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2014 PA Super 82

MARY E. GLOVER, INDIVIDUALLY AND ON BEHALF OF OTHER SIMILARLY SITUATED FORMER AND CURRENT HOMEOWNERS IN PENNSYLVANIA Appellant v. UDREN LAW OFFICES, P.C., A NEW JERSEY DEBT COLLECTOR Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 938 WDA 2012

Appeal from the Order of June 13, 2012
In the Court of Common Pleas of Allegheny County
Civil Division at No.: GD 11-018015

EDELLA JOHNSON (A/K/A EDELLA ROBINSON) AND ERIC JOHNSON, INDIVIDUALLY AND ON BEHALF OF OTHER SIMILARLY SITUATED FORMER AND CURRENT HOMEOWNERS IN PENNSYLVANIA Appellant v. PHELAN HALLINAN & SCHMIEG, LLP Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1131 WDA 2012

Appeal from the Order of July 17, 2012
In the Court of Common Pleas of Allegheny County
Civil Division at No.: GD 12-005395

BEFORE: DONOHUE, J., SHOGAN, J., and WECHT, J.

CONCURRING AND DISSENTING OPINION BY WECHT, J.:

FILED: April 23, 2014

I join the learned majority's determination that no relief may be granted for the claims made by Mary E. Glover and Edella and Eric Johnson ("Appellants")[1] under the Uniform Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §§ 201-1, *et seq*., albeit subject to the qualification set forth below. However, I respectfully dissent from the majority's conclusion that Appellants failed to plead claims upon which relief could be granted under Pennsylvania's Loan Interest Protection Act ("Act 6"), 41 P.S. §§ 101, *et seq.* For the reasons set forth herein, I would reverse the trial court's ruling dismissing those claims.

In order to explain my reasons for differing with the majority, I think it best to supplement the majority's apt but foreshortened account of Glover's claims in this case. Glover alleged that New Jersey law firm Udren Law Offices, P.C. ("Udren"), engaged in improper behavior in its capacity as a debt-collector and foreclosure counsel for mortgagee.[2] On August 2, 2002, Glover entered into a thirty-year mortgage with mortgagee. In March 2005,

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[1] For the reasons set forth by the majority, I treat the separate appellants collectively. ***See*** Maj. Op. at 2-3.

[2] Each case involves a confusing array of mortgagees and mortgage servicers which at various times have owned or serviced Appellants' respective mortgages. However, in each of the instant cases, only the attorneys for the mortgagees were named as defendants. Thus, the identity of the relevant mortgagees and servicers has no bearing on my analysis. Accordingly, I employ the word "mortgagee" to refer to the non-party clients of attorney-Appellees.

following an injury, Glover requested a loan modification to reduce her payments. On August 18, 2005, mortgagee responded with a "Notice of Collection Activity" which specified that Glover was in "serious default," and enumerated alleged arrears of $559.15. The notice provided that, if Glover failed to remit payment of that amount, mortgagee would commence foreclosure proceedings.

On December 1, 2005, Glover and mortgagee entered into a forbearance agreement. Mortgagee also agreed to review Glover's application for financial assistance on April 1, 2006. However, on March 14, 2006, mortgagee notified Glover that it had denied her application for a loan modification.

Sometime after March 14, 2006, an Udren attorney telephoned Glover and advised her that she immediately must remit $1,700 in missed payments as well as attorney's fees and costs of $1,697.28, for a total of $3,397.28. Glover failed to pay, and Udren filed a foreclosure complaint, claiming a total of $12,652.36, which encompassed itemized obligations including outstanding principal, unpaid interest, anticipated court costs, escrow, late charges, and "Attorneys['] fees [of $1,250] (anticipated and actual to 5% of principal)." Glover Complaint at 6-7 ¶¶13-15.

