

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. 02-7929

MEMORANDUM AND ORDER

J. M. KELLY, J.

July 29, 2004

Presently before the Court is an Amended Motion for Class Certification ("Motion for Certification")(Doc. No. 57) filed by William H. Daniels ("Plaintiff"), a Response in Opposition to Plaintiff's Motion for Certification (Doc. No. 62) filed by Kathleen Woodward, Michael Woodward, Woodward Properties, Inc., and Wynnefield Terrace Associates ("Landlord"), a Response in Opposition to Plaintiff's Motion for Certification (Doc. No. 64) filed by Kenneth L. Baritz ("Baritz"), a Reply in Further Support of the Motion for Certification (Doc. No. 67) filed by Plaintiff, Sur-replies (Doc. Nos. 68, 69) filed separately by Landlord and Baritz (collectively "Defendants"), and Supplemental Motions (Doc. Nos. 75, 76) filed separately by Defendants pursuant to this Court's order of May 24, 2004, which further address the Motion for Certification,¹ Plaintiff's respective Responses (Doc.

¹ Both Landlord and Baritz also move for partial summary judgment in their supplemental motions filed pursuant to court order. As we construe these motions as supplemental memoranda to the Motion for Certification, Landlord's Motion for Partial

Nos. 78, 79), and Baritz's Reply (Doc. No. 80) thereto.

I. The Class Definition

Plaintiff seeks to certify a class pursuant to Federal Rule of Civil Procedure 23 composed of all persons who within the past eight years "sustained damages as a result of renting (and/or who guaranteed rental of) apartments from the Landlords and who were subjected by defendants to one or more illegal, unfair or otherwise improper practices in connection with such rentals."² The Class definition then goes on to give the following eight examples of allegedly improper practices: (1) failing to properly account for security deposits; (2) requiring illegal security deposits upon renewal; (3) failing to timely place security deposits in designated accounts and/or to deposit them in approved financial institutions as required by law to identify such accounts and failing to pay interest and penalties to tenants as required by law in connection therewith; (4)

Summary Judgment (Doc. No. 75) and Baritz's Motion for Partial Summary Judgment (Doc. No. 76) are **DISMISSED WITHOUT PREJUDICE**.

² Plaintiff also brings this action on behalf of the following two sub-classes, the "Extorted Sub-Class" and the "Letter Sub-Class." In pertinent part, the "Extorted Sub-Class" consists of "all Class members who rented apartments from the Landlords during the Class Period who were wrongfully extorted . . . by means of unjustified eviction . . . to pay money . . . not owed," and the "Letter Sub-Class" consists of all Class members who, during the one year prior to the filing of this Complaint were sent letters similar to Exhibit C."

improperly deducting from security deposits money to which Landlord was not entitled; (5) improperly and unilaterally increasing rent in renewal terms; (6) imposing illegal penalties in the guise of "late charges"; (7) failing to timely return to tenants security deposits, interest and penalties; and (8) filing and pursuing unjustified eviction proceedings.

In their opposition to the Motion for Certification, Defendants point out the amorphous nature of the putative class described. We are not satisfied that the proposed Class definition, which also applies to the two Sub-Classes, is adequate. The references to "sustained damages as a result of renting" and "subjected by defendants to one or more illegal, unfair or otherwise improper practices" exemplify that the Class definition is too indefinite. And, where membership in the class is based upon subjective considerations applicable to each potential class member, as it is here, the class is simply too amorphous for recognition as a class. See, e.g., Ronor Pharmacy, Inc. v. McKesson & Robbins Drug Co., No. 74-4901 (S.D.N.Y. July 18, 1975)(unreported). "The proposed class may not be 'amorphous, vague, or indeterminate' and it must be 'administratively feasible to determine whether a given individual is a member of the class.'" Mueller v. CBS, Inc., 200 F.R.D. 227, 233 (W.D. Pa. 2001); see also Manual for Complex Litigation (Fourth) § 21.222 (stating that a class definition

"must be precise, objective, and presently ascertainable"). Plaintiff's Class definition is not precise, objective, nor is it presently ascertainable.

A class definition will be rejected when it requires addressing the central issue of liability in the case. Black v. Premier Co., No. 01-4317, 2002 U.S. Dist. LEXIS 26461, at *17 (E.D. Pa. Aug. 13, 2002). Whether a particular individual is or is not included in the Class would be a difficult and time-consuming process, involving the presentation of evidence in each case. Therefore, we reject the overall Class definition because it requires the Court not only to determine damages, but also to determine liability.

