

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM H. DANIELS, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
KENNETH L. BARITZ, et al., :  
Defendants. : No. 02-CV-7929

MEMORANDUM AND ORDER

J. M. KELLY, J. APRIL , 2003

Presently before the Court are two Motions to Dismiss, one filed by Defendants Wynnefield Terrace Associates ("WTA"), Woodward Properties, Inc. ("WPI"), Carol Willis ("Willis"), Kathleen Woodward and Michael Woodward (the "Woodwards") (collectively, the "Landlords")<sup>1</sup> and another filed by the Landlords' attorney, Defendant Kenneth L. Baritz, Esquire ("Baritz"). Plaintiff William H. Daniels ("Daniels"), a tenant residing in an apartment managed by the Landlords', filed a Class Action suit in this Court seeking damages and injunctive and declaratory relief from the Landlords and Baritz (collectively, the "Defendants") for alleged deceptive and unfair practices in connection with the Landlords' rental operations.<sup>2</sup>

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<sup>1</sup> The Woodwards' are alleged principal or sole owners of WTA and WPI. (Daniels' Compl. ¶ 8.) Willis is a purported WTA and WPI employee and/or an agent of the Woodwards. (Daniels' Compl. ¶ 9.)

<sup>2</sup> Daniels' Class Action suit is brought pursuant to Federal Rule of Civil Procedure 23 on behalf of a class defined as "all persons who during the period October 15, 1996 to the present . . . sustained damages as a result of renting (and/or who guaranteed

In the instant motion, Defendants petition this Court to dismiss allegations of federal and state law fair debt collection violations, state consumer protection and landlord tenant laws, local housing ordinances, and common law claims set forth in Daniels' Complaint. Specifically, Defendants contend that since neither the Landlords nor Baritz are debt collectors within the purview of the federal Fair Debt Collection Practices Act, Daniels' sole federal claim must fail. Consequently, they allege that this Court is without jurisdiction to adjudicate Daniels' remaining claims. Further, even if this Court finds that Daniels' federal claim withstands dismissal, Defendants argue that Daniels nevertheless insufficiently pleads his state, local and common law claims, which are also barred by res judicata and collateral estoppel doctrines. To rebut Defendants' motions to dismiss, which challenge almost all of Daniels' claims set forth in his Complaint, Daniels provides this Court with a brief response that addresses only some of Defendants' arguments.

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the rental of) apartments from the Landlords" and who suffered injury as a result of the Defendants' purported violations of federal, state and common law in connection with the Landlords' rental operations. (Daniels' Compl. ¶ 11.) Daniels' suit also includes an "Extorted Sub-Class," consisting of those Class members "who rented apartments from the Landlords during the Class Period who were wrongfully extorted by the Landlords and their Lawyer by means of unjustified eviction proceedings as a means of coercing members . . . to pay money to defendants which was not owed to them." (Daniels' Compl. ¶ 12.) The question of class certification is not before us, and we express no opinion on this issue at this time.

Despite Daniels incomplete briefing, for the following reasons, the Motion to Dismiss filed by the Landlords is **GRANTED IN PART and DENIED IN PART** and the Motion to Dismiss filed by Baritz is **GRANTED IN PART and DENIED IN PART**.

#### I. BACKGROUND

In 1996, Daniels entered into a lease agreement (the "Lease") with the Landlords to rent a residential apartment in Philadelphia, Pennsylvania. In September 2002, Baritz, on behalf of the Landlords, commenced an action to evict Daniels from his apartment for his alleged failure to pay rent. Sometime thereafter, a proceeding was held in the Philadelphia Municipal Court and a judgment by agreement was ultimately rendered.

On October 17, 2002, Daniels filed the instant Class Action suit, alleging violations of both the federal and Pennsylvania fair debt collection practices acts, Pennsylvania Landlord and Tenant Act and consumer protection laws, Philadelphia Fair Housing Ordinances, and common law. In his Complaint, Daniels avers that the Lease he and, alleged, thousands of other individuals entered into was a "contract of adhesion" containing "unlawful, onerous and/or unfair terms" that allegedly operated to encourage "Landlords' fraudulent and deceptive scheme to extort money from Daniels and the Class members." (Daniels' Compl. ¶¶ 21-22.) Daniels further avers that the Landlords

imposed improper escrow procedures and unjustified deductions from security deposits, assessed illegal late charges, and commenced unwarranted eviction proceedings, to which Baritz initiated. Daniels requests both compensatory and punitive damages as well as injunctive and declaratory relief on behalf of all members of the Class and the "Extorted Sub-Class" injured by Defendants' alleged fraudulent and deceptive actions.

