Loyola Consumer Law Review

Volume 2 | Issue 1 Article 9

1989

New Jersey's Anti-Eviction Act Protects Tenants from Eviction Induced by Unreasonable Lease Changes

Karen M. Cichowski

Anti-Waiver Provision (from page 21)

557 (Ala. 1977). In *Byrd*, the creditor asked the debtor to come to its office to discuss the disputed default. While the debtor was reviewing the creditor's records, the creditor repossessed his car. The *Byrd* court held that the repossession violated U.C.C. section 9-503 because the creditor engaged in trickery. The court in the present case held that *Byrd* was not applicable because FMCC did not use trickery to repossess Tillquist's car, and because Tillquist knew he was behind in payments.

Tillquist also claimed that FMCC's repossession notice violated section 9-504(3) of the U.C.C. because it demanded more money than Tillquist owed. Tillquist was three payments behind when FMCC repossessed the car. Tillquist subsequently made two payments, on October 18 and 19, but the October 21 repossession notice did not reflect these payments. The court rejected Tillquist's claim that section 9-504(3) of the U.C.C. prohibited mistaken repossession notices. Even if it did, the court held that the October 21 notice did not constitute a mistake because FMCC did not have sufficient opportunity to change its records.

Tillquist further alleged that the repossession notice was misleading because it informed him that he could reclaim his car within fifteen days of receipt of the notice (October 21), or within fifteen days from the date of repossession (October 18). Tillquist argued that the conflicting dates impaired his rights under the Retail Installment Sale Financing Act ("RISFA"), Conn. Gen. Stat. §§ 42-83 - 100a (1988), because if he chose to rely on the later of the two dates he may not have been able to reclaim his car. The court concluded, however, that October 21 was not a redemption date but the last day Tillquist could reinstate the contract. Thus, the court held that the notice did not violate the RISFA because it did not contain conflicting redemption dates.

FMCC's Communications with Tillquist Constituted Harassment

The court then addressed Tillquist's final claim that FMCC violated the Connecticut Creditor's Collection Practices Act ("CCPA"), Conn. Gen. Stat. §§ 36-243a-243c (1988). The CCPA limits who a creditor may contact in connection with collecting a debt. The list does not include members of the debtor's family. Accordingly, the court concluded that FMCC had violated the CCPA by calling Tillquist's home and talking to his children about the debt. The CCPA also forbids direct communications with a debtor whom the creditor knows is represented by an attorney, unless the attorney fails to respond to the creditor's inquiries. The court found that FMCC violated the CCPA by contacting Tillquist after he informed FMCC that he was represented by an attorney. The court also held that FMCC violated the CCPA by calling the Tillquists while they were at work. Overall, the court found that FMCC had engaged in a pattern of general harassment in violation of the CCPA.

Finally, the court addressed whether the CCPA violations were also violations of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-110a - 110q (1988). A trade practice violates the CUTPA if the practice constitutes a breach of public policy. The court held that FMCC's violations of the CCPA amounted to a breach of public policy under the CUTPA.

The court found that Tillquist had not shown any actual damages, but recognized its discretionary power to award punitive damages where the defendant's actions demonstrate a willful disregard for others. The court held that FMCC intentionally violated the CCPA by its embarrassing and harassing phone calls and awarded Tillquist $500 in punitive damages plus reasonable attorney's fees.

Michael I. Leonard

New Jersey's Anti-Eviction Act Protects Tenants From Eviction Induced By Unreasonable Lease Changes

In *447 Associates v. Miranda*, 115 N.J. 522, 559 A.2d 1362 (1989), the New Jersey Supreme Court examined New Jersey's Anti-Eviction Act, N.J. Rev. Stat. §§ 2A:18-61.1 - 61.12 (1988) ("the Anti-Eviction Act"), and held that in an action to evict a tenant for nonpayment or late payment of rent, the tenant may raise the defense that late rent payments stemmed from an unreasonable change in the tenant's renewal lease. The court also held that landlords must take into account the totality of the tenant's circumstances and not impose lease changes that will cause undue hardship to tenants.

Background

In October of 1984, Carmen Miranda ("Miranda") entered into a lease agreement for an apartment in Newark, New Jersey. Under that lease, Miranda paid her monthly rent, in cash, directly to her landlord or his agent after she had received and cashed her public assistance check. Although the public assistance check typically arrived on the third of the month or later, Miranda was never charged a penalty for late payment of her rent.