II. Plaintiff as Class Representative

To obtain class certification Plaintiff must establish that the proposed Class, and each of the proposed Sub-Classes, satisfy all four of the prerequisites of Federal Rule of Civil Procedure 23(a) - numerosity, commonality, typicality, and adequacy of representation. See Fed. R. Civ. P. 23(a). Following a conference on March 24, 2004 an order by this Court issued requesting that Defendants supplement their responses to Plaintiff's Motion for Certification, and in doing so, address whether or not Plaintiff, in light of a "Judgment by Agreement" in an underlying matter, can proceed in this matter. After a

thorough review of the papers before us, we find that even if the Class were maintainable under its current definition, which it is not, Plaintiff is not the proper Class representative since the facts of his case are distinct and there are unique defenses due, in part, to Plaintiff's agreement to have judgment entered against him as a result of an October 2002 eviction proceeding instituted by Landlord for his admitted failure to pay rent. We find that Plaintiff fails the typicality requirement of Rule 23(a).

"A proposed class representative is not typical if the proposed representative has a unique defense that threatens to play a major role in the litigation." King v. Arrow Fin. Servs., LLC, No. 02-0867, 2003 U.S. Dist. LEXIS 13259, at *13 (E.D. Pa. July 31, 2003). Plaintiff's individual circumstance is markedly different from that upon which the claims of the other putative Class members presumably arise. Plaintiff's claim arises from his rental of certain property pursuant to a Lease Agreement. Due to his admitted breach of the Lease terms, namely the failure to timely pay rent, Baritz issued a Notice to Vacate due to this nonpayment of rent on September 25, 2002. In connection with that Notice, a hearing was held on October 17, 2002, and thereafter, Plaintiff agreed to have judgment, inclusive of late and attorney fees, entered against him. Plaintiff admits that he has been late with his rent on several occasions, that Landlord

had the right to charge him a late fee, that Landlord had the legal right to initiate eviction proceedings against him, that he did not have the money at that time to bring his rent current, thereby weakening his argument concerning the 5-day cure period at issue, that he agreed to have judgment entered against him in connection with the Notice that serves as the basis for the Letter Sub-Class, for the past rent, late charges and legal fees, that even after this hearing he was late in his rent and that Baritz never charged him directly for any fees. While the merits of the case are not before the Court at this stage, enough facts have been revealed to make it quite obvious that Defendants have substantial defenses to Plaintiff's claims. The claims of the Class should not be prejudiced by weaknesses in Plaintiff's own case.

For essentially these same reasons, this plaintiff would not, in my view, be an adequate representative of any of the Classes suggested. Plaintiff has simply failed to sustain the minimal burden upon him to justify class certification.

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O R D E R

AND NOW, this 29th day of July, 2004, in consideration of an Amended Motion for Class Certification ("Motion for Certification")(Doc. No. 57) filed by William H. Daniels ("Plaintiff"), a Response in Opposition to Plaintiff's Motion for Certification (Doc. No. 62) filed by Kathleen Woodward, Michael Woodward, Woodward Properties, Inc., and Wynnefield Terrace Associates ("Landlord"), a Response in Opposition to Plaintiff's Motion for Certification (Doc. No. 64) filed by Kenneth L. Baritz ("Baritz"), a Reply in Further Support of the Motion for Certification (Doc. No. 67) filed by Plaintiff, Sur-replies (Doc. Nos. 68, 69) filed separately by Landlord and Baritz (collectively "Defendants"), and Supplemental Motions (Doc. Nos. 75, 76) filed separately by Defendants pursuant to this Court's order of May 24, 2004, which further address the Motion for Certification, Plaintiff's respective Responses (Doc. Nos. 78, 79), and Baritz's Reply (Doc. No. 80) thereto, it is **ORDERED**:

1. Plaintiff's Amended Motion for Class Certification (Doc. No. 57) is **DENIED**;

2. As we construe it as a supplemental memorandum to the Motion for Certification, Landlord's Motion for Partial Summary Judgment (Doc. No. 75) is **DISMISSED WITHOUT PREJUDICE**; and
3. As we construe it as a supplemental memorandum to the Motion for Certification, Baritz's Motion for Partial Summary Judgment (Doc. No. 76) is **DISMISSED WITHOUT PREJUDICE**.

BY THE COURT:

JAMES MCGIRR KELLY, J.