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Rental Applicants Do Not Have Viable ECOA and UTPCPL Claims

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A recent decision handed down by the United States District Court for the Middle District of Pennsylvania in *Portis v. River House Associates* sheds new light on what legal measures residential lease applicants in Pennsylvania may take due to racial discrimination.

In *Portis*, the federal court summarily dismissed an attempt by rental applicants to sue for racial discrimination under the Equal Credit Opportunity Act (ECOA) and Pennsylvania's Unfair Trade Practices and Consumer Protection Law (UTPCPL).

In 2005, a married African-American woman who was relocating from out of state to central Pennsylvania sought to lease an apartment unit at Korman Communities in Harrisburg. After touring the sample apartment units, she stated her intention to lease a studio apartment unit in the complex. She was then directed by the general manager to complete a rental application, which she immediately did.

After doing so, the general manager left the couple to run a credit history on the wife.

When the general manager returned, she indicated that the credit check showed no credit history for the wife and requested to run such a check on the husband instead. The husband complied with the general manager's request even though the wife insisted she had an established credit history.

The general manager then left the couple again to check the husband's credit. Upon her return, the general manager stated that the credit check showed no credit history for him as well. Visibly frustrated, the couple demanded that the general manager re-run the credit checks. After the couple left the property management office, the general manager claimed she had run credit checks several times for both of them but that no such history was available for either of them.

According to the general manager, all of these credit checks were performed through a company named First American Registry Inc.

Due to the alleged absence of a credit history for the couple, Korman Communities demanded that the wife pay a security deposit of a greater amount than originally represented and a nonrefundable move-in fee to secure the lease. The couple refused to agree to these new terms.

One week later, the wife completed a rental application and leased an apartment unit down the road at Pennsylvania Place.

Similar to Korman Communities, Pennsylvania Place also required a credit check for rental applicants, and via First American Registry Inc. they were able to confirm that the wife had good credit.

Soon thereafter, the couple contacted First American Registry Inc. to ascertain why their credit histories were not made available to Korman Communities. They were allegedly advised that neither the general manager nor any employee of Korman Communities requested such histories, and that the only requests for their credit were made by Pennsylvania Place.

Believing that they were subjected to racial discrimination, the couple filed suit against Korman Communities and its general manager for violations of the ECOA and UTPCPL, among other causes of action.

The general manager and Korman Communities then filed a motion to dismiss these statutory claims.

As for the ECOA claim, the defendants argued that the couple lacked a viable cause of action because leasing residential property does not constitute a credit transaction under the ECOA.

The federal court first examined both the actual text of the ECOA as well as Congress' findings and statement for the ECOA.

The ECOA provides that "[i]t shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction ... on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract)." After reviewing this passage of the ECOA, the federal court focused its inquiry on how the terms "creditor" and "credit transaction" are defined under the ECOA. The federal court noted that, although the ECOA did not define the term "credit transaction," the terms "credit" and "creditor" are defined and "their definitions provide some insight: 'credit' denotes 'the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor;' 'creditor' refers to 'any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.'" Since the U.S. Supreme Court and the 3rd U.S. Circuit Court of Appeals have never considered application of the ECOA in the residential lease context, the federal court thus relied upon Congress's findings and statement of the ECOA's purpose as well as the United States Court of Appeals for the 7th Circuit's ruling in *Laramore v. Ritchie Realty Management Co.* for further guidance.

According to Congress, "there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness,

impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote.

It is the purpose of [ECOA] to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to sex or marital status." In *Laramore*, the 7th Circuit found that the ECOA does not apply to "typical" residential leases.

The federal court in *Portis*, after reviewing the allegations contained in the complaint, similarly found no reason that the lease which the couple "sought was sufficiently extraordinary to render it within the ECOA." Relying heavily upon the underlying basis set forth by the 7th Circuit in *Laramore*, the federal court in *Portis* found "sound *Laramore's* reasoning that 'the typical residential lease involves a contemporaneous exchange of consideration - the tenant pays rent to the landlord on the first of each month for the right to continue to occupy the premises for the coming month.'" The federal court concluded that, "generally speaking, residential leases are not credit transactions and landlords are not creditors under the ECOA." According to the federal court, there was no indication in the complaint that the couple sought a lease containing any extraordinary terms or conditions that could render the lease a credit transaction under the ECOA.

Rather, the federal court emphasized that the complaint repeatedly alleged that the couple merely sought to lease an apartment.

The federal court in *Portis* also found that the complaint already included a claim under the Fair Housing Act, "any application of the ECOA to the instant circumstances would be duplicative and superfluous." The federal court next addressed the viability of the couple's claim under UTPCPL.

The federal court, similar to its analysis under the ECOA, turned to the text of that statute.

The federal court wrote that the UTPCPL prohibits "'unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.' Should such unsavory practices be employed, the UTPCPL permits certain private and public actors to bring suit.

Specifically, private actions may be filed by 'any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, as a result of the use or employment by any person of a method, act or practice declared unlawful by this act,' and the attorney general or a district attorney may bring an action when he or she 'has reason to believe that any person is using or is about to use any method, act or practice declared by [the UTPCPL] to be unlawful, and that proceedings would be in the public interest.'" The federal court pointed out that "the UTPCPL clearly permits private actors to bring suit only when they purchase or lease goods or services." Thus, while Pennsylvania courts have repeatedly found that the UTPCPL applies to residential leases, the question remained "whether the UTPCPL permit[ted] a person who leased property from one entity to bring suit against another entity from which the person

initially attempted to lease property," since no such court has addressed such a situation.

The federal court ultimately refused to expand beyond the plain meaning of the UTPCPL's text. In particular, the federal court rejected the couple's plea to liberally construe that text because, in doing so, the court would have had to basically ignore the plain language of the text. In doing so, the federal court merely confirmed that the UTPCPL only applies to consummated transactions.

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