In May of 1986, the apartment building in which Miranda lived was sold to 447 Associates ("Associates"). On May 18, 1986, Associates mailed Miranda a "Notice of Rent Increase" which terminated her lease on August 31, 1986, and offered her a new lease. Under the new lease, Miranda's rent was increased and she was required to pay her rent by mail no later than the fifth of the month. If the rent check was received after the fifth of the month, Miranda would be charged a twenty-five dollar penalty. The "Notice of Rent Increase" also stated that Miranda's continued possession of the apartment would constitute acceptance of the new lease and its provisions.

Miranda never signed a new lease with Associates, but she remained in the apartment after August 31, 1986, and paid the increased rent. Miranda was able to comply with the payment deadline only by cashing her public assistance checks, purchasing a money order and mailing it to Associates. Because Miranda did not receive her public assistance check until on or after the third of the month, Associates received her rental payments two to four days late in four of the next six months. Pursuant to the conditions of the renewal lease, Associates assessed a twenty-five dollar late fee for each late payment. Miranda refused to pay the late fees and on February 19, 1987, Associates filed a complaint seeking possession of Miranda's apartment.

Procedural History

The trial court held that Miranda's continued possession of the apartment, after Associates notified her of the lease changes, constituted acceptance of all the renewal lease terms, including the penalty for late payments. Consequently, the court ordered Miranda to pay Associates the late fees, plus court costs, or lose possession of the apartment. The appellate court affirmed the trial court's decision. The New Jersey Supreme Court accepted the case to clarify the rights of landlords and tenants under the Anti-Eviction Act.

Opinion of the New Jersey Supreme Court

The Anti-Eviction Act was passed in 1974 during a statewide housing shortage to protect residential tenants from unfair and arbitrary evictions. The Anti-Eviction Act provided that a landlord could only evict a tenant for one of the "good cause" reasons stated in the statute and only if the landlord gave the tenant "suitable notice" before instituting an eviction proceeding. A landlord has good cause to evict a tenant if the tenant fails to pay rent owed, N.J. Rev. Stat. § 2A:18-61.1(a), fails to pay a rent increase after the tenant was notified of the increase provided if the increase is not unconscionable, N.J. Rev. Stat. § 2A:18-61.1(f), or refuses to accept reasonable changes in the terms of a lease, N.J. Rev. Stat. § 2A:18-61.1(i).

Associates argued that Miranda had accepted all the renewal lease provisions by retaining possession of the apartment and that Miranda's failure to pay the late rent penalties constituted "good cause" for eviction under the Anti-Eviction Act.

Miranda, however, argued that she had a right to challenge the reasonableness of the new late-payment fee provision before it became binding on her. She also argued that she never accepted the late-payment fee provision contained in Associates' "Notice of Rent Increase," and that the late-payment fee provision was unreasonable and should not be enforced.

The court held that in an action to evict a tenant for nonpayment or late payment of rent the tenant may raise the defense that the failure to abide by the rent-payment requirements of the lease resulted from an unreasonable change in the tenant's lease. The court further held that after the tenant raises this defense, the landlord has the burden of proving that the change was reasonable. In doing so, the court distinguished challenges to changes in lease terms and conditions under N.J. Rev. Stat. § 2A:18-61.1(i), from challenges to the amount of a rent increase under N.J. Rev. Stat. § 2A:18-61.1(f). When a tenant challenges a rent increase the tenant has the burden of proving that the increase was unconscionable.

The court first addressed whether Miranda had accepted the new late-payment fee by retaining possession of the apartment. In a month-to-month lease where there is no written lease, a tenant impliedly accepts a rent increase if the tenant remains after receiving notice of a rent increase. Therefore, Miranda impliedly accepted the new lease's increased rent by retaining possession of the apartment. However, under the Anti-Eviction Act a tenant has the right to challenge the reasonableness of a lease change in court within thirty days after being notified of the change. The court concluded that acceptance of a renewal lease should not bar tenants from later challenging the reasonableness of a term contained therein. The court held that Miranda did not have an adequate opportunity to challenge the late-payment fee provision because she was not invited to sign a lease or negotiate the terms contained in the "Notice of Rent Increase." The court noted that absent some direction from landlords, tenants in Miranda's situation could not be expected to know the legally acceptable method of challenging the reasonableness of a lease renewal term. Therefore, although Miranda had accepted some of the provisions of the renewal lease, her consistent refusal to pay the late-payment fees constituted a valid refusal to accept that lease change.