## II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12 provides that a party may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept the non-movant's well-plead averments of fact as true and view all inferences in the light most favorable to the non-moving party. Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 944 (3d Cir. 1985); Society Hill Civic Assoc. v. Harris, 632 F.2d 1045, 1054 (3d Cir. 1980); Abbdulaziz v. City of Philadelphia, Civ. A. No. 00-5672, 2001 U.S. Dist. LEXIS 16972, at \*4 (E.D. Pa. Oct. 18, 2001). In reviewing a motion to dismiss, the court must only consider the facts alleged in the pleadings, documents attached thereto as exhibits, and matters of judicial notice. Southern Cross Overseas Agencies, Inc. v. Kwong Shipping Group Ltd., 181 F.3d 410, 426 (3d Cir. 1999); Jordan v.

Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994); Douris v. Schweiker, Civ. A. No. 02-1749, 2002 U.S. Dist. LEXIS 21029, at \*6 (E.D. Pa. Oct. 23, 2002). A motion to dismiss is appropriate only when the movant establishes that he is entitled to judgment as a matter of law and there exists "no set of facts in support of his claims which would entitle him to relief." Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998); Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir. 1991).

### **III. DISCUSSION**

Although the Landlords and Baritz each submit separate motions to dismiss pursuant to Rule 12(b)(6), Defendants, throughout their respective motions, challenge the same claims in Daniels' Complaint and offer similar arguments. Thus, in the interest of clarity, we address the Defendants' shared claims before focusing on the few claims unique to the Landlords.

#### **A. Defendants' Shared Claims**

##### **1. Fair Debt Collection Practices Act**

Defendants aver that they are not liable for alleged debt collection practices violations since they are not "debt collectors" within the purview of the federal Fair Debt Collection Practices Act ("FDCPA"). Thus, Defendants reason that

since Daniels' sole federal claim fails, this Court is without jurisdiction to address Daniels' remaining state, local and common law claims.

Enacted in 1977, the FDCPA protects debtors from "abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). A "debt collector," as defined in the FDCPA, includes:

[A]ny person who uses any instrumentality of interstate commerce of the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owned or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts . . . . The term does not include-

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

. . . .

(F) any person collecting or attempting to collect any

debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

15 U.S.C. § 1692a(6).

**a. The Landlords' Claims**

The Landlords allege that Congress intended the FDCPA to regulate only those persons who regularly engage in the business of collecting debts owed to others, and not creditors who seek to collect their own debts. Since the Landlords are merely collecting a debt owed to them, they argue that they are not "debt collectors" under the FDCPA. Generally, the FDCPA does not apply to creditors attempting to collect on their own debts since creditors are "presumed to retain their abusive collection practices out of a desire to protect their corporate good will . . . ." Pollice v. National Tax Funding, L.P., 225 F.3d 379, 403 (3d Cir. 2000) (quotations omitted); see also 15 U.S.C. § 1692(a)(6)(A); Oldroyd v. Associates Consumer Discount Co., 863 F. Supp. 237, 241 (E.D. Pa. 1994). However, the FDCPA applies to a creditor "who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15

U.S.C. § 1692a(6). Thus, when a creditor either uses an alias or "control[s] almost all aspects of debt collection," he is considered a "debt collector" as defined by the FDCPA. Flamm v. Sarner & Assoc., No. Civ. A. 02-4302, 2002 U.S. Dist. LEXIS 22255, at \*10 (E.D. Pa. Nov. 6, 2002) (quotations omitted).

