

Successful Criminal Prosecution of a Landlord Under the Servicemembers Civil Relief Act

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The Servicemembers Civil Relief Act (SCRA)² is something of a misnomer in that it also contains a number of criminal provisions in addition to its civil remedies.³ Each provision provides that violations of the specific SCRA section constitute a misdemeanor, and that the offender is subject to fines and imprisonment pursuant to Title 18, United States Code.

Most Judge Advocates are familiar with provisions of the SCRA that allow a servicemember to reduce interest rates,⁴ reopen default judgments,⁵ or apply for a stay in a court of law.⁶ However, when it comes to military tenants, ignoring the tenets of the SCRA can lead to serving time in federal prison.⁷

This article will examine the criminal penalties and prosecution procedures of the SCRA; wrongful eviction under the SCRA; the case of *Flessert v. McLeod*, a civil wrongful eviction lawsuit; and finally, *United States v. McLeod*, the subsequent SCRA criminal prosecution.

SCRA Criminal Penalties and Prosecution Procedures

Criminal penalties are available for violations of numerous SCRA provisions including eviction and distress,⁸ installment contracts,⁹ filing a false affidavit,¹⁰ mortgages and trust deeds,¹¹ enforcement of storage liens,¹² assignment of life insurance policies,¹³ and seizure of property or security deposit following termination of a lease.¹⁴

Before Judge Advocates consider seeking criminal prosecution of an SCRA case, they should ensure that they have exhausted all possible other avenues of advocacy, including attempting to informally resolve the dispute and assisting the servicemember in a civil action. The next step is to contact the Office of The Judge Advocate General (OTJAG) Legal Assistance Policy Division to approve the referral.¹⁵ When OTJAG has recommended referral, the Judge Advocate should the contact the local U.S. Attorney's Office to move forward with prosecution.¹⁶ In persuading the U.S. Attorney that the

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² Pub. L. No. 108-189, 117 Stat. 2835 (2003) (codified at 50 U.S.C.S. app. §§ 501-596) (LexisNexis 2008).

³ See *infra* notes 7-13.

⁴ 50 U.S.C. app. § 527.

⁵ *Id.* app. § 521.

⁶ *Id.* app. § 522.

⁷ *United States v. McLeod*, No. 2:06-cr-27 (W.D. Mich. Sept. 21, 2007)

⁸ 50 U.S.C. app. § 531(c)(1).

⁹ *Id.* app. § 532(b)(1).

¹⁰ *Id.* app. § 521(c).

¹¹ *Id.* app. § 533(d)(1).

¹² *Id.* app. § 537(c)(1).

¹³ *Id.* app. § 536(e)(1).

¹⁴ *Id.* app. § 535(h)(1).

¹⁵ Policy e -Letter 47, Office of the Judge Advocate General, Legal Assistance (LA) Pol. Div., para. 4 (29 Feb. 2008).

¹⁶ *Id.*

case warrants criminal prosecution, the Judge Advocate should be prepared to demonstrate why the actions of the offender are particularly offensive and how the case might be potentially precedential.

Wrongful Eviction Under the SCRA

The SCRA, 50 U.S.C.S. app. § 531, protects against the eviction of servicemembers and their dependents.¹⁷ When a landlord does not abide by the SCRA, the servicemember should first pursue the matter in civil court to obtain damages or an injunction against the landlord. This may occur under either the SCRA or State eviction law.¹⁸ In *Flessert v. McLeod*, the servicemember and his wife attempted to resolve the dispute through civil proceedings after the landlord evicted the servicemember's wife and retained the couples' belongings.¹⁹ When *Flessert v. McLeod* did not result in an acceptable remedy, *United States v. McLeod* was pursued in criminal court.²⁰ Though infrequently enforced, the SCRA does allow for the criminal prosecution of a landlord for wrongful eviction. Judge Advocates should be mindful that a SCRA wrongful eviction prosecution can allow recovery for a victim who was unsuccessful recouping damages via a civil action or simply is located a thousand miles away from a likely court with jurisdiction.

