May 24, 2011

Dan Ruben
Executive Director
Equal Justice America
Building II- Suite 204
13540 East Boundary Road
Midlothian, VA 23112

Dear Mr. Ruben,

This spring semester at the East Bay Community Law Center my client's lawsuit against a federal bank for wrongful eviction came to a close after more than a year of litigation. In the process, I observed both the advantages and limitations of pursuing justice for low-income tenants through affirmative lawsuits.

My client was a 66 year-old disabled grandmother caring for two grandchildren when her former landlord lost her home through foreclosure in 2008. Over the next year she did exactly what was asked of her by a confusing collection of real estate agents, banks and law firms by paying and sending her rent wherever she was told and attempting to find a new home (even though she had a legal right to remain a tenant after her landlord's foreclosure under Oakland's Just Cause for Eviction Ordinance). Despite numerous assurances that nothing bad would happen to her if she paid her rent, the federal bank that owned her home went through the eviction process and obtained a default judgment against her. With a few days remaining before the sheriff's scheduled eviction, my client arrived at the East Bay Community Law Center's eviction clinic and blew my supervising attorney away with her story and her impressive written documentation of all rent paid. After successfully requesting a stay of execution and setting aside the default judgment, my client filed a cross-complaint against the bank for their misleading tactics and the stress she suffered.

Over the next year and a half, my supervising attorney and I helped our client along her slow march towards justice. We propounded multiple sets of discovery requests, which resulted in the disclosure of hundreds of emails. We built on the information gathered through the emails with the depositions of real estate agents, bank officials, bank eviction managers and eviction coordinators and asset managers at an outsourcing organization. As the spring semester approached, we had pieced together virtually all the facts we needed to support our legal contentions and braced ourselves for our client's deposition, mediation and a trial date at the end of May.

Our client's deposition was probably the most critical element of the litigation. Not only would her testimony substantiate her rental payments, but it would reveal to the bank, its attorneys and the attorneys of all the other parties just how strongly her story might resonate with a jury. Consequently, we met with our client at least three times the week before her deposition, refreshing her now 68 year-old memory, preparing her for the unfamiliar setting of a deposition, and building her confidence for moments of uncertainty. The deposition itself exceeded our expectations; it was over in less than five hours and our client was exceptional.

A few weeks later my supervising attorney, our client and I rejoined at the office of the realtor's attorney for a full day of mediation. Though it was not until around noon that the opposing parties offered a sum greater than zero dollars, we could sense things were starting to turn our way. The mediator, known for taking tough stances against both sides, acknowledged we had a great case and that the other parties were not offering nearly enough. We remained patient and unwilling to sacrifice all of our work for the small sums offered and left late in the afternoon with no settlement but an agreement to continue mediation in a month.

In the meantime, my supervising attorney and I researched everything we could in anticipation of the bank's threatened summary judgment motion. Yet instead of filing a summary judgment motion, the bank curiously filed a motion to belatedly amend their answer to claim an exemption to punitive damages, a sign they were starting to take our legal arguments and our client seriously. This premonition proved true at our second mediation, as the opposing parties offered substantially larger settlement offers, culminating in an exceptional settlement offer that we agreed to by mid-afternoon.

Ultimately, the same indifference the bank displayed towards our client in evicting her without investigating whether she had been paying rent enabled the successful settlement. For example, early on in the litigation, the bank avoided a scheduled deposition and insisted we sign a universal confidentiality agreement. The judge rebuked the bank's arrogance and ordered $5,000 in sanctions against them. The mediator found this order significant in predicting how successful we would be at trial. Likewise, while we methodically accumulated evidence and researched potential oppositions, the bank never filed a motion for summary judgment and instead relied on a strategy of delay, perhaps expecting we would jump at their first offer as plaintiff attorneys often do.

Although we succeeded in guiding our client to a handsome settlement, this settlement does not resolve all of our client's problems related to her wrongful eviction. First, the settlement money simply cannot undo the stress she suffered over the last three years, both the time spent under the cloud of eviction and the time spent fighting back through her lawsuit. Second, the settlement funds in a way create new problems, as our client now has to pay taxes, she may no longer qualify for certain benefits and she has to hide the settlement from friends and relatives to avoid complications. Lastly, our client's privacy concerns diminish the effectiveness of any media campaigns to deter the unlawful eviction practices of banks at foreclosed properties.

In sum, affirmative litigation can serve as an important tool for a patient individual with strong documentation especially when paired with diligent advocates, but affirmative litigation is far from a panacea for tenants who have been wronged in the eviction process.

Sincerely,

Greg Minor
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