Daniels' Complaint avers that Defendants, "directly or through subordinates or agents," used deceptive and misleading representations and practices to collect purported debts from class members. (Daniels' Compl. ¶ 31.) Daniels explains that by using Baritz's name and status as an attorney to collect on their debts, the Landlords fall within the definition of "debt collector" pursuant to the FDCPA. See, e.g., Zhang v. Haven-Scott Assoc., No. Civ. A. 95-2126, 1996 U.S. Dist. LEXIS 8738, at \*31 (E.D. Pa. June 21, 1996). Although the Landlords object to this characterization of their debt collection practices, we must view all well-plead factual averments in the light most favorable to the non-movant on a Rule 12(b)(6) motion. Considering this standard, we cannot, at this juncture, conclude that the Landlords are not liable as debt collectors under the FDCPA.

However, as the Landlords point out, the FDCPA does not apply to "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." See 15 U.S.C. § 1692(a)(6)(A). Thus, we find, and Daniels does not dispute, that the Woodward and Willis, as employees or officers

of WTA and WPI, are exempt from FDCPA liability. Accordingly, Woodwards and Willis are dismissed as to Count I of Daniels' Complaint.

**b. Baritz's Claims**

Baritz also claims that he is not a "debt collector" pursuant to the FDCPA, but fails to support this bare allegation with any facts indicating otherwise. Although the FDCPA, at one time, did not apply to attorneys acting on behalf of their clients, Congress repealed this provision when it discovered that an increasing number of attorneys were collecting debts on their clients' behalf. Dutton v. Wolpoff & Abramson, 5 F.3d 649, 655 (3d Cir. 1993); Crossley v. Lieberman, 868 F.2d 566, 569 (3d Cir. 1989). Thus, attorneys who regularly engage in debt collection practices, apart from their legal representation, are covered under the FDCPA. Crossley, 868 F.2d at 569; Oldroyd, 863 F. Supp. at 241; Woodside v. New Jersey Higher Educ. Assistance Authority, No. Civ. A. 92-4581, 1993 U.S. Dist. LEXIS 5126, at \*14 (E.D. Pa. Mar. 1, 1993). Since Baritz fails to demonstrate that he does not engage in debt collection practices, as Daniels alleges in his Complaint, Daniels' claim against Baritz survives dismissal under Rule 12(b)(6).

Baritz next contends that, even if he is considered a "debt collector" under the FDCPA, he did not send deceptive or improper

communications to Daniels in order to collect a debt in violation of the FDPCA. Baritz purports that, on September 25, 2002, he sent a notice, which was attached to his motion to dismiss as an exhibit, advising Daniels to vacate the premises that complied with FDPCA debt collection practices. However, we cannot consider this notice in making our determination since we are not certain that the notice Baritz attaches is, in fact, the notice of which Daniels complains and Daniels also questions its authenticity. Moreover, it is not referred to in Daniels' Complaint. Thus, we cannot conclude, at this juncture, that Daniels fails to plead a FDPCA claim sufficiently against Baritz.

Since neither the Landlords nor Baritz sets forth compelling reasons to warrant dismissing Daniels' FDPCA claim, we find that Daniels' federal claim is properly before this Court and Daniels, thereby, establishes jurisdictional grounds for this suit to also warrant our exercise of supplemental jurisdiction over his state, local and common law claims pursuant to 28 U.S.C. § 1367. Thus, at this juncture, we decline to dismiss Daniels' claims for lack of jurisdiction, as Defendants suggest.

## **2. Pennsylvania Fair Credit Extension Uniformity Act**

Defendants next challenge Daniels' claims pursuant to the Pennsylvania Debt Collection Trade Practices Act ("PDCTPA"). As Defendants correctly point out, the PDCTPA was repealed on March

28, 2000, and subsequently replaced by the Pennsylvania Fair Credit Extension Uniformity Act ("PFCEUA"). 73 Pa. Cons. Stat. § 2270.6. The PFCEUA states that "[i]t shall constitute an unfair or deceptive debt collection act or practice under this act if a debt collector violates any of the provisions of the [federal] Fair Debt Collection Practices Act." 73 Pa. Cons. Stat. § 2270.4(a). Upon Daniels' request, we will consider his claim under the repealed PDCTPA as a claim under the PFCEUA. We have already determined that Daniels' FDCPA claim is not subject to dismissal. Since a FDCPA violation also constitutes a violation of the PFCEUA, according to Pennsylvania law, we similarly find that dismissal is not warranted for Daniels' PFCEUA claim.