Flessert v. McLeod

In September of 2004, Mrs. Flessert entered into a rental agreement for a mobile home trailer in Wilson, Michigan for \$250 a month.²¹ The landlord of the mobile home trailer was Randall McLeod.²² At the time of signing the lease, Mrs. Flessert's husband, Specialist (SPC) Flessert, was attending his Advanced Individual Training at the Aberdeen Proving Ground, Maryland.²³ In a subsequent FBI investigation, McLeod confirmed that Mrs. Flessert "told him that her husband was away in training, for the United States Army."²⁴ Mrs. Flessert was pregnant with their third child and the baby was due in late December 2004.²⁵

¹⁷ 50 U.S.C. app. § 531.

(a) Court-ordered eviction.

(1) In general. Except by court order, a landlord (or another person with paramount title) may not –

(A) evict a servicemember, or the dependent of a servicemember, during a period of military service of the servicemember, from premises –

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

....

(c) Penalties. –

(1) Misdemeanor. Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

Id.

¹⁸ See, e.g., MICH. COMP. LAWS § 600.2918 (LexisNexis 2008).

¹⁹ *Flessert v. McLeod*, No. 2005 18621 GC (95A D. C. Mich. Oct. 18, 2005).

²⁰ *United States v. McLeod*, No. 2:06-cr-27 (W.D. Mich. Sept. 21, 2007).

²¹ Plea Agreement, *United States v. McLeod*, No. 2:06-cr-27, para. 5 (W.D. Mich. May 8, 2007) [hereinafter Plea Agreement].

²² *Id.* para. 5.

²³ Letter from Mrs. Flessert to Whom it May Concern (n.d.) [hereinafter Letter from Mrs. Flessert] (on file with author).

²⁴ FBI Special Agent Report of Interview of Randall McLeod (July 27, 2005) [hereinafter FBI Interview of McLeod].

²⁵ Plea Agreement, *supra* note 21, para. 5.

Mrs. Flessert paid the October and November rent in advance by post-dated check.²⁶ The initial rent was co-signed by the Red Cross, who also advised Mr. McLeod that the basis for the rental advance was the fact that it was for a servicemember's family.²⁷ In late November 2004, Mrs. Flessert and her two children traveled to Wisconsin to visit relatives and were joined by SPC Flessert when he took leave for the Thanksgiving holiday.²⁸ The day after Thanksgiving, Mrs. Flessert went into pre-term labor.²⁹ Her physician recommended that she not travel.³⁰ She left a voicemail with Mr. McLeod indicating that she was experiencing problems with her pregnancy, but would return to Michigan as soon as possible to pay the December rent.³¹

In early December, Mr. McLeod evicted the Flesserts without a court order.³² The eviction consisted of Mr. McLeod changing the locks on the trailer and confiscating their personal belongings and furniture, including a three piece bedroom set.³³ When SPC Flessert learned of the eviction, he immediately contacted the Legal Assistance Office, Office of Command Judge Advocate (OCJA), Fort McCoy, Wisconsin. Major (MAJ) Jack Jakubiak was assigned to the case and contacted Mr. McLeod, advising him that his actions violated the SCRA.³⁴ McLeod was not receptive to this information and several follow up conversations were met with disdain.³⁵ At one point, McLeod offered to return some of the Flessert's belongings, but stated that he intended to keep the bedroom suite as recompense "for all of his inconvenience."³⁶ Major Jakubiak advised McLeod of the criminal nature of his conduct and urged him to seek advice from counsel.³⁷ When Mr. McLeod retained counsel, MAJ Jakubiak provided McLeod's attorney with the relevant case law and citation, and further identified in writing that the SCRA also included criminal penalties of up to one year in prison.³⁸

Upon reviewing the provided materials, Mr. McLeod's counsel negotiated the return of all of the Flesserts' belongings.³⁹ However, before the materials could be recovered, Mr. McLeod fired his attorney and once again refused to return the Flesserts' personal property.⁴⁰

After still further negotiations with Mr. McLeod proved unsuccessful, MAJ Jakubiak contacted the Menominee County Sheriff's Department to report the theft of the Flesserts' belongings by Mr. McLeod.⁴¹ The Deputy Sheriff noted that Mr. McLeod:

