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Lind v. New Hope Property, LLC:* No Hope for Implausible Claims under *Iqbal

Following the United States Supreme Court's decision in *Ashcroft v. Iqbal*,¹ legal commentators queried how much protection against frivolous lawsuits the decision would actually afford to institutional defendants. The *Iqbal* Court articulated a more rigorous pleading standard that requires plaintiffs to state both well-pleaded facts and a plausible claim for relief. The results are now in: the *Iqbal* standard has afforded meaningful relief early on in litigation for defendants that are only tangentially related to the core allegations in a complaint. A recent decision from the United States District Court for the District of New Jersey, *Lind v. New Hope Property, LLC*, is an example of such a case. The Court held that notwithstanding the plaintiffs' 56-page, 145-paragraph complaint, the conclusory and generalized allegations against the mortgage-lender defendants failed to satisfy the *Iqbal* standard and must be dismissed with respect to those defendants.²

In *Lind*, the plaintiffs alleged that they were induced by certain non-lender defendants to participate in a mortgage foreclosure rescue program whereby the plaintiffs would make mortgage loan investments to purchase properties from defaulting homeowners. After the plaintiffs made these investments, the non-lender defendants responsible for the program (the "New Hope defendants") allegedly discontinued the program and converted the mortgage proceeds for their own use. The lender defendants originated the plaintiffs' mortgages or later purchased them on the secondary market. The plaintiffs brought suit to recover their investment losses, asserting against all the defendants (1) common law claims of conspiracy, conversion, and unconscionability, (2) statutory violations of the Real Estate Settlement Procedures Act (RESPA),³ and the Truth in Lending Act (TILA),⁴ and (3) fraud-based claims for common law fraud, violation of the Racketeer Influenced and Corrupt Organizations Act (RICO),⁵ and violation of the New Jersey Consumer Fraud Act (CFA).⁶ The court dismissed the complaint in its entirety with respect to the lender defendants.

Non-Fraud Claims Failed to Satisfy Fed. R. Civ. P. 8(a)

The impact of *Iqbal* is most significant regarding a plaintiff's ability to maintain non-fraud-based claims.⁷ In general, Fed. R. Civ. P. 8(a) requires only that plaintiffs provide "a short and plain statement of the claim showing that the pleader is entitled to relief."⁸ As the *Lind* decision demonstrates, however, *Iqbal* has strengthened this pleading standard such that even non-fraud-based claims now require specificity and plausibility to survive a motion to dismiss.

With regard to the plaintiffs' common law claims, the Court held that "[p]laintiffs have offered no facts making it plausible that the Mortgage Company Defendants were members of a conspiracy of which they were also victims."⁹ The Court dismissed the plaintiffs' conversion claim because it was directed against "defendants" collectively, when it was evident from other allegations in the

complaint that the claim could only be intended to target the New Hope defendants.¹⁰ Likewise, the plaintiffs' unconscionability claim could not stand because it was based on "conclusory [and] generalized allegations" and did "not state a plausible ground of substantive unconscionability as to the mortgage agreements held by the Mortgage Company Defendants."¹¹

In addition, the Court dismissed the plaintiffs' RESPA and TILA claims because the alleged credit transactions did not fall within the scope of either statute. Specifically, the plaintiffs alleged that they had entered the credit transactions as "investors."¹² The Court held that loans obtained for a "business purpose" are not covered by TILA or RESPA.¹³

Fraud-Based Claims Failed to Satisfy Fed. R. Civ. P. 9(b)

With regard to the claims of fraud, and violations of RICO and CFA, the plaintiffs' failure to make any specific allegations against the mortgage-lender defendants, and in particular, to identify what role, if any, the lender defendants purportedly played in the subject scheme, was fatal to those claims.¹⁴ In holding that the plaintiffs had failed to meet the Fed. R. Civ. P. 9(b) pleading standard, the Court found that the complaint provided "no basis" on which to lump the lenders together as "a single unit."¹⁵ With regard to the RICO claim, the plaintiffs failed to allege the necessary "pattern of racketeering activity" where the complaint made clear that the subject scheme lasted under a year and had ended.¹⁶

Finally, the plaintiffs could not sustain their CFA claim through the "bare accusation" that the mortgage-lender defendants did not use "due diligence" in issuing loans.¹⁷ Accordingly, the Court dismissed each of the fraud-based claims because of the lack of any specific allegations with respect to the lender defendants.

Conclusion

In strengthening the Fed. R. Civ. P. 8(a) pleading standard, *Iqbal* and its progeny provide institutional defendants with a fair shot at avoiding the costs historically associated with defending against unsupported and implausible allegations of wrongdoing. An effective motion to dismiss predicated on *Iqbal* creates an opportunity for defendants to ward off expensive and burdensome discovery. Ultimately, as demonstrated by the *Lind* decision, the stringent *Iqbal* standard, requiring detailed allegations to survive a motion to dismiss for failure to state a claim, provides an enhanced weapon to end frivolous lawsuits aimed at bystander defendants.

R. Bruce Allensworth, Andrew C. Glass, Ryan M. Tosi, and Nicole D. Newman of K&L Gates' Boston office, and Mark D. Marino and Justin A. Greenblum of K&L Gates' Newark office, represented a mortgage-lender defendant in Lind v. New Hope Property, LLC.

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¹ *Ashcroft v. Iqbal*, --- U.S. ----, 129 S. Ct. 1937, 1949 (2009).

² *Lind v. New Hope Property, LLC*, No. 09-3757-JBS-KMW, 2010 WL 1493003 (D.N.J. Apr. 13, 2010).

³ 12 U.S.C. §§ 2601 *et seq.*

⁴ 15 U.S.C. §§ 1601 *et seq.*

⁵ 18 U.S.C. §§ 1961 *et seq.*

⁶ N.J. Stat. Ann. §§ 56:8-1 *et seq.*

⁷ Fed. R. Civ. P. 8(a).

⁸ *Id.*

⁹ *Lind*, 2010 WL 1493003, at *6.

¹⁰ *Id.* at *7.

¹¹ *Id.*

¹² *Id.* at *5.

¹³ *Id.* at *5, *6.

¹⁴ *Id.* at *4.

¹⁵ *Id.* at *5.

¹⁶ *Id.* at *5 n.9.

¹⁷ *Id.* at *5 n.8.