### **3. Pennsylvania Unfair Trade Practices and Consumer Protection Law**

Defendants next contend that Daniels' Complaint does not aver facts sufficient to support his allegation that Defendants' engaged in unfair and deceptive debt collection practices in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). The UTPCPL is a remedial provision aimed at preventing the use of unfair methods of competition and unfair or deceptive acts or practices in connection with any trade or commerce. 73 Pa. Cons. Stat. § 201-3. Liberally construing its protections, Pennsylvania courts have interpreted debt collection as an act in trade or commerce within the scope

of the UTPCPL. See In re: Fricker, 115 B.R. 809, 818 (E.D. Pa. 1990); Pennsylvania Retailers' Assoc. v. Lazin, 426 A.2d 712, 718 (Pa. Commw. Ct. 1981). Thus, the unfair or deceptive practices allegedly committed by Defendants in connection with their debt collection efforts are acts within the scope of the UTPCPL. We are satisfied that Daniels' Complaint, which avers sufficient facts in support of this claim, adequately sets forth a claim pursuant to the UTPCPL.

**a. The Landlords' Claims**

The Landlords argue specifically that Daniels' UTPCPL claim challenging, inter alia, the timeliness of Defendants' eviction notices and the amount of legal fees imposed on tenants in connection with eviction proceedings, is not in violation of the UTPCPL. 73 Pa. Cons. Stat. § 201-2(4)(xxi). Daniels counters that since "unfair methods of competition and unfair or deceptive practices with regard to the collection of debts" are in violation of the PFCEUA, they also constitute a UTPCPL violation pursuant to the provision relating to unfair debt collection practices. See 73 Pa. Cons. Stat. § 2270.2. We find Daniels' reasoning consistent with other courts in this district, and agree that unfair or deceptive debt collection practices in violation of the PFCEUA, also violate the UTPCPL. See Flamm, 2002 U.S. Dist. LEXIS 22255, at \*19-20; Oslan v. Law Offices of

Mitchell N. Kay, 232 F. Supp. 2d 436, 437 n.1 (E.D. Pa. 2002).

Since we have determined that Daniels presents a viable PFCEUA claim, he also asserts a UTPCPL claim that survives dismissal.

The Landlords next argue that we must dismiss Willis and the Woodwards' from this action since the UTPCPL expressly prohibits individual liability, which, they claim, is supported by Williams v. National School of Health Technology. 836 F. Supp. 273 (E.D. Pa. 1993). Although the Williams Court stressed that the UTPCPL "does not impose liability on parties who have not themselves committed any wrongdoing," we do not understand Williams as proposing that individuals alleged to have personally engaged in unfair or deceptive debt collection practices to fail outside the purview of the UTPCPL. See id. at 283. Since Daniels sufficiently avers that the Landlords engaged in unfair and deceptive debt collection practices in violation of the UTPCPL, and we are not presented with any authority supporting the proposition that individuals are precluded from liability under the UTPCPL, Daniels' claim against these defendants survives.

**b. Baritz's claims**

Baritz also claims that Daniels' UTPCPL claim must fail since, as an attorney acting within the course of his legal work, he is precluded from liability. To support his position, Baritz

relies on Jackson v. Ferrera, which recognizes that although the Pennsylvania Supreme Court has not yet determined whether the UTPCPL regulates lawyers, consumer protection statutes generally do not apply to an attorney's actions "arising out of the actual practice of law." No. Civ. A. 01-5365, 2002 U.S. Dist. LEXIS 12731, at \*4 (E.D. Pa. Apr. 16, 2002) (quotations omitted). However, Daniels UTPCPL claim challenges Baritz's debt-collection practices, and not the sufficiency of his legal representation, as in Jackson. See id. Thus, we conclude that Daniels' UTPCPL claim against Baritz does not warrant dismissal at this juncture.