[I]s currently living in Arizona for the winter. He advised that he entered and removed [KF]'s belongings. He claimed she abandoned the trailer and left it a mess. When he arrived there was no fuel left and he had to put stuff in the drains so they would not freeze. She also owes him back rent. He is holding her property and will not return it unless she takes him to court. When asked if he went through the eviction process he said he did not and did not have to because she abandoned the place. When asked if there was any way [KF] could get her property back he said "no."⁴²

²⁶ *Id.*

²⁷ See *United States v. McLeod*, No. 2:06-cr-27 (W.D. Mich. Sept. 21, 2007).

²⁸ Plea Agreement, *supra* note 21, para. 5.

²⁹ *Id.*

³⁰ Letter from Mrs. Flessert, *supra* note 23.

³¹ *Id.*

³² Plea Agreement, *supra* note 21, para. 5.

³³ *Id.*

³⁴ *Id.* at 16–18, 20.

³⁵ *Id.* at 20.

³⁶ *Id.* at 17–18.

³⁷ *Id.* at 17.

³⁸ Fax to Ms. Deborah Curran, Attorney at Law, from Captain Jakubiak, Fort McCoy Legal Assistance Office, Wis., Feb. 11, 2005.

³⁹ Memorandum to File by Captain Jack Jakubiak, Legal Assistance Attorney, Fort McCoy, Wis. 2–3 (Feb. 22, 2005) [hereinafter *Jakubiak Memo*].

⁴⁰ Transcript of Sentencing Hearing at 17–18, *United States v. McLeod*, No. 2:06-cr-27 (W.D. Mich. Sept. 19, 2007) [hereinafter *Transcript of Sentencing Hearing*].

⁴¹ *Jakubiak Memo*, *supra* note 39, at 2.

⁴² Menominee County Sheriff Incident Report, No. 155-159-05 (Feb. 10, 2005).

Subsequently, MAJ Jakubiak once again contacted Mr. McLeod and advised him that he was at risk of being criminally prosecuted for his actions.⁴³ The Fort McCoy OCA then contacted the United States Attorney's Office (USAO), Western District of Michigan, and the Legal Assistance Policy Division, Office of The Judge Advocate General, for assistance.⁴⁴

The USAO's office requested that the FBI conduct an investigation. During the investigation, Mr. McLeod admitted that he was aware that SPC Flessert was in the U.S. Army when he rented the property to Mrs. Flessert.⁴⁵ He also admitted that on or about December 12, 2004, he "took all of the contents of the trailer and padlocked the door."⁴⁶ Finally, he stated that he knew "that [Mrs. Flessert]'s husband was away in the United States Army and that he failed to get a court order to evict. [McLeod] acknowledged that absent any Federal law, he realizes that the State of Michigan requires a landlord to go through an eviction process to make a tenant move out."⁴⁷ An FBI Special Agent later testified that "[McLeod] was going to hang onto the items that he had removed from the trailer, what he said was five pickup loads of stuff . . . until she took him to court."⁴⁸ He reiterated that he considered the trailer abandoned, despite the fact that the rent was only twelve days late.⁴⁹

The Flesserts retained a legal assistance attorney from the Legal Services of Northern Michigan, Inc., to civilly prosecute the case against McLeod.⁵⁰ In October of 2005, a complaint was filed alleging violations of Michigan law and the civil provisions of the SCRA.⁵¹ In the complaint, the Flesserts requested damages of over \$15,000, including relocation expenses.⁵² Mr. McLeod was served by mail and publication.⁵³ When he failed to respond to the complaint a default judgment was entered against him on 31 March 2006, awarding damages of \$15,068 and costs of \$232 to the Flesserts.⁵⁴

The Flesserts' travails continued, however. They were unable to collect on the judgment because they could not locate any accounts or property to attach a judgment, garnishment, or lien. It was learned that McLeod had over forty creditors attempting to secure payment from him and in order to avoid these obligations, McLeod had transferred assets, to include his