

2021 WL 2945559  
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United States District Court,  
N.D. Georgia, Atlanta Division.

Christa MCLAURIN, Plaintiff,  
v.  
NATIONAL CREDIT SYSTEMS,  
INC., et al., Defendants.

CIVIL ACTION FILE NO.  
1:21-CV-1114-SCJ-WEJ

|  
Signed 06/30/2021

### **Attorneys and Law Firms**

Justin M. Baxter, Pro Hac Vice, Baxter & Baxter, LLP, Portland, OR, Shimshon Wexler, Lewis Brisbois Bisgaard & Sith, Atlanta, GA, for Plaintiff.

James Owen Bass, Law Offices of James O. Bass, PC, Woodstock, GA, for Defendant National Credit Systems, Inc.

Leo Kogan, Nicolas Bohorquez, Freeman Mathis & Gary, LLP, Atlanta, GA, for Defendant Ventron Management, LLC.

Michael William Scaljon, II, Ventron Management, LLC, College Park, GA, for Defendant East Perimeter Pointe Apartments, LP.

### **ORDER**

WALTER E. JOHNSON, UNITED STATES MAGISTRATE JUDGE

\*1 This matter is before the Court on defendants Ventron Management, LLC (“Ventron”) and East Perimeter Pointe Apartments, LP’s (“East Perimeter”) Partial Motion to Dismiss Plaintiff’s Complaint [19] and plaintiff Christa McLaurin’s Motion to Amend the Complaint [23]. For the reasons set forth below, the Court **GRANTS** the Motion to Amend and **DENIES AS MOOT** Ventron and East Perimeter’s Partial Motion to Dismiss.

### **I. PLAINTIFF’S MOTION TO AMEND**

Under Rule 15(a)(1) of the Federal Rules of Civil Procedure, a party may amend a pleading once as a matter of right within twenty-one days after service of the pleading, or, if the pleading requires a response, within twenty-one days after service of a responsive pleading or motion filed under Rule 12(b), (e), or (f). See Fed. R. Civ. P. 15(a)(1)(A)-(B). Here, plaintiff filed her June 8, 2021 Motion to Amend the Complaint within twenty-one days of Ventron and East Perimeter’s May 26, 2021 Partial Motion to Dismiss. Thus, Rule 15(a)(1)(B) applies and plaintiff need not seek leave of court to amend.<sup>1</sup>

<sup>1</sup> Plaintiff has not previously amended the pleadings and the Court directed [21] the parties to file any motions under Local Rule

7.1(A)(2), including motions to amend pleadings, no later than June 11, 2021.

Accordingly, the Court **GRANTS** plaintiff's Motion to Amend [23] and **DIRECTS** plaintiff to file the Amended Complaint [23-1] along with the associated exhibits (see Complaint [1] Exs. A-D, at 13-35) within **TEN (10) DAYS** of the date of this Order.

However, the Amended Complaint includes the same claims set forth in the same numbered counts against Ventron and East Perimeter which they take issue with in their pending Partial Motion to Dismiss. (Compare Am. Compl., with Defs.' Mem. [19-1].) Thus, in the interest of judicial economy, the Court addresses Ventron and East Perimeter's concerns regarding the viability of Counts IV through VI at this stage of the litigation.

## **II. AMENDED COMPLAINT**

Plaintiff signed a lease on January 15, 2016 for a monthly rent of \$705 with Ventron as agent for East Perimeter at 2914 Treecrest Parkway, Decatur, Georgia 30035. (Am. Compl. ¶ 7; Compl. Ex. A, at 14.) As part of that lease, plaintiff paid a \$200 security deposit to Ventron.<sup>2</sup> (Am. Compl. ¶ 8; Compl. Ex. A, at 14.) The lease is attached as Exhibit A to the Complaint and the first page states its basic terms, including a twelve-month lease term, \$50 re-key lock charge, and \$100 late fee for rent. (Am. Compl. ¶ 28; Compl. Ex. A, at 14.)