#### **4. Illegal Penalties**

Defendants challenge Daniels' claim that late charges and legal fees imposed by Defendants constitute illegal penalties in violation of Pennsylvania state and common law. Defendants argue that this claim must be dismissed because Daniels does not aver a specific cause of action underlying its claim. Daniels does not offer a response to these allegations. Rule 12(b)(6) "is designed to screen out cases where a complaint states a claim based upon a wrong for which there is clearly no remedy, or a claim which the plaintiff is without right or power to assert and for which no relief could possibility be granted." Port Authority of New York & New Jersey v. Arcadian Corp., 189 F.3d 305, 312 (3d Cir. 1999). Although the Federal Rules of Civil

Procedure only require a Complaint to include a short and plain statement of the claims alleged, a proper pleading must provide the parties with fair notice of the claims and defenses asserted. Even the most liberal interpretation of his Complaint reveals that Daniels fails to identify a legal basis underlying his illegal penalties claim to put Defendants on notice. Thus, we must dismiss Daniels' Count IX illegal penalties claim against all Defendants.

#### **5. Pennsylvania's Landlord and Tenant Act**

The Defendants next argue that Daniels fails to allege facts sufficient to support his claim pursuant to the Pennsylvania Landlord and Tenant Act of 1951 ("Landlord-Tenant Act"), which governs the landlord-tenant relationship. See 68 Pa. Cons. Stat. § 250.101 et seq. Since Daniels' Complaint includes several factual allegations to support his Landlord-Tenant Act claim, we find, for the following reasons, that dismissal is not warranted.

##### **a. The Landlords' Claims**

The Landlords argue that Daniels' claim for damages pursuant to 68 Pa. Cons. Stat. § 250.512 is improper since the Landlords are permitted to withhold the security deposit from tenants for purposes of collecting unpaid rent and then sue for damages to the leasehold premises. Section 250.512 provides that, within 30

days of termination of a lease or upon surrender and acceptance of the leasehold premises, the landlord must "provide a tenant with a written list of any damages to the leasehold premises . . . accompanied by payment of the difference between any sum deposited in escrow . . . and the actual amount of damages to the leasehold premises caused by the tenant." 68 Pa. Cons. Stat. § 250.512(a). Landlords may refuse to return the escrow if the tenant owes rent or breaches any lease provision. Id. Daniels Complaint, however, avers that Landlords, inter alia, exaggerated the damages to the leasehold premises caused by tenants and failed to return the balance of the security deposit when no breach or failure to pay occurred. Thus, we find that Daniels, at this juncture, sets forth factual averments supporting his claim pursuant to the Landlord-Tenant Act that cannot be dismissed on a Rule 12(b)(6) motion.

**b. Baritz's Claim**

Baritz also argues that dismissal is warranted as to Daniels' claim that the Lease, inter alia, purports to reduce the notice period set forth in the Landlord-Tenant Act, and contends that the notice to vacate he sent to Daniels, which Baritz attaches to his motion, demonstrates his compliance with the Landlord-Tenant Act. The Landlord-Tenant Act, which provides guidelines governing evictions, states that:

in case of the expiration of a term or of a forfeiture for breach of the conditions of the lease . . . the notice [to quit] shall specify that the tenant shall remove within fifteen days from the date of service thereof, and when the lease is for more than one year, then within thirty days from the date of service thereof. In case of failure of the tenant, upon demand, to satisfy any rent reserved and due, the notice shall specify that the tenant shall remove within ten days from the date of the service thereof.

68 Pa. Cons. Stat. § 250.501(b). Daniels' Complaint avers that Baritz commenced baseless eviction proceedings without prior notice and without first making a demand for payment of alleged arrearages despite the fact that Defendants routinely accepted late rental payments. (Daniels' Compl. ¶¶ 40-41.) We find that Daniels' allegations, which attack the propriety of the eviction actions to which Baritz was involved, and not the specific notice to vacate that Baritz's attaches, are sufficient to support his Landlord-Tenant Act claim against Baritz.

