

**STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

NICHON ROBERSON, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

ECI GROUP, INC.; ECI MANAGEMENT
LLC; and DEKALB-LAKE RIDGE, LLC;,

Defendants.

Civil Action File No.
17-A-64506-4

CLASS ACTION
JURY TRIAL

Plaintiff's First Amended Complaint

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Introduction

1. Plaintiff Nichon Roberson (“Plaintiff”), on behalf of herself and all others similarly situated, files this first amended¹ class action complaint against ECI Group, Inc. (“ECI Group”), ECI Management LLC (“ECI Management”), and DeKalb-Lake Ridge, LLC (“DKLR”). Plaintiff and the Class seek damages for Defendants’ flagrant and systematic violations of Georgia’s security deposit statute.

Nature Of The Action

2. This action seeks to recover on behalf of current and former tenants of Defendants whose rights under Georgia’s security deposit statute were violated by Defendants’ systematic violation of the procedures provided for in O.C.G.A. §§ 44-7-30 through 44-7-37, which are designed to protect Georgia residents from landlords unfairly taking their security deposits.

3. Spearheaded and controlled by ECI Group and ECI Management, Defendants have a company-wide policy of withholding all or some of the security deposits of its departing tenants in violation of Georgia law by not following, among other things, the procedures set forth in O.C.G.A. § 44-7-33 (b).

4. In particular, after the termination of occupancy, Defendants are required to conduct an inspection of the apartment, prepare a list of any damage done to the premises, and provide that damages list to the departing tenant within 3 business days. O.C.G.A. § 44-7-33 (b). Providing the list of damage done to the premises allows tenants to conduct their own counter-inspection, which must be conducted within 5 business days of the termination of occupancy, to

¹ Plaintiff files this amended complaint pursuant to Rule 15 of the Georgia Civil Practice Act, which provides that “[a] party may amend [their] pleading as a matter of course and without leave of court at any time before the entry of a pretrial order.” O.C.G.A. § 9-11-15 (a). Plaintiff notes that her first amended complaint makes two changes to the original complaint: one is to remove any request for injunctive or declaratory relief from the prayer for relief, and the other is to update the proposed class definition based on a statutory change. Both changes are consistent with the scope of class relief previously communicated by Plaintiff to Defendants.

ascertain the accuracy of the Defendants' damages list, assemble their own evidence, or to otherwise dispute the accuracy of the list. *Id.*

5. The security deposit statute provides that “[t]he tenant’s claims shall be limited to those items to which the tenant specifically dissented,” and so if the tenant fails to dispute any item on the list prepared by the Defendants, tenants ordinarily lose their rights to contest the alleged damages in court. O.C.G.A. § 44-7-33 (c).

6. Defendants, however, know that the tenant must dispute the list of damage done to the premises and they use this against their tenants by sending the damages list after the time the tenant has a right to conduct his inspection. By doing so, Defendants try to take away a tenant’s rights to contest any alleged damages in court while preserving the Defendants’ ability to take the tenant’s security deposit.

7. By violating the requirements of O.C.G.A. § 44-7-33, however, Defendants lose their right to withhold any portion of the security deposits of the class members pursuant to O.C.G.A. §§ 44-7-35 (a) and (b), as well as any right to bring a claim for damages to the premises. Moreover, O.C.G.A. § 44-7-35 (c) is clear that violation of the security deposit statute results in each tenant receiving three times the amount of the security deposit improperly withheld plus reasonable attorney fees.

Parties

8. Plaintiff and proposed class representative Nichon Roberson is a resident of DeKalb County, Georgia, currently residing at 2827 Vicksburg Court, Decatur, Georgia 30034.

9. ECI Group, Inc. is a Georgia for-profit corporation with its principal office address at 2100 Powers Ferry Road, Suite 200, Atlanta, Georgia 30339. Its registered agent is Seth R. Greenberg, who is also the Chief Financial Officer of ECI Group.

10. ECI Management LLC is a Georgia limited liability company with its principal

place of business at 2100 Powers Ferry Road, Suite 200, Atlanta, Georgia 30339. Its registered agent is A.J. Block, Jr. ECI manages or operates at least fifteen separate apartment complexes in Georgia on behalf of ECI Group. ECI Management LLC is also known as ECI Management Corporation.