Mortgagee later offered Glover a loan modification agreement. Therein, mortgagee specified an "'Unpaid Principal Balance' of $11,941.30 consisting of the amount(s) loaned to the Borrower by the Lender and any interest capitalized to date." Glover Complaint, Exh. H ("Loan Modification

Agreement"). That amount included an addition of $2,237.73 to Glover's principal, additional charges, including delinquent interest and "escrow advance/set up"; and $3,696.00 in "foreclosure fees and costs." ***Id.*** Glover did not remit $3,696.00, but commenced making her monthly payments as modified.

On January 4, 2008, Glover and mortgagee entered into a new loan modification agreement that increased Glover's principal balance from $9,508.36 to $12,152.02, increased her monthly payment, and increased her repayment period by six years. The increased principal included $1,859.32 for "Escrow" and $1,571.02 for "Corp Recov/Title/Mod Fees/Atty/FC/BPO/Appraisal." Glover continued to make monthly payments pursuant to the new modified agreement.

Following federal proceedings detailed by the majority, ***see*** Maj. Op. at 4-5, Glover filed suit in the Court of Common Pleas of Allegheny County, alleging that Udren violated Act 6 and the UTPCPL. Glover alleged the following Act 6 violations: Udren charged flat-rate or percentage-based attorneys' fees rather than hourly fees (count I); charged such fees before the services were performed and had been billed to the foreclosure plaintiff (count II); charged such fees prematurely prior to or during the 30-day notice of foreclosure period, and filed fees in excess of $50 before filing a foreclosure complaint (count III); and charged such fees prior to entry of judgment and/or a sheriff's sale without court approval (count IV). In

counts V through IX, Glover asserted that the above-stated acts also warranted relief under the UTPCPL.

Udren filed preliminary objections alleging that Glover failed to state claims upon which relief could be granted. On June 13, 2012, the Allegheny County Court of Common Pleas entered a Memorandum and Order of Court sustaining Udren's preliminary objections to all counts raised by Glover and dismissing Glover's complaint with prejudice.[3] The court found that Udren was not a "residential mortgage lender" ("RML") subject to liability under Act 6. The court rejected Glover's UTPCPL claims because Udren, serving as counsel in connection with a foreclosure action, was engaged in the practice of law, and therefore exempt from UTPCPL liability by our Supreme Court's decision in ***Beyers v. Richmond***, 937 A.2d 1082 (Pa. 2007).

The trial court's reasoning regarding Act 6 warrants reproduction:

> [Glover] is pursuing a private cause of action under Act 6 pursuant to section 502 . . ., which permits a person who has paid charges prohibited by or in excess of those allowed by law to recover the amount of the excess charges in a lawsuit against the person who collected such excess charges. This Section reads as follows:
>
> **§ 502. Usury and excess charges recoverable**
>
> A person who has paid a rate of interest for the loan or use of money at a rate in excess of that provided for by this act or otherwise by law or has paid charges prohibited or in excess of those allowed by this act or otherwise by law

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[3] Because the relevant trial court opinion on its face addressed only the Glover litigants, my account of that opinion does the same.

> may recover triple the amount of such excess interest or charges in a lawsuit against the person who has collected such excess interest or charges.

Under the structure of Act 6, a person may recover damages under Section 502 only upon a showing that the defendant charged fees in violation of other provisions of Act 6 or otherwise by law. Section 406 is the provision in Act 6 upon which [Glover] relies to support her claims under Section 502. This provision reads as follows:

> **§ 406. Attorney's fees payable**
>
> With regard to residential mortgages, no *residential mortgage lender* shall contract for or receive attorney's fees from a residential mortgage debtor except as follows:
>
> (1) Reasonable fees for services included in actual settlement costs.
>
> (2) Upon commencement of foreclosure or other legal action with respect to a residential mortgage, attorney's fees which are reasonable and actually incurred by the residential mortgage lender may be charged to the residential mortgage debtor.
>
> (3) Prior to commencement of foreclosure or other legal action attorneys' fees which are reasonable and actually not in excess of fifty dollars ($50) provided that no attorneys' fees may be charged for legal expenses incurred prior to or during the thirty-day notice period provided in section 403 of this act.