#### **6. Applicability of Res Judicata and Collateral Estoppel Doctrines To Other Claims**

Defendants collectively attack Daniels' remaining state, local and common law claims on both res judicata and collateral estoppel grounds. To support their argument, Defendants produce a copy of a purported settlement agreement between Daniels and the Landlords, which was approved by the Philadelphia Municipal Court. (Landlords' Mot. to Dismiss, Ex. B; Baritz's Mot. to Dismiss, Ex. C, E.) Defendants purport that this document

evinces an agreement between the parties that settled or should have settled all the claims Daniels avers in the instant action. Daniels contends that we are prohibited from considering this settlement agreement, since it was not referred to or attached to his Complaint and is of questionable authenticity. If the Court nevertheless chooses to consider this document, then Daniels argues that the doctrines of res judicata and collateral estoppel do not apply since Defendants fail to establish that a prior adjudication or final judgment on the merits occurred or demonstrate that Daniels had a full and fair opportunity to litigate all the issues raised in the instant case.

As a preliminary matter, we consider only those documents either attached or referred to in the Complaint and matters of judicial notice in resolving a Rule 12(b)(6) motion. A court is generally prohibited from considering documents attached to the motion to dismiss unless these documents are undisputably authentic or constitute public records.<sup>3</sup> See Southern Cross Overseas Agencies, Inc. v. Kwong Shipping Group, 181 F.3d 410, 426 (3d Cir. 1999); Pension Benefit Guaranty Corp. v. White, 998 F.2d 1192, 1196 (3d Cir. 1993); Ransom v. MARRAZZO, 848 F.2d 398, 401 (3d Cir. 1988). Although we may take notice of the existence

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<sup>3</sup> Although Rule 12(b)(6) provides that the court may accept and consider matters outside the pleadings by converting a Rule 12(b)(6) motion to a summary judgment motion pursuant to Federal Rule of Civil Procedure 56, we consider Defendants motions under Rule 12(b)(6).

of a prior proceeding involving the parties in Philadelphia Municipal Court, we cannot recognize the settlement agreement, which is not attached to or referenced in the Complaint, for the purposes of preempting the instant case.

Even if we were to consider the settlement agreement that Defendants submitted, absent Defendants' repeated assertions that the identical issues were presented to and settled by the Philadelphia Municipal Court, these documents do not disclose the particular issues discussed or resolved by the parties to indicate that the instant case is barred by collateral estoppel or res judical doctrines. To demonstrate a viable collateral estoppel, or "issue preclusion," defense, a party must demonstrate that: (1) the issue sought to be precluded is identical to that involved in the prior litigation; (2) the issue was fully litigated in the prior case; (3) a final and valid judgment was already reached on the issue; and (4) the determination of the issue was essential to the prior judgment. Delaware River Port Authority v. Fraternal Order of Police, 290 F.3d 567, 572 (3d Cir. 2002). Although the settlement agreement reveals that there was some prior dispute between the parties regarding Daniels' rent, the document does not mention what issues were addressed or resolved in reaching the judgment by agreement.

Moreover, Defendants fail to satisfy the requirements of the

res judicata doctrine. To bar suit under the res judicata doctrine, a party must demonstrate: (1) "an identity of the thing sued upon; (2) an identity of the cause of action; (3) an identity of the persons and parties to the action; and (4) an identity of the quality or capacity of the parties suing or sued." McCarter v. Mitcham, 883 F.2d 196, 199 (3d Cir. 1989) (citing Dunham v. Temple University, 432 A.2d 993, 999 (Pa. Super. 1981)). Since we are unable to ascertain the nature of the dispute between the parties in the Philadelphia Municipal Court litigation, the doctrine of res judicata is not triggered in the instant case. Consequently, we find that neither collateral estoppel nor res judicata applies and, therefore, deny Defendants' motions to dismiss on these grounds.

## **B. The Landlords' Claims**

### **1. Breach of Contract**

The Landlords dispute Daniels' breach of contract claim on the ground that Daniels fails to support his claim with the actual signed Agreement, allegations of any breach, or actual damages Daniels incurred. Moreover, even if we find that Daniels' Complaint sufficiently avers his breach of contract claim, they argue that Willis and the Woodward are not parties to the Lease and, therefore, cannot be accountable under a breach of contract theory. Daniels does not respond to this challenge.

