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Claim for TILA Rescission Dismissed by Seventh Circuit Court of Appeals

On October 19, 2010, the Seventh Circuit Court of Appeals affirmed the dismissal of a rescission claim under the Truth in Lending Act ("TILA") because the plaintiffs had not alleged facts showing the allegedly inaccurate disclosures were "material" under TILA. See *Bonte, et al. v. U.S. Bank, N.A.*, No. 09-2455 (7th Cir. October 19, 2010). The opinion reinforced what must be pled to state a claim for TILA rescission, generally discussed the pleading requirements of Federal Rules of Civil Procedure 8(a) and 12(b)(6) after *Twombly* and *Iqbal*, and described what constitutes waiver of an argument.

The Bontes alleged U.S. Bank, N.A., as Trustee (the assignee of their home mortgage loan) was liable for allegedly inaccurate disclosures received at the closing of their loan. The Bontes identified 10 specific charges they claimed were inaccurate, and alleged these 10 mistakes caused an inaccurate disclosure of the Bontes' finance charge, APR, and amount financed. The complaint, filed just shy of three years after the loan closed, sought only rescission of their loan, and did not seek damages.

The Trustee moved to dismiss the complaint because none of the 10 charges relied upon by the Bontes were "material" disclosures under TILA, and only problems with material disclosures can support TILA rescission. Moreover, none of the charges are components of the finance charge, the APR, and the amount financed (all of which are material under TILA), despite the Bontes' conclusory allegation to the contrary. The Trustee supported its motion with a detailed discussion of how the finance charge, APR, and the amount financed are calculated, and with substantial authority showing none of the 10 charges are components of those disclosures, or of any other material disclosure.

The Bontes' response brief generally stated the 10 charges were components of the finance charge, the APR, and the amount financed, but failed to provide any authority to support that

conclusion. Instead, the Bontes' response brief was largely a recitation of general statements about the need to construe TILA liberally.

The district court dismissed the Bontes' complaint with prejudice for failure to state a claim. The court found the Bontes had waived any argument that the 10 charges were material under TILA by failing to make any substantive response to the Trustee's argument. The district court also agreed with the significant authority cited by the Trustee, establishing the 10 charges were not material in any event.

The Bontes appealed, arguing "the district court erroneously held their complaint to a higher [pleading] standard than that envisioned by *Twombly* and its progeny" especially given that "TILA is to be construed liberally in favor of consumers." *Bonte*, No. 09-2455, slip op. at 8.

The Seventh Circuit affirmed the dismissal. The court began by explaining, under *Twombly* and *Iqbal*, courts "follow a two-pronged approach in assessing the sufficiency of a complaint." *Id.* at 9. First, the court determines "whether the complaint contains an adequate 'short and plain statement of the claim showing that the pleader is entitled to relief' as required by Rule 8(a)(2)." *Id.* The court found the Bontes met this requirement by including ample factual detail in their complaint, namely identifying 10 specific charges they claimed were inaccurate. *Id.* at 9-10.

But the Bontes failed the second prong, which requires the courts to determine whether the facts alleged, taken as true, "plausibly give rise to an entitlement to relief." *Id.* (citing *Seigal v. Geisha NYC, LLC*, 517 F.3d 501, 504 (7th Cir. 2008) for the proposition that "it is ... clear that a complaint that satisfies Rule 8(a)'s pleading requirements might still warrant dismissal under Rule 12(b)(6) if the facts pled cannot result in any plausible relief"). Here, the court found even if the 10 charges were inaccurate, the Bontes still would not have stated a claim for rescission because none of the 10 charges were material as

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a matter of law. The court examined each of the 10 allegedly inaccurate charges identified by the Bontes, and held, as a matter of law, “none of the ten errors are in fact related to the amount financed, the finance charge, and the applicable APR, notwithstanding [the Bontes’] unsupported legal statement to the contrary.” *Id.* at 8. Thus, even though the Bontes’ “allegation of ten discrepancies ... amount[ed] to a satisfactory ‘short and plain statement of the claim’” it was properly dismissed because the “facts alleged, taken as true, simply do not give rise to a right of rescission—the only relief requested in the Complaint.” *Id.* (internal citations omitted).

The court also found the Bontes had waived any argument that the 10 charges were material. The court found waiver because the Bontes had never, either in the district court or on appeal, set forth any authority to establish why the 10 charges were material. *Id.* at 10-11. In doing so, the court rejected the Bontes’ assertion that waiver could not be found “because they ‘opposed [the Trustee’s] motion for dismissal, and identified for the lower court the factual and legal basis for their claim.’” *Id.* at 10. Instead the court held “identifying the ‘factual and legal basis’ of their claim does little to save the Bontes from dismissal when [the Trustee] has painstakingly explained precisely why the factual basis, taken as true, does not in fact warrant the requested relief.” *Id.* at 11-12.

In sum, the Seventh Circuit explained simply pleading facts is not enough to state a claim. Those facts must establish a right to the relief sought. Here, the Bontes included ample facts by identifying 10 specific charges they believed were inadequately disclosed. But those facts did not support rescission because none of the 10 charges were material under TILA. Moreover, by failing to ever offer any authority (or even argument) to establish *why* the 10 charges were material, the Bontes waived that argument.

About the Authors

Hugh S. Balsam is a partner at Locke Lord. He is responsible for drafting and editing briefs and arguing appeals in all areas of the law, including commercial litigation, intellectual property law, insurance liability, bankruptcy law, property law, employment law, constitutional law, product liability, medical litigation, and state and federal procedural law.

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