Section 406 regulates only the fees that [an RML] may contract for or receive. [An RML] is defined in Section 101 of Act 6 as "any person who lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt." [Udren] never lent money to [Glover] or obtained a residential mortgage from [Glover]. Thus, [Udren] is not [an RML]; [Udren] is, instead, a debt collector governed by [the FCEUA] . . . .

Since [Glover] relies solely on Section 406, since Section 406 applies only to [RMLs], and since [Udren] is not [an RML], I am dismissing [Glover's] claims raised in Counts I-IV for failure to plead any violations of Act 6 that would allow recovery under Section 502.

Trial Court Opinion ("T.C.O."), 6/13/2012, at 3-5 (original footnotes omitted; emphasis by trial court).

With regard to Glover's UTPCPL claims, the trial court emphasized that none of the alleged violations were based upon Pennsylvania's Fair Credit Extension Uniformity Act ("FCEUA"), 73 P.S. §§ 2270.1, *et seq*. ***Id.*** at 7. The trial court noted that Appellants' overarching claims prompted the question whether the UTPCPL applies to "the misconduct of a law firm." ***Id.*** at 9. In considering that question, the court surveyed Pennsylvania's limited legal authority on that question.[4]

The trial court ruled for the following reasons that Udren was not subject to the UTPCPL:

> [W]here a claim brought against a law firm attempting to collect a debt on behalf of a creditor is based on unfair or deceptive acts or practices, in [the FCEUA, 73 P.S. §§ 2270.3(3)(ii)], the Legislature has drawn a line that excludes alleged unfair practices arising out of the filing of pleadings and the prosecution of a lawsuit to reduce a debt to judgment.
>
> Since the [FCEUA] provides that violations of this Act constitute violations of the [UTPCPL], [***see*** 73 P.S. § 2270.4,] the Legislature would have intended that any legislation regulating unfair collection practices would exempt from coverage activities of a law firm in the prosecution of a lawsuit to reduce a debt to judgment. In other words, the Legislature would not have

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[4] In particular, the trial court reviewed our Supreme Court's plurality decision in ***Beyers***, *supra*. In that case, in which the plaintiff made claims against her attorney regarding the attorney's misappropriation of certain settlement funds to which plaintiff was entitled, the Court held that the UTPCPL did not apply to "attorney conduct in the context of the practice of law." T.C.O. at 9 (quoting ***Beyers***, 937 A.2d at 1089).

> intended for legislation that is not specifically directed to debt collectors to provide a remedy for conduct that is explicitly excluded from legislation that is directed to debt collectors.

T.C.O. at 10-11.

Because Glover's only substantive averments in connection with her UTPCPL claims consisted of alleged impropriety in Udren's act of "filing Foreclosure Complaints" that charged improper fees, ***id.*** at 11 (quoting Glover Complaint at 23 ¶77), Udren was acting as an attorney rather than a debt collector. ***Id.*** at 11. Consequently, the trial court concluded that ***Beyer*** precluded relief for Glover's claims.

Appellants' arguments call upon this Court to interpret various statutory provisions. Thus, we apply a *de novo* standard of review, and the scope of our review is plenary. ***See Bowling v. Office of Open Records***, 75 A.3d 453, 466 (Pa. 2013).

> [W]ith all questions of statutory interpretation, our object is to ascertain and effectuate the intention of the General Assembly, giving effect, if possible, to all provisions of the statute under review. 1 Pa.C.S. § 1921(a). Generally, the best indication of legislative intent is the statute's plain language. Further, the plain language of each section of a statute must be read in conjunction with one another, construed with reference to the entire statute. We presume that the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable, and that the General Assembly intends the entire statute to be effective and certain. 1 Pa.C.S. §§ 1922(1), (2).

Bowling, 75 A.3d at 466 (case citations omitted). Moreover, we must liberally construe statutes "to effect their objects and promote justice." 1 Pa.C.S. § 1928(c).