2 Plaintiff alleges that all actions by Ventron were performed in its capacity as agent for East Perimeter. (See e.g., Am. Compl. ¶¶ 7-9, 12-14, 24.)

On June 9, 2016, the Magistrate Court of DeKalb County entered a Writ of Possession in favor of East Perimeter against plaintiff (docket number 16D80602 or 16D80802) for \$1,097 (rent accruing to June 9, 2016). (Am. Compl. ¶ 33; Compl. Ex. B, at 23-25.) Shortly after that judgment was entered it was paid in full by the non-profit organization United Way. (Am. Compl. ¶¶ 34-35.) However, a satisfaction of the judgment was never filed with the court. (Id. ¶ 38.) Because the judgment was paid, East Perimeter allowed plaintiff to remain in the apartment for another year. (Id. ¶ 36.)

\*2 On July 6, 2017, the Magistrate Court of DeKalb County issued a second Writ of Possession in favor of East Perimeter (docket number 17D15798) and entered a judgment in its favor against plaintiff for \$1,188 (rent accruing to July 13, 2017). (Am. Compl. ¶¶ 17, 39; Compl. Ex. C, at 27.) Plaintiff left the apartment on July 12, with the consent of East Perimeter and Ventron accepted possession of the property before any additional rent came due. (Am. Compl. ¶¶ 18, 24-25.)

Plaintiff alleges Ventron wrongfully kept the \$200 security deposit and did not tell her why it was not refunded or credited to her. (Am. Compl. ¶¶ 10-16.) Plaintiff should not have incurred a \$150 cleaning

charge because neither Ventron nor East Perimeter provided her with a list of damage to the premises. (*Id.* ¶¶ 26-27.) Likewise, the lease only provided for a \$50 re-key charge, yet debt collector National Credit Systems, Inc. (“National Credit”) sought to collect \$85 for that service on behalf of Ventron and East Perimeter. (*Id.* ¶¶ 23, 28.)

Plaintiff attempted to apply for a VA Home Loan, but was told that she could not do so because she had two judgments against her totaling \$2,285 in favor of East Perimeter.<sup>3</sup> (*Am. Compl.* ¶¶ 29-30.) Plaintiff also learned that (in addition to those judgments) she allegedly owed \$2,293 to National Credit arising from her prior lease. (*Id.* ¶ 32.) National Credit claimed that the \$2,293 was in addition to the combined judgment amount of \$2,285. (*Id.* ¶¶ 40-41.) National Credit stated that plaintiff owed \$4,578 and provided plaintiff with an allegedly false itemization of the debt (likely at the direction of East Perimeter).<sup>4</sup> (*Id.* ¶¶ 43-46; *Compl. Ex. D*, at 35.)

<sup>3</sup> Attorney Michael Scaljon represented East Perimeter in those actions. (*Am. Compl.* ¶ 31.)

<sup>4</sup> The “Itemized Account Statement” appears on East Perimeter letterhead and is attached to the Complaint as part of Exhibit D. (*See Compl. Ex. D*, at 35.) The statement includes, in part, \$1,455 rent owed, \$100 late charge, \$150 cleaning charge, \$85

key charge, \$9 “other” charge, and does not indicate that plaintiff’s \$200 security deposit was either returned or credited to her alleged debt. (*Id.*)

Plaintiff mailed letters to the credit reporting agencies Equifax, Experian, and Trans Union requesting removal of the 2016 judgment and the National Credit tradeline. (*Am. Compl.* ¶ 47.) Plaintiff also mailed multiple letters to National Credit, East Perimeter, and Attorney Scaljon disputing the above events. (*Id.* ¶¶ 48-49.) Equifax notified National Credit of plaintiff’s dispute and forwarded plaintiff’s documentation to it for investigation. (*Id.* ¶¶ 50-52.) However, National Credit confirmed that the account was correct and, as a result, plaintiff’s credit score was adversely affected, she was unable to purchase a home, and she suffered emotional distress. (*Id.* ¶¶ 53-56.)