11. DeKalb-Lake Ridge, LLC is a Georgia limited liability company with its principal place of business at 2100 Powers Ferry Road, Suite 200, Atlanta, Georgia 30339. Upon information and belief, DKLR's sole member is ECI Group. Its registered agent is Seth R. Greenberg, the CFO of ECI Group. DKLR owns or operates the apartment complex known as the Columns at Lake Ridge, which is located at 3900 Lake Ridge Lane, Dunwoody, Georgia, 30338.

Jurisdiction And Venue

12. This Court has personal jurisdiction over Defendants because they are all Georgia corporations, and even if they were not, the cause of action arises from Defendants' transaction of business in Georgia.

13. This Court is also a proper venue for this action because DeKalb County is the county where Plaintiff's lease was made or was to be performed, and some or all Defendants have an office or offices in DeKalb County. Moreover, DeKalb County is also the county where the cause of action originated, and some or all Defendants have an office or offices in DeKalb County.

Facts Relating To Plaintiff

14. Plaintiff is a physician applying to residency. She is also the primary caregiver for her mother, Rosie Roberson, who suffers from Alzheimer's disease and resided in the Plaintiff's apartment.

15. On or about May 27, 2014, Plaintiff signed a rental agreement with ECI

Management to rent an apartment at 3502 Lake Ridge Lane, Dunwoody, Georgia (“Unit 3502”) in the Columns at Lake Ridge complex, which is managed, owned, and operated by ECI Management, DKLR, and ECI Group. Plaintiff’s lease began on May 27, 2014 and terminated on May 26, 2015. Plaintiff’s monthly rent for the lease was \$875.00. As part of her rental agreement, Plaintiff paid a \$437.50 security deposit.

16. Plaintiff renewed her lease, which began on May 27, 2015 and was scheduled to terminate on April 26, 2016. Plaintiff’s monthly rent under this lease was 945.00.

17. After April 26, 2016, Plaintiff held over in the property and her leasehold was transformed into a month-to-month lease per the agreement in her lease.

18. On or about July 1, 2016, Plaintiff notified ECI that she intended to vacate Unit 3502 effective August 11, 2016.

19. Prior to vacating Unit 3502, Plaintiff retained the services of a professional cleaning company to clean the apartment.

20. Plaintiff vacated the apartment and the occupancy terminated on August 11, 2016 and turned in her keys to management.

21. On information and belief, on or about August 15, 2016, an agent of ECI Management, ECI Group, and/or DLKR entered Unit 3502 and conducted an inspection. Defendants did not provide Plaintiff with notice of this inspection beforehand. The inspection attributed \$60.00 in damages, allegedly due to a rug that was left in the apartment and a bag of trash under the sink. In the place on the form in which Plaintiff was supposed to sign (or, if she chose, refuse to sign), the person filling out the form indicated that she was “Not Available.”

22. Under Georgia law, Defendants were required to provide the list of damage done to the premises within three business days, and Plaintiff would then have the right to conduct a

counter-inspection within five (5) business days of termination of the occupancy in order to ascertain the accuracy of the list. Defendants, however, did not provide the damages list to Plaintiff within three business days of termination, thus violating her rights under Georgia's security deposit statute.

23. Despite not complying with the requirements of Georgia law, Defendants withheld the \$60.00 from Plaintiff's security deposit for alleged damage done to the premises.

Facts Common To The Class

24. Defendants have instituted a policy and procedure of systematically violating Georgia's security deposit statute regarding handling the security deposits of departing tenants that is applicable to all of Defendants' apartment complexes in Georgia.

25. Specifically, Defendants have a policy and procedure of the following with regard to departing tenants: (a) not providing departing tenants the damages list that Defendants are required to generate by O.C.G.A. § 44-7-33(b) within the three-business-day deadline, so that tenants could conduct their own counter-inspection to ascertain the accuracy of the list within five business days; and (b) notwithstanding their failure to comply with the requirements of Georgia law, withholding some or all of the departing tenants' security deposits in violation of O.C.G.A. § 44-7-35.