In the context of remedial statutes such as Act 6 and the UTPCPL, statutes "predicated on a legislative recognition of the unequal bargaining power of opposing forces in the marketplace" that are designed "to ensure the fairness of market transactions," we must construe them broadly to effectuate their intended ends. ***Creamer v. Monumental Props., Inc.***, 329 A.2d 812, 816 (Pa. 1974) (citing ***Verona v. Schenley Farms Co.***, 167 A. 317, 320 (Pa. 1933)). The UTPCPL, in particular, serves "to protect the public from fraud and unfair or deceptive business practices," and therefore "is to be liberally construed in order to effectuate its purpose." ***Keller v. Volkswagen of Am., Inc.***, 733 A.2d 642, 646 (Pa. Super. 1999) (citing 73 P.S. § 201-2(4)). This is reinforced by the fact that, in ascertaining the General Assembly's intent, we may presume that it intended "to favor the public interest as against any private interest." 1 Pa.C.S. § 1922(5). With these principles in mind, I address the statutory bases for relief asserted by Appellants and rejected, in turn, by the trial court and the majority.

Appellants contend that Appellees violated Act 6 by assessing certain foreclosure fees and costs in violation of section 406, which provides, in relevant part, as follows:

> **§ 406. Attorney's fees payable**
>
> With regard to residential mortgages, no **residential mortgage lender** shall contract for or receive attorney's fees from a residential mortgage debtor except as follows:

> (1) Reasonable fees for services included in actual settlement costs.
>
> (2) Upon commencement of foreclosure or other legal action with respect to a residential mortgage, attorney's fees which are reasonable and actually incurred by the residential mortgage lender may be charged to the residential mortgage debtor.
>
> (3) Prior to commencement of foreclosure or other legal action attorneys' fees which are reasonable and actually incurred not in excess of fifty dollars ($50) provided that no attorneys' fees may be charged for legal expenses incurred prior to or during the thirty-day notice period provided in section 403 of this act.

41 P.S. § 406 (emphasis added). Appellants seek to recover under section 502 of Act 6, which provides that a person who has paid improper charges or excess interest "may recover triple the amount of such excess interest or charges in a suit at law against the **person** who has collected such excess interest or charges." 41 P.S. § 502 (emphasis added).

A "residential mortgage lender" is "any person who lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt. The term shall also include the holder at any time of a residential mortgage obligation." 41 P.S. § 101. The word "person" refers to "an individual, corporation, business trust, estate trust, partnership or association or any other legal entity, and shall include but not be limited to residential mortgage lenders." ***Id.***

As noted *supra*, the trial court dismissed Appellants' Act 6 claims because Appellees did not fit the definition of an RML. Because Appellants brought their claims under section 406, which by its terms proscribes certain conduct only by RMLs, and because Appellees are not RMLs, no claim against

them could lie for a violation of section 406. The majority in effect adopts the trial court's reasoning in affirming that court's ruling. ***See*** Maj. Op. at 11-14.

Appellants argue that the trial court's ruling is in derogation of the plain language of Act 6 sections 101, 406, and 502. I agree.

Our Supreme Court recently observed in another connection that "[n]early all of the definitions under Section 101 [of Act 6] are defined in the context of mortgage loans." ***Rothlein v. Portnoff Law Assocs., Ltd.***, 81 A.3d 816, 822 (Pa. 2013). Thus, among the chief abuses the legislature sought to remedy in that act, including those specified in article IV ("Protective Provisions"), were those associated with residential mortgage transactions. Indeed, virtually every section in article IV proscribes conduct specific to residential mortgage transactions. ***See*** 41 P.S. §§ 401-08.

