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FROM THE COURTS

Navient Suit Claiming It Gave Borrower Headaches to Proceed



A New Jersey federal judge denied Navient's motion to dismiss a plaintiff's suit that alleges the company called her 881 times in an 11-month period, causing headaches and emotional distress.

by Charles Toutant

Accused of calling a New Jersey debtor as many as 10 times a day, student loan servicer Navient Solutions lost a bid for summary judgment on liability for common-law intrusion on seclusion.

A federal judge in Camden, New Jersey, denied Navient's motion to dismiss Yolanda Polhill's suit, which alleges that the company called her 881 times in an 11-month period and that the calls gave her headaches and emotional distress.

Summary judgment is not warranted on the intrusion on seclusion claim because the facts in the case are largely disputed, U.S. District Judge Karen Williams ruled.

The parties agree that Navient began phoning Polhill in May 2017, and that the calls continued until around January 2019, Williams wrote. But parties dispute the number, frequency and timing of calls and Polhill's requests to no longer receive calls, Williams said.

In addition, although Polhill set her phone to vibrate for incoming calls and kept it in her purse during the workday, the parties disagree about whether the calls were distracting, with Polhill claiming she was reprimanded by her supervisor for answering the phone to ask Navient to stop calling her, Williams wrote.

Also, Navient claims that Polhill's headaches continued even after it stopped calling her, while she argues that the headaches ended when Navient's calls stopped. And while Polhill claims that she revoked consent to receive calls from Navient four times, it said it called her number but cannot be sure it was speaking with her.

The case stems from a \$6,000 student loan that Polhill co-signed for her brother in 2004

Navient cites Rush v. Portfolio Recovery Associates, a 2013 case from the District of New Jersey, to support its assertion that Polhill's claims fail. Navient asserted that Rush requires a large number of calls over a short period to make a showing of intrusion on seclusion. Navient claims that it made fewer than one call per day to Polhill, and that she answered fewer than 10 calls, and such facts don't rise to the level of tortious conduct. Navient also asserts that Polhill can't show actual damages from the case because she did not present an expert opinion finding that the calls gave her headaches.

Polhill says the question of whether persistent calls become offensive after

the caller has been told to stop is a question for the jury. She says she always suffered from minor headaches related to her menstrual cycle, but she did not suffer from stress-related headaches until the Navient calls began and those headaches ceased when the calls stopped. Navient, for its part, says the standard for liability from the Rush case has not been reached because the plaintiff has not alleged extreme behavior such as prying into her personal affairs or attacking, abusing or insulting her.

Williams found that questions of fact preclude summary judgment, citing a New Jersey Supreme Court ruling from 1977, Stengart v. Loving Care Agency, when she wrote that "[o]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Williams added that in evaluating claims for intrusion on seclusion, New Jersey courts rely on the Restatement (Second) of Torts, which said with regard to phone calls, "[T]here is no liability for ... calling [a plaintiff] to the telephone on one occasion or even two or three, to demand payment of a debt. It is only when the telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff, that becomes a substantial burden to his existence, that his privacy is invaded.

Williams wrote that the facts in the present case are different from what was presented in *Rush*, where the court found that the defendant's conduct was not highly offensive.

In Rush, the defendant contacted the plaintiff up to five times a day, over a four-month period. The plaintiffs in Rush never answered the phone or spoke with the defendant, and the defendants never left a voice message.

In the present case, Navient began calling Polhill in May 2017 and ceased in or around January 2019. Unlike Rush, Polhill claims she asked Navient to cease calling her four different times, that she received more than 800 calls and she sometimes received as many as 10 calls per day. Navient does not conceded these facts.

Charles Toutant is a litigation writer for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review. Contact him at ctoutant@alm.com.



CITY OF DORAL NOTICE OF ZONING WORKSHOP

All residents, property owners and other interested parties are hereby notified of a **Zoning Workshop** on Thursday, January 12, 2023 at 6:00 p.m. The Meeting will take place at the City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166.

The following application will be presented:

HEARING NO.: 23-01-DOR-04

APPLICANT: Bridge Point Doral 2700, LLC (the "Applicant")

PROJECT NAME: Bridge Point Retail Parce PROPERTY OWNER: Doral Farms, LLC

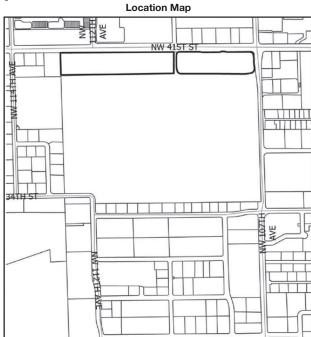
LOCATION: Southwest corner of the intersection of NW 107 Avenue and Doral Boulevard/ NW 41 Street

FOLIO NUMBER: 35-3030-000-0020

SIZE OF PROPERTY: ±11.6412 acres (General Use to Corridor Commercial) and ±16.0994 acres (General Use to Private Parks and Recreation). The overall size of the property is ±175 acres **FUTURE LAND USE MAP DESIGNATION:** Office Residential and Business

ZONING DESIGNATION: General Use District (GU)

REQUEST: The Applicant is requesting a zoning map amendment for approximately 11.6412 acres of the overall property from General Use (GU) zoning district to Corridor Commercial (CC) zoning district and ±16.0994 acres of the overall property from General Use (GU) zoning district to Private Parks and Recreation zoning district.



ZONING WORKSHOP PROCESS: The zoning workshop consists of two sessions:

- 1. First Session. The first session of a zoning workshop shall provide a forum for members of the public to learn about proposed developments within the city. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. The applicant shall provide visual depictions, such as renderings, drawings, pictures, and the location of the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the City Council shall not be present during the first session of the zoning workshop.
- Second Session. The second session of a zoning workshop shall provide a forum for the City Council to learn about the proposed developments discussed at the first session of the zoning workshop. No quorum requirement shall apply. Developments shall be presented by the applicants sequentially, one at a time, for the City Council's review and comment. The applicant shall again present visual depictions of the proposed development. In addition, the applicant shall be available to answer any questions that members of the City Council may have about the proposed development.

No quorum requirement shall apply nor will any vote on any project be taken, but roll call will be taken, as it is a publicly noticed meeting.

Information relating to this request is on file and may be examined in the City of Doral, Planning and Zoning Department located at 8401 NW 53rd Terrace, Doral, Fl. 33166. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to

NOTE: If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide translation services during the zoning application process or during any quasi-judicial proceeding.

NOTA: Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés. es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparecencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparecencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento o durante el

Connie Diaz, MMC City of Doral

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