26. On information and belief, ECI Group and ECI Management controls and dominates a family of companies through which it manages its rental real estate business in Georgia.

27. On information and belief, the policy followed by Defendants with regard to compliance with O.C.G.A. § 44-7-33 *et seq.* is set by ECI Group and ECI Management and enforced through the family of companies ("ECI Subsidiaries").

28. On information and belief, the ECI Subsidiaries do not maintain adequate

records and corporate books.

29. On information and belief, all monies paid to the ECI Subsidiaries are forwarded up the corporate ladder to intermediate subsidiaries and, ultimately, to ECI Group and ECI Management. As a consequence, the ECI Subsidiaries are undercapitalized and do not themselves have assets sufficient to satisfy a judgment against them on the Class Members' claims.

30. On information and belief, the purpose of the creation of ECI Group and ECI Management as separate legal entities is to shield ECI Group and ECI Management and the ECI subsidiaries from legal liability and to shield assets to prevent them from being collected upon by creditors.

31. On information and belief, each of the foregoing allegations concerning the relationship between Defendants is equally true with respect the relationship between ECI Group, ECI Management, and all of its other subsidiaries that own or operate apartment complexes in the state of Georgia.

Class Action Allegations

32. Plaintiffs bring this action pursuant to O.C.G.A. § 9-11-23 on behalf of herself and a Class defined as follows:

- (a) any citizen of Georgia, as of the date of the complaint or amended complaint;
- (b) who had an agreement for the rental of real property with ECI Group or any of its subsidiaries or affiliated entities or persons, including but not limited to ECI Group, ECI Management, and DKLR;
- (c) who had all or some of their security deposit not returned within one month of the termination of the lease due, at least in part, to alleged damage to the premises; and
- (d) had all or some of their security deposit so retained during the time period beginning May 19, 1997 (*i.e.*, twenty years from the date of filing of the

original complaint) and continuing through June 30, 2018 (*i.e.*, the last date before changes to the security deposit statute became effective).

33. Numerosity: The Class is so numerous that joinder of all class members is impracticable. Plaintiff is unable to allege at this time the exact number of class members; however, Plaintiff believes that there are at a minimum hundreds, if not thousands, of Class Members. Defendants operate fifteen apartment complexes within Georgia, which comprises more than 3000 units. Plaintiff believes that Defendants' records maintained in the ordinary course of business will readily reveal the exact number of Class Members.

34. Commonality: Common questions of law and fact predominate in this action. The central question in this dispute—whether Defendants violated the requirements of Georgia landlord-tenant law and wrongfully withheld departing tenants' security deposits without providing those tenants with the statutorily required damages list—is applicable to all class members.

35. Typicality: Plaintiffs' claims are typical of the claims of other members of the Class, as Plaintiffs and other members of the Class suffered the same type of harm arising out of Defendants' failure to comply with Georgia's law concerning security deposits.

36. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex class actions. Plaintiff is a member of the Class, Plaintiff has no interest antagonistic to any other members of the Class, and Defendants have no defenses unique to Plaintiff.

37. Predominance: The questions of law or fact common to the Class Members predominate over any questions affecting only individual members. Defendants' course of conduct can be discovered without any need for participation by individual Class Members. The Class's claims present no issues of causation or reliance unique to individual class members.

38. Superiority: A class action is superior to all other methods for the fair and efficient adjudication of this controversy. This action presents textbook facts and circumstances for the conduct of a class action to afford each individual Class Member a fair and efficient manner by which to prosecute his or her common claims and, likewise, a fair and efficient manner by which Defendants may defend such claims.

39. Individual prosecution of this matter in separate actions is not desirable as each Class Member's damages likely is hundreds of dollars and they will need to incur nearly the same investment to prosecute their individual case as plaintiff in this case will incur to prosecute this case. The interests of individual Class Members are overwhelmingly best served by the conduct of a class action.

40. Individual litigation of this matter would unduly increase expenses to all parties and prolong efficient adjudication given the expected size of the class.

41. Upon information and belief, there is no other litigation concerning this controversy that has already been commenced by or against members of the class.