Notably, article IV does not employ the word "persons" once in any of its provisions to refer to a lender, servicer, or debt collector. Although the word is employed elsewhere in the act to refer to an individual or entity other than a borrower, all such uses, including its use in section 502, pertain to enforcement. ***See*** 41 P.S. §§ 502, *supra*, 505 (providing that "[a]ny person who . . . violates [Act 6] shall be guilty of a misdemeanor of the third degree," and subject to a fine), 506 (providing for enforcement by the Attorney General against "any person" who has violated Act 6 or regulations promulgated thereunder). Stated briefly, Act 6's teeth are found in article V, which specifies the mechanisms for sanctioning violations of article IV's

various prohibitions governing residential mortgage transactions, *inter alia*. If, as the majority holds, section 502 does not provide a remedy for violations of article IV generally and section 406 particularly, then it is unclear how a mortgagor is protected against the conduct proscribed therein in article IV when such conduct is undertaken by debt collectors or law firms that are serving at the behest of RMLs.

It cannot reasonably be disputed that, as the legislature surely was aware when it last amended Act 6 in 2008, ***see*** Act of July 8, 2008, P.L. 824, No. 57, § 1, RMLs, at least large institutional ones, sometimes delegate responsibility for collections to conventional debt collectors or to law firms serving in the hybrid role of debt collector and, when necessary, foreclosure counsel. In holding that the legislature intended to restrict section 406's prohibition solely to the misconduct of RMLs acting on their own behalf and never to their debt-collecting agents or delegates, the majority constructively grants RMLs carte blanche to flout section 406's strict limitations on the imposition of various costs on mortgage debtors simply by out-sourcing collection and foreclosure activities to third parties, law firms or otherwise.[5]

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[5] While Appellants may have other remedies against unscrupulous debt collectors or foreclosure counsel, given the majority's determination that UTPCPL claims cannot lie against foreclosure counsel, I am aware of no alternative statutory provision that multiples the award for article IV misconduct by a factor of three, as section 502 provides, or that creates a direct avenue of relief against entities that, in whatever capacity, act on
(Footnote Continued Next Page)

The General Assembly explicitly mentioned RMLs in its broad definition of "person," indicating its intent that RMLs, **among others**, could be subject to the various enforcement mechanisms embodied in article V. But the breadth of the definition of "person," read in the context of the word's almost exclusive usage in article V's enumeration of enforcement mechanisms, bespeaks the legislature's intent to broaden, not narrow, the group of "persons" subject to enforcement for violations of article IV. Having defined and strictly prohibited certain acts pertaining to the imposition and collection of legal fees associated with foreclosure, and having singled out such abuses for the enhanced award of treble damages, I believe that the legislature intended that **no one** associated with the violation of those provisions should be beyond the reach of Act 6 enforcement for the misconduct proscribed therein. The definition of "person," so broadly crafted, reinforces my belief in this regard.

My analysis is buttressed by another presumptively meaningful distinction between those sections: Section 406 prohibits the **receipt** of improper charges and interest, while section 502 prohibits the **collection** of

(Footnote Continued) ————————————————

behalf of RMLs in ways that our legislature identified as improper in Act 6. An alternative remedy that is not equal to the escalated penalty imposed by our legislature in Act 6 disserves the legislature's overarching intent. As a remedial statute, Act 6 is designed to protect homeowners against certain misconduct, not just certain instances of certain misconduct when it happens to be perpetrated by one category of "person" as defined by section 502 but not another.

such charges. This distinction further reinforces the inference that collection activity in violation of section 406, *i.e.*, collection activity affiliated with an RML's ultimate receipt of such charges, is prohibited, not just collection activity undertaken by the RML, itself. What it is improper for an RML to receive, it is improper for an RML's proxy to collect.

In my view, the majority's ruling moves the law incrementally toward a result not only at odds with Act 6's undisputedly remedial objective, but also one that is unreasonable if not absurd, allowing RML proxies to run roughshod over the rights and privileges provided to borrowers while hiding behind the fact that they are not, themselves, RMLs. And any RMLs who handle the process in-house now have notice that, to avoid article IV's provision, they need only adopt an out-sourcing model for collections. Everyone wins, except the mortgagors that article IV was designed to protect against specified abuses.

