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—ATTORNEYS AT LAW—
WILENTZ, GOLDMAN & SPITZER, P.A.

Wilentz Philadelphia Lawyers Prevail in a Trio of Cases

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The Philadelphia litigation team of shareholders Daniel S. Bernheim and Jonathan J. Bart recently successfully obtained dismissals of two class action and one individual cases against their clients in three actions. Two of these matters successfully defended law firms under the Fair Debt Collection Practices Act (FDCPA):

1. *Riotto v. Hladik, Oronato and Federman, LLP* (U.S. Dist. Ct., Dist. New Jersey, No. 2:19-cv-13921). In this case, Wilentz attorneys Daniel S. Bernheim and Jonathan J. Bart represented the law firm of Hladik, Oronato in a putative class action case brought by a mortgagor who had defaulted under his mortgage loan under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. The plaintiff sued the servicer for inaccurate calculations of his indebtedness and the law firm for alleged misleading statements made in an FDCPA Validation Notice provided as a prelude to foreclosure. The plaintiff first alleged that the law firm misled him as to the time within which he must seek to contest the debt in that the notice provided him with 30 days to contest the debt but only 20 days per state law before the foreclosure action may be instituted. Relying on a case previously won by the same Wilentz team, *Oppong v. First Union Mortgage Corp.*, 326 Fed. Appx. 663 (3d Cir. 2009), the law firm argued that the "least sophisticated consumer" could understand the difference between differing time deadlines, such that the FDCPA was not violated. Plaintiff then withdrew this claim and filed an Amended Complaint alleging that the FDCPA rights disclosed in the validation letter were overshadowed by other information in the letter such that the information was not "effectively conveyed" to the consumer and that the disclosures of those rights were misleading and deceptive. While the servicer settled the claims against it, Wilentz filed a motion to dismiss the Amended Complaint, successfully arguing that the form of the letter was compliant with the FDCPA and that the least sophisticated consumer could understand the information provided. The class action was therefore dismissed against the law firm.
2. *Elnaggar v. Watson and Allard, P.C., et al*. (U.S. Dist. Ct. E.D. Pa., No. 2:19-cv-03743). In this case, a former student of the University of Pennsylvania brought an FDCPA action against a law firm and its individual lawyers. The law firm had brought a collection action for unpaid tuition loans years earlier and obtained a default judgment. After the default was vacated in 2018 and the case dismissed, the plaintiff contacted the law firm to demand that his transcript be released. The law firm replied that the loan was still outstanding and the statute of limitations for the loan had not expired. Plaintiff brought an FDCPA claim arguing that the law firm was trying to collect a time-barred debt. Wilentz of Bernheim and Bart, on behalf of the law firm, filed a motion to dismiss noting that the loan program under which the collection action was brought (Federal Perkins loans) has no statute of limitations so no FDCPA violation occurred. The court agreed with Wilentz's argument and dismissed the case with leave to file an amended complaint. After the plaintiff filed an amended complaint alleging that the law firm had a duty to respond to plaintiff's demand to release the transcript, Wilentz filed another motion to dismiss on the basis that after its initial response, the law firm had no duty under the FDCPA to either further respond or intervene in plaintiff's dealings with the University to obtain his transcript. The court again agreed with Wilentz and this time dismissed the case with prejudice. An appeal was recently filed to the Third Circuit.
3. *Hermann-Condobrey v. Morgan Properties Management Co., et al*. (Superior Ct., Camden Co., NJ, No.

CAM-L-000410-22). This was a putative class action case brought on behalf of residential lessees at properties owned by the defendant claiming a wide variety of alleged violations of the New Jersey Truth-in-Renting Act ("TRA") and Consumer Fraud Act ("CFA"), among other claims based primarily on the assessment of attorney's fees upon the representative plaintiff's default in her eviction case. Working as a team with a top notch litigation group from Saul Ewing, the Wilentz lawyers Bernheim and Bart filed a motion to dismiss arguing that no private right of action existed under the TRA, that similar class action claims had been filed by the same plaintiff's law firm such that the dismissal of those claims constituted *res judicata*, that the entry of judgment against the representative plaintiff in landlord-tenant court barred these claims on the basis of the New Jersey Entire Controversy Doctrine, and that the plaintiff left her lease owing more than the attorneys' fees complained of, so that she suffered no ascertainable loss as required under the CFA. After extensive briefing, the court granted the Defendants' motion and dismissed the case with prejudice on every ground articulated in the motion to dismiss.

Attorneys

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

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