42. Upon information and belief, class membership is readily identifiable from Defendants' records that they maintain on their tenants such as name, social security number, last known address, electronic mail address, phone number and other identifying information.

Count I – Violation of Georgia Security Deposit

43. Plaintiff expressly incorporates by reference and re-alleges as if set forth fully herein the preceding allegations of this complaint, and set forth the following count.

44. With respect to Plaintiff and each Class Member, Defendants did not provide them with a list of the damages done to the premises they are required to generate as part of the move-out inspection process under O.C.G.A. § 44-7-33 (b) by the three-business day deadline.

45. In so doing, Defendants did not provide one of the written statements "within the

time period specified in O.C.G.A. § 44-7-33.” O.C.G.A. § 44-7-35 (b). Therefore, pursuant to O.C.G.A. § 44-7-35(b), Defendants could not withhold any portion of the security deposit from the Class Members or cannot assert any claim against the tenant for damages to the premises.

46. Notwithstanding, Defendants nevertheless withheld all or a portion of the security deposit of each class member and, in so doing, violated O.C.G.A. § 44-7-35(c).

47. Upon information and belief, the withholding of some or all of Plaintiff’s and each Class Member’s security deposits was intentional and otherwise not the result of a bona fide error that occurred in spite of the existence of procedures reasonably designed to avoid such errors. As a consequence of the foregoing, Plaintiff and each Class Member are entitled to recover three times the amount improperly withheld as well as reasonable attorney fees.

48. To the extent that they are not directly liable for the foregoing as a “landlord” under the security deposit statute, Defendants are liable to the Class Members via veil-piercing and/or through a joint venture. ECI Group, ECI Management, and the ECI Subsidiaries have failed to follow corporate formalities and observe the corporate form, have used the ECI Subsidiaries, including, but not limited to, DKLR, as mere instrumentalities through which ECI Group and ECI Management carry out their business and have generally abused the corporate form by establish its subsidiaries, as separate legal entities solely for the purpose of shielding ECI Group and ECI Management from legal liability and execution of judgments by creditors. Consequently, the Court should disregard the corporate form and hold Defendants liable for the actions of its subsidiaries and all involved in the joint venture against the Class Members, and Class Members are entitled to recover from Defendants three times the amount wrongfully withheld as well as reasonable attorney’s fees and costs.

49. Moreover, ECI Group and ECI Management acted in concert and combination

and/or through a joint venture with its subsidiaries to deprive the Class Members of their rights under Georgia law, and of their security deposits, by failing to provide them the written statements within the time period specified in O.C.G.A. § 44-7-33 but nevertheless withholding some portion of the security deposits of the Class Members. These actions violated the Class Members' rights under O.C.G.A. § 44-7-35.

50. By virtue of its membership and/or assistance in this conspiracy and/or joint venture, Defendants are liable for the wrongful acts of its co-conspirator and/or joint-venturer subsidiaries in furtherance of the conspiracy.

51. As a consequence of the foregoing, Class Members are entitled to recover three times the amount wrongfully withheld, as well as reasonable attorney fees.

Prayer For Relief

Plaintiff Nichon Roberson, individually and on behalf of the Class, request for the following relief:

- (a) An order certifying the Class as defined above, appointing Plaintiff as the representative of the Class, and appointing undersigned counsel as Class Counsel;
- (b) A damage award for Plaintiff and each Class Member in the amount of three times the unlawfully withheld security deposit pursuant to O.C.G.A. §§ 44-7-33 and 44-7-35;
- (c) An award of reasonable attorney fees to Plaintiff and each Class Member pursuant to O.C.G.A. § 44-7-35; and
- (d) Such further and other relief as the Court deems reasonable and just.

Jury Trial Demand

Plaintiff, on behalf of herself and on behalf of the Class, demands a trial by jury for all issues so triable.

Plaintiff submits this amended complaint on June 26, 2019.

/s/ Naveen Ramachandrappa

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Certificate of Service

I certify that, on June 26, 2019, I served a copy of **Plaintiff's First Amended Complaint** by US mail on the following counsel of record for Defendants:

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/s/ Naveen Ramachandrappa