In effect, the majority interprets Act 6 to vest in residential borrowers a right not to be saddled with certain unreasonable interest rates and costs while denying them a remedy for that conduct when it is carried out by a lender's surrogates. However, Pennsylvania law long has rejected interpretations of the law that result in a right without a corresponding remedy. ***See Carlacci v. Mazaleski***, 798 A.2d 186, 190-91 & n.1 (Pa. 2002) (holding that the right to reputation required an expungement remedy where none was created by statute); ***Willcox v. Penn Mut. Life Ins. Co.***, 55 A.2d 521, 530-31 (Pa. 1947) ("Not only is the maxim 'ubi jus

ibi remedium' – where there is a right there is a remedy – one of the proudest declarations of the common law, but it necessarily implies that a right without a remedy is not a right at all but a mere abstraction."). Here, while there may be **some** alternative remedy, it is not equal to the remedy provided by Act 6 for the abuses proscribed therein.

I believe that sections 101, 406, and 502, read in the context of each other and the larger statutory scheme, do not preclude an enforcement action under section 502 against any "person" complicit in violations of section 406, whether an RML or an agent thereof.[6] Consequently, I would hold that the trial court erred as a matter of law in holding to the contrary, and would reverse its order to the extent that it sustained Appellees' preliminary objections to Appellants' Act 6 claims.

Turning to the question whether Appellants can make out claims under the UTPCPL, I join the majority's analysis, subject to a caveat. Because I believe that the majority's brief analysis of ***Beyers*** is susceptible to an interpretation more broad than the Court's decision in that case warrants, I provide the discussion below to outline precisely the basis for, and the limitations of, my joinder in the majority's disposition of this issue.

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[6] Moreover, to the extent my reading of the relevant provisions and that of the trial court and the majority reflect any ambiguity, in the context of a remedial statute such as Act 6 we must construe the statute broadly to effectuate its remedial ends. ***See Creamer***, 329 A.2d at 816. This leads to the same result that I believe is necessitated by the statute's plain language.

In ***Beyers***, *supra*, our Supreme Court considered "whether the [UTPCPL] applies to an attorney's conduct in collecting and distributing settlement proceeds." ***Id.*** at 1084 (plurality). Based upon her allegation of counsel's improper deductions from settlement proceeds, Beyers sued her attorney for, *inter alia*, alleged violations of the UTPCPL. ***Id.*** at 1085. The trial court found the attorney liable under the UTPCPL and awarded treble damages. On appeal, this Court affirmed the trial court's award of damages under the UTPCPL, holding that the attorney's misconduct did not arise from the practice of law, and that the attorney could not use his professional status as a shield against an otherwise valid UTPCPL claim. ***Id.***

Our Supreme Court granted allowance of appeal, and reversed. In the lead opinion, only limited aspects of which commanded a majority, a plurality of the Court noted that a majority of jurisdictions had held that attorney misconduct is not subject to consumer protection laws. ***Id.*** at 1086 & n.7 (citing cases). However, a minority of jurisdictions carved out exceptions for "the entrepreneurial aspects of the practice of law, such as advertising and debt collection," while proscribing liability under consumer protection laws for negligence and legal malpractice. ***Id.*** at 1086 and n.8 (citing cases), ***see id.*** at 1087 n.12 (citing cases in which courts had **implied** "that in certain circumstances a claim could be brought against an attorney under the consumer protection act").

Noting that the question presented was novel in Pennsylvania, our Supreme Court observed that we "ha[ve] held that the UTPCPL does not

apply to treatment provided by another category of professionals: physicians." ***Id.*** at 1087 (citing ***Foflygen v. Zemel***, 615 A.2d 1345 (Pa. Super. 1992); ***Gatten v, Merzi***, 579 A.2d 974 (Pa. Super. 1990)). The Court deemed persuasive the consonant conclusion of the United States District Court for the Eastern District of Pennsylvania in ***Jackson v. Ferrera***, No. Civ.A. 01-5365, 2002 WL 32348328 (E.D.Pa. 2002), an unpublished decision rejecting the application of the UTPCPL "to attorney conduct in the practice of law." ***Id.*** at 1089.

