

A Wilentz Litigation Team Wins Dismissal in Consumer Credit Suit in the U.S. District Court for the Eastern District of Pennsylvania

04/08/21

Daniel S. Bernheim, 3d and Jonathan J. Bart, of Wilentz's Philadelphia litigation team obtained the dismissal of a complaint against a debt collection law firm for alleged violations of the Fair Debt Collection Practices Act ("FDCPA"). In *Elmaggar v. Watson & Allard, P.C.* (E.D. Pa. No. 19-3743), the plaintiff alleged that the defendant law firm violated the FDCPA by seeking to collect Federal Perkins student loans and non-federal loans after the expiration of the statute of limitations and refused to aid in causing its client, the University of Pennsylvania, to release the plaintiff's transcript without full payment.

Successfully arguing that Perkins loans do not have a statute of limitations and demonstrating that the plaintiff's own correspondence attached to the complaint demonstrated that the law firm only sought to collect the Perkins loans, the District Court dismissed all claims relating to the collection of outstanding loans with prejudice. In addition, the Court found that there was no allegation that the law firm had any control over the University of Pennsylvania's decision to release transcripts and that absent bankruptcy, a university has the right to withhold transcripts for non-payment of loans. Accordingly, the complaint was dismissed in its entirety.

Of interest, although the Court did not base its holding on the standard to be applied to communications with borrowers represented by counsel (referred to as the "competent attorney" standard), it cited with approval the Seventh Circuit's application of a heightened standard applied to such communications in comparison to the "least sophisticated debtor" standard applied to direct communications with borrowers and noted the Third Circuit's approval of such a standard in *Allen ex rel Martin v. LaSalle Bank, N.A.*, 629 F.3d 364 (3d Cir. 2014). This may provide additional strength to the argument to apply a heightened standard when defending FDCPA claims in the future when based on negotiations with attorneys.

About Wilentz' Litigation Practice in Philadelphia

Messrs. Bernheim and Bart concentrate their practice in the defense of lending institutions and law firms in consumer based class action and individual lawsuits. They have obtained precedential holdings before the Pennsylvania Supreme Court and the United States Court of Appeals for the 3rd and 9th Circuits and numerous District Courts under the Uniform Fiduciaries Act, the Pennsylvania Loan Interest Protection Act, the FDCPA and the Equal Credit Opportunity Act as well as numerous other cases relating to the law of negotiable instruments under the Uniform Commercial Code.

Attorneys

- Daniel S. Bernheim, 3d
- Jonathan J. Bart

Practices

- Business & Commercial Litigation
- Appellate Practice
- Banking & Financial Services
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