The court next addressed whether Associates had "good cause" to evict Miranda for refusing to accept the late payment provisions. The court agreed with Miranda that, in light of her circumstances, the change in the lease imposing late fees whenever the rent was not paid by mail by the fifth of the month was unreasonable. The court stated that the reasonableness of a lease change must be determined by considering the interests of both the landlord and the tenant. In addition, the court stated that when making changes in the material terms or conditions of leases, landlords must take into account the totality of the tenant's circumstances and not impose changes that will cause undue hardship to tenants who attempt in good faith to meet their rent obligations. The court noted that Miranda did not complain about having a rent deadline, only the timing of the deadline. Because Miranda's dependence on public assistance

(continued on page 24)

Anti-Eviction Act (from page 23)

consistently prevented her from paying the rent by the fifth of the month, the court held that the provision requiring her to do so was unreasonable and therefore unenforceable.

Karen M. Cichowski

Iowa Supreme Court Establishes Exhaustion Presumption In Tortfeasor Liability Policy Settlements For Underinsured Motorist Insurance

In *Estate of Rucker v. National General Insurance Co.*, 442 N.W.2d 113 (Iowa 1989) (en banc), the Supreme Court of Iowa considered a dispute concerning the effects of a settlement upon an underinsured motorist policy which contained an exhaustion requirement. The exhaustion requirement precluded coverage if the injured party settled for less than the tortfeasor's full policy amount. The court held that the exhaustion requirement was against public policy. Instead, the injured party will be assumed to have exhausted the tortfeasor's policy limits by settling the claim. The injured party may then recover from the underinsured motorist policy the difference between the actual injury and the tortfeasor's policy limit, subject to the underinsured motorist policy limits.

Background

While bicycling on June 4, 1986, Herbert F. Rucker ("Rucker") was struck and killed by a pick-up truck driven by Carl F. Bunse ("Bunse"). Bunse had a $100,000 automobile liability insurance policy with Farm Bureau Mutual Insurance Company ("Farm Bureau"). Under Rucker's settlement with Farm Bureau, Rucker would receive an immediate payment of $25,750, monthly payments of $500, and a guaranteed minimum total payout of $115,750. The present value of the guaranteed payout was $85,250. Rucker had underinsured motorist coverage of $20,000 through his automobile insurance agency, National General Insurance Company ("National"). Iowa Code Section 516A.1 requires that automobile insurance policies include this type of coverage unless the insured objects in writing. Iowa Code § 516A.1 (1988). The goal of the underinsured motorist coverage statute is to fully compensate the victim. The underinsured motorist coverage applies whenever the tortfeasor has less insurance than the victim has injury.

After Rucker's estate ("the estate") settled with Farm Bureau, the estate sought benefits from National under Rucker's underinsured motorist policy. When National refused to pay, the estate filed suit against National for the underinsured motorist policy benefits. National argued that the policy explicitly required that the estate exhaust Bunse's liability policy limits before claiming underinsured policy benefits. The estate failed to do this because the settlement with Farm Bureau had a present value less than Bunse's policy limits. In contrast, the estate argued that the exhaustion requirement was against public policy.

The District Court's Decision

The district court held that the exhaustion requirement did not violate public policy. However, the district court held that the estate satisfied the exhaustion requirement because the $115,000 guaranteed pay-out under the settlement exceeded the $100,000 policy limit. Therefore, the estate was entitled to the underinsured motorist benefits to the extent it could demonstrate damages in excess of the $100,000 liability policy limit. The Supreme Court of Iowa granted National's application for interlocutory appeal.

The Iowa Supreme Court Decision

The Iowa Supreme Court held that, as a matter of law, a settlement must be valued at its present value. The $85,250 present value of the estate's settlement was $14, 750 below the liability policy limit and therefore the estate failed to fulfill the exhaustion requirement.

The court also held, however, that the exhaustion requirement was against public policy and therefore void. The goal of the underinsured motorist coverage is to fully compensate the victim; it applies whenever the tortfeasor has less insurance than the victim has injury. If the tortfeasor's liability insurance does not fully compensate the insured's loss, the insured can recover the amount of the loss minus the amount paid by the tortfeasor's insurance, subject to the limits of the policy.

The court stated that private and public policy considerations support encouraging an injured party to settle for less than a tortfeasor's liability policy limits. It may be in the injured party's best interest to settle with the tortfeasor's liability insurer for an amount less than the policy limit, even when liability and damages are certain, to avoid the cost, delay and uncertainty of a lawsuit. An exhaustion requirement discourages prompt settlement and increases courts' litigation caseload. When settlement is in the injured person's best interest, failure to fully exhaust the liability policy should not be a bar to receiving underinsured motorist coverage. An exhaustion requirement that does so, the court held, violates public policy.

The court held that an injured person may accept what he or she considers the best settlement offer without losing the underinsured motorist benefits. The court will assume that the settlement exhausted the tortfeasor's liability policy. The injured person may then recover the difference between the damages actually suffered and the limit of the underin-