The Court further acknowledged the district court's conclusion in another unpublished decision that attorneys "who regularly engage in debt collection practices, *apart from their legal representation*," are subject to liability under the FDCPA. ***Id.*** (quoting ***Daniels v. Baritz***, No. 02-cv-7929, 2003 WL 21027238, at *4, emphasis added by the Supreme Court).[7] The ***Daniels*** court found that the UTPCPL "appl[ied] to debt collection as an act in trade or commerce." ***Id.*** (citing ***Daniels***, 2003 WL 2102738, at *5). The Supreme Court also acknowledged our Commonwealth Court's holding that the UTPCPL applies to a physician's fraudulent activity in seeking to collect debts from his patients, ***id.*** (citing ***Commonwealth v. Cole***, 709 A.2d 994

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[7] In ***Yelin v. Swartz***, the same district court extended the analysis to Pennsylvania's FCEUA. 790 F.Supp.2d 331, 338 (E.D.Pa. 2011) ("If the complaint does not allege that the defendant committed misconduct during the course of practicing law, the mere fact that the defendant happens to be an attorney will not bar a UTPCPL claim.").

(Pa. Cmwlth. 1998)), notwithstanding that claims arising out of the practice of medicine are excluded from UTPCPL liability. However, the ***Beyers*** Court found that these various circumstances were distinguishable from UTPCPL claims based upon "professional misconduct," undisputedly the character of claims presented in ***Beyers***. ***Id.*** In distinguishing rather than rejecting these cases, the Court neither expressed nor implied any disapproval of those decisions in their respective contexts.

In tandem with its review of various Pennsylvania constitutional provisions bearing upon the regulation of attorneys, a broad analysis that did not command a majority of the Court, the plurality posited that Pennsylvania's rules of professional conduct and of disciplinary enforcement "exclusively address[ed] the conduct complained of" **in that case**. ***Id.*** at 1092 (citing, *inter alia*, Pa.R.P.C. 1.5(c), 1.15(b); quoting Pa.R.P.C. 8.4(b)). Carefully confining its holding to the facts then at bar, the Court concluded that attorneys' "**conduct in collecting and distributing settlement proceeds** does not fall within the purview of the UTPCPL." ***Id.*** at 1093 (emphasis added).

In his concurring opinion, which was joined by Justice Baer, then-Chief Justice Cappy emphasized that he "agree[d] with the majority, to the extent that it holds that[,] as a matter of statutory construction, the [UTPCPL] does not apply to attorneys practicing law." ***Id.*** at 1093 (Cappy, C.J., concurring). The concurrence expressly disavowed the plurality's discussion of Pennsylvania constitutional provisions regarding the proper repository for

the oversight of attorneys, and did not rely upon the ethical rules cited by the plurality. ***Id.*** In effect, the narrow ***Beyers*** consensus was limited to the plurality's reliance upon the interpretive rationales that were ventured by this Court in ***Walter*** and the district court in ***Jackson***. In ***Walter***, as read by the ***Beyers*** plurality, we held that the UTPCPL's focus on protecting against "unfair methods of competition and deceptive practices in the conduct of any trade or commerce" excluded the activities of physicians rendering medical services to their patients. ***See Beyers***, 937 A.2d at 1088 (quoting ***Walter***, 876 A.2d at 407-08). In ***Jackson***, as in ***Beyers***, the attorney who was deemed immune from UTPCPL liability was sued by his clients for misconduct in connection with his representation of **those clients**, an action subject separately to professional malpractice liability, not liability arising from misconduct toward a party outside the attorney-client relationship, who would have no direct malpractice remedy.[8] ***See Beyers***, 937 A.2d at 1088-89 (citing ***Jackson***, 2002 WL 32348328, at *4).