Pursuant to Pennsylvania state law, a plaintiff claiming a breach of contract must demonstrate: "(1) the existence of a valid and binding contract to which the plaintiff and defendants were parties; (2) the contract's essential terms; (3) that plaintiff complied with the contract's terms; (4) that the defendant breached a duty imposed by the contract; and (5) damages resulting from the breach." Chester Perfetto Agency, Inc. v. Chubb & Son, No. Civ. A. 99-3492, 1999 U.S. Dist. LEXIS 16385, at \*4 (E.D. Pa. Oct. 21, 1999). Reviewing Daniels' Complaint, we find that it sufficiently pleads the existence of a contract, the alleged breach by the Landlords and resulting damages. First, Daniels attaches the Lease that he and, allegedly, thousands of other individuals entered into with the Landlords. The Landlords do not dispute the existence of this Lease and its essential terms. Second, Daniels claims that the Landlords breached this Lease by, inter alia, failing to return the key deposit or to provide tenants with proper notice of eviction, as mandated by the Lease. (Daniels' Compl. ¶61.) Third, the Complaint requests damages in an amount equal to the unwarranted and excessive fees and charges imposed by the Landlords. The Landlords contend that, apart from WTA, which is the only party named on the Lease that Daniels provides, the remaining landlords are not parties to that contract. However, we find that Daniels' Complaint sufficiently avers that both the

WPI, a business involved in the management of Daniels' apartment, and the Woodwards, who are the sole owners of the WTA and WPI, are involved with producing and enforcing the terms of the contract. Thus, we cannot determine, at this juncture, that Daniels fails to allege any facts in support of his breach of contract claim against either the WPI or the Woodwards to warrant dismissal. However, we agree with the Landlords insomuch as Willis, an employee of the Woodwards,' is not a proper party to Daniels' breach of contract claim since she acted at all times within the scope of her employment and on behalf of the defendants WTA, WPI and the Woodwards.' (Daniels' Compl. ¶ 9.) Thus, as to Willis, Daniels does not sufficiently plead a claim against her individually and she must be dismissed as a defendant to this claim.

## **2. Punitive Damages**

Finally, the Landlords' argue that Daniels' request for punitive damages must fail since, under Pennsylvania state law, punitive damages are not available for a breach of contract claim. Although we agree that punitive damages are not warranted for a mere breach of contractual duties, Daniels' Complaint does not specifically request punitive damages in connection with that claim. Rather, Daniels includes other claims, which, although difficult to prove, allow for an award of punitive damages. See,

e.g., Aronson v. Creditrust Corp., 7 F. Supp. 2d 589, 594 (W.D. Pa. 1998) (recognizing that punitive damages are available under the UTPCPL). Thus, we find that Daniels adequately pleads his punitive damages claim to withstand dismissal at this juncture.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM H. DANIELS, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
KENNETH L. BARITZ, et al., :  
Defendants. : No. 02-CV-7929

O R D E R

**AND NOW**, this            day of April 2003, in consideration of the Motion to Dismiss filed by Defendants Wynnefield Terrace Associates ("WTA"), Woodward Properties, Inc. ("WPI"), Carol Willis ("Willis"), Kathleen Woodward and Michael Woodward ("the Woodwards") (collectively, the "Landlords") (Doc. No. 12), the Response of Plaintiff William H. Daniels ("Daniels") (Doc. No. 17) and the Landlords' reply thereto (Doc. No. 18), it is **ORDERED** that the Landlords' Motion to Dismiss is **GRANTED IN PART and DENIED IN PART** to the extent that:

- (1) Count IX of Daniels' Complaint is dismissed; and
- (2) Willis and the Woodwards are dismissed from Daniels'

federal Fair Debt Collection Practices Act claim in Count I;  
and

(3) Willis is dismissed as to Daniels' Breach of Contract  
claim in Count V.

All other claims averred in Daniels' Complaint against the  
Landlords withstand dismissal and remain before this Court.

Further, in consideration of the Motion to Dismiss filed by  
Defendant Kenneth Baritz, Esquire ("Baritz") (Doc. No. 13),  
Daniels' Response (Doc. No. 17) and Baritz's reply thereto (Doc.  
No. 19), it is **ORDERED** that Baritz's Motion to Dismiss is **GRANTED**  
**IN PART and DENIED IN PART** to the extent that Count IX of  
Daniels' Complaint is dismissed .

BY THE COURT:

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JAMES MCGIRR KELLY, J.