

RECENT DEVELOPMENTS

Potter, employing Dooley, foreclosed on the house as to both Gary and Yolanda Parker. The court granted summary judgment on the foreclosure. After this decision, Yolanda filed notice of rescission pursuant to the Truth in Lending Act (“TILA”). She also sought temporary and permanent restraining orders against the foreclosure. The district court denied the restraining orders and finalized the foreclosure. Potter purchased the home in foreclosure. The court then informed Yolanda that she could pursue a claim of rescission under TILA, but subsequently ruled for Potter on her motion that Yolanda failed to state a claim for which relief could be granted. Parker appealed.

HOLDING: Vacated and remanded.

REASONING: The court considered this motion for dismissal in the light most favorable to the plaintiff and reviewed *de novo*. It found that although Potter was not a “creditor” in the TILA sense, Yolanda might still have a claim under TILA.

Yolanda claimed that Potter was a “creditor” as defined by the TILA, because the mortgage was obtained through a mortgage broker, namely Money and/or Dooley. Under TILA, “creditor” means: a person (A) who regularly extends consumer credit that

is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. The court found that both prongs must be satisfied, and Potter did not qualify under (B) because her name did not appear on the face of the note or contract.

The court next considered an alternative that Yolanda did not argue, whether Potter could be liable as an assignee. The district court had also addressed this, but found that assignees were not liable under a civil action predicated on either section 1640(a) or section 1641(a). This court agreed, but noted that Yolanda was not bringing a civil action, she was bringing an action for rescission, which is governed by section 1635. The TILA clearly states that if a consumer is eligible for rescission under § 1635, she may seek rescission of the transaction as against the creditor or “as against *any* assignee of the obligation.” The court vacated the summary judgment and remanded for determination of Potter’s status as an assignee.

LANDLORD TENANT

LANDLORD LIABLE FOR TENANT’S EMOTIONAL DISTRESS

Homesavers Council of Greenfield Gardens, Inc. v. Sanchez, 874 N.E.2d 497 (Mass. App. Ct. 2007).

FACTS: Tenant and her children lived at the landlord’s housing complex that received Section 8 federal rental subsidies for a portion of the units. The landlord thought the subsidy would be better for another tenant who received less income and terminated the subsidy without informing the tenant. The tenant took leave from her job and because she couldn’t afford her rent, she sought a rent reduction which she would have been entitled to under her subsidy had the landlord not transferred it. The landlord brought suit against the tenant for unpaid rent and the tenant countersued, asserting the illegality of the subsidy termination.

The trial court held that the landlord’s violation of the tenant’s right of quiet enjoyment caused the tenant emotional distress and awarded her damages.

HOLDING: Affirmed.

REASONING: The tenant’s claim of intentional infliction of emotional distress was a statutory violation of Massachusetts General Laws chapter 186, section 14. The court stated that it saw “no reason in law or policy why emotional distress, where foreseeable, should not be viewed as a consequence of interference with quiet enjoyment.” The court noted that even though it had not been expressly decided whether emotional distress may be awarded for a section 14 violation, both the Supreme Judicial Court of Massachusetts and this court have assumed such damages are available. The court reasoned that “a woman with children living in a subsidized apartment might find anxiety-provoking a threat to put her on the street for failure to pay an unreasonable, erroneously determined rent well beyond her limited financial capacity.” The court rejected the landlord’s argument that the

tenant’s emotional distress preceded the landlord’s violation. The court agreed that “the judge could... find that the landlord’s actions were willful and, thus, per the attorney general’s regulations, a violation of Massachusetts General Laws chapter 93A, section 2.” The court also rejected the landlord’s argument that the tenant’s emotional distress was not reasonably foreseeable where “prior eviction proceedings between the parties had been resolved amicably” because in the tenant’s prior eviction there was an agreement between the parties which the court considered different from the facts of the case at hand.

The court agreed with the trial court’s finding there was enough evidence to sustain a finding of

intentional infliction or reckless infliction of emotional distress by extreme and outrageous conduct because “the conduct occurred in total disregard of applicable substantive and procedural guidelines; it continued notwithstanding the tenant’s efforts to obtain a correction; the landlord remained obdurate until confronted by an actual trial; and the actions subjected the tenant to potentially disastrous consequences.” The court explained that there was plenty of evidence to support the finding that the tenant suffered from severe, emotional distress. The tenant suffered from depression which “stabilized prior to her receipt of the notice to quit [but] worsened markedly after the notice was served.” Subsequent to the landlord’s actions, she became anxious, frightened, irritable, extremely worried for the welfare of her children, was unable to sleep, [and was plagued by] thoughts of suicide.”

There was enough evidence to sustain a finding of intentional infliction or reckless infliction of emotional distress by extreme and outrageous conduct.