In distinguishing ***Daniels*** and ***Cole***, cases involving, respectively, "[a]ttorneys who regularly engage in debt collection practices, *apart from*

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[8] This point warrants emphasis: Neither abused clients nor abused third parties benefit directly from administrative remedies arising from the Supreme Court's oversight of the practice of law. Clients, however, have recourse to malpractice actions, while third-party remedies are fewer and far between. Indeed, in this regard, physician cases arguably bear little resemblance to attorney cases, inasmuch as the rendering of clinical care to one party seldom, if ever, entails injuring a third party. The same cannot be said of the rendering of legal services.

their legal representation," ***Beyers***, 937 A.2d at 1089 (quoting ***Daniels***, 2003 WL 21027238, at *4 (emphasis supplied by ***Beyers***)), and a physician seeking to collect debts from his patients, ***id.*** (citing ***Cole***, 709 A.2d at 997), the ***Beyers*** Court necessarily left open the prospect of UTPCPL claims against attorneys acting outside the scope of their professional practices, including in the context of debt collection on behalf of a client against a third party. Were we to find that the third-party debtors' UTPCPL claims against attorneys acting as debt collectors did **not** involve the practice of law, we would be writing on a blank slate, at least relative to Pennsylvania law. However, because of the way Appellants presented their claims, we need not do so in this case.

As noted, the trial court based its ruling primarily upon the fact that Glover's complaint asserted that the misconduct for which UTPCPL relief was warranted occurred in connection with Udren's foreclosure complaint. Thus, by Appellants' own lights, any misconduct was committed by Appellees in the context of the practice of law. Even in carefully restricting its ruling to the facts then at bar, a majority of the ***Beyers*** Court held that misconduct associated with the practice of law does not fall within the purview of the UTPCPL based solely on its reading of the text of the UTPCPL. Thus, ***Beyers*** controls Glover's case and supports the trial court's ruling dismissing Glover's UTPCPL claims. However, had Appellants asserted improprieties outside the context of the foreclosure complaint itself, I believe it remains unclear whether UTPCPL claims would lie. ***Beyers*** left the question

unresolved, and it is unnecessary and therefore imprudent to resolve it in this case. Thus, I do not read ***Beyers*** or the majority's opinion to hold or suggest that a licensed attorney acting as a debt collector or in another capacity unrelated to the practice of law cannot be held liable under the UTPCPL.[9] That question must wait for another day.

In closing, I must acknowledge a lurking difficulty, in that my analyses of these two issues, and the results I would reach, may appear at first blush to be in tension with each other. Appellants' Act 6 and UTPCPL claims arise from the same underlying misconduct, yet I would reach different results as to each. However, nothing in our canons of statutory construction so much as suggests that acts excluded from liability under one statute cannot create liability under another statute. Despite their occasional complementary interactions, Act 6 and the UTPCPL provided distinct remedies for distinct categories of misconduct. While the UTPCPL proscribes fraud and deceit in commerce, Act 6 proscribes, *inter alia*, the imposition, collection, and receipt of excessive or prohibited fees and interest arising in the context of residential mortgages. ***Cf. Penna. Dep't of Banking v. NCAS of Del., LLC***, 995 A.2d 422, 442 & n.25 (Pa. Cmwlth. 2010) (distinguishing Act 6 from the UTPCPL because Act 6 does not have "as its primary aim the

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[9] I do not mean to suggest that the majority intends otherwise. But its brief allusion to ***Beyers*** in its brevity might be read that way.

prevention of fraud or deceit"; rather, Act 6 aims to "protect consumers from paying too much interest").

Absent a clear basis for departing from our obligation to honor Act 6's plain language – and no such basis has been ventured – I would read Act 6 as a self-contained set of rules and remedies that are in no way informed by the distinct protections, remedies, and exclusions found in the UTPCPL or the FCEUA. As set forth above, it is unnecessary to depart from Act 6's plain language, viewed in light of its own definitions, the broader statutory context, and its remedial function, to hold that Appellants' Act 6 claims cannot be jettisoned on preliminary objections under the circumstances of this case.