In addition to claims against National Credit, plaintiff alleges six claims against Ventron and East Perimeter jointly. (*See generally Am. Compl.*) Count III alleges they violated O.C.G.A. § 9-13-80 by failing to file a satisfaction of the 2016 judgment with the Magistrate Court of DeKalb County within sixty-days of payment. (*Am. Compl.* ¶¶ 74-78.) Count IV alleges that all three defendants breached the lease agreement by attempting to collect charges not owed via National Credit’s demand for \$2,293, including additional rent, a late charge, excess re-key charge, “other” charge, and charges already included in the judgment

amounts (i.e., attorney's fees and court fees). (*Id.* ¶¶ 79-94.) Count V alleges that Ventron and East Perimeter violated O.C.G.A. § 44-7-35 by failing to return plaintiff's security deposit, charging her a cleaning fee, and failing to provide written lists and statements required by O.C.G.A. § 44-7-33 and-34. (Am. Compl. ¶¶ 95-102.) Finally, Count VI alleges that Ventron and East Perimeter's actions (e.g., failing to file a satisfaction of judgment, attempting to collect amounts not owed, reporting a false trade line on plaintiff's credit report, and breaching the lease agreement) violated Georgia's Fair Business Practices Act ("GFBPA") and that she may recover against them under O.C.G.A. § 10-1-399 because they failed to correct their actions within thirty days of receiving her written requests asking them to do so. (Am. Compl. ¶¶ 103-12.)

### **III. THE PARTIAL MOTION TO DISMISS**

\*3 Ventron and East Perimeter move to dismiss Counts IV through VI, alleging those claims fail to state a right to relief. (Defs.' Mem. [19-1].) With regard to plaintiff's breach of contract claim, defendants assert that she failed to allege the specific contractual provision which was breached or facts that could constitute breach. (*Id.* at 5-6.) Defendants go so far as to wonder which contract was breached and by whom. (*Id.* at 6.) Likewise, defendants argue that plaintiff cannot maintain her claim under O.C.G.A. § 44-7-30 (regarding the return of security deposits) because she failed to allege that her security deposit was not returned

"based on damages to the premises" and because the statute does not prevent them from retaining it for unpaid rent. (Defs.' Mem. 7-9.) Finally, defendants contend that plaintiff's claim under the GFBPA fails to explain how their alleged conduct violated the statute. (*Id.* at 9-10.)

As an initial matter, the Court notes that Ventron and East Perimeter's complaints ring hollow as to the allegations set forth in the initial Complaint. Indeed, plaintiff attached a copy of the lease agreement to the Complaint as Exhibit A and the first page of that agreement lists the terms allegedly breached. Thus, the Court is hard pressed to believe that Ventron and East Perimeter could not determine what contract is at issue, who may have breached that contract, or how it was breached. Any confusion they may have had regarding plaintiff's specific allegations of breach (and her related GFBPA claim) are dispelled by the more explicit allegations set forth in the Amended Complaint.

Moreover, while a landlord may retain a security deposit for unpaid rent, plaintiff alleges that defendants never credited that \$200 to her alleged debt given its absence on the itemization form provided to her by National Credit on East Perimeter letterhead. Likewise, it is not hard to determine how the alleged behavior, including breach of contract and attempted double recovery of rent, fees, and other costs previously paid via satisfaction of the 2016 judgment, may violate the GFBPA given plaintiff's

written attempts to correct her dispute with defendants before filing suit. Accordingly, the Amended Complaint renders Ventron and East Perimeter's Partial Motion to Dismiss **MOOT** as plaintiff has clearly stated claims upon which she might obtain relief against them.

#### **IV. CONCLUSION**

For the reasons set forth above, the Court **DENIES AS MOOT** Ventron and East Perimeter's Partial Motion to Dismiss Plaintiff's Complaint [19] and

**GRANTS** plaintiff's Motion to Amend the Complaint [23]. The Court **DIRECTS** plaintiff to file her Amended Complaint with the associated exhibits attached within **TEN (10) DAYS** of the date of this Order.

**SO ORDERED**, this 30th day of June, 2021.

#### **All Citations**

Not Reported in Fed. Supp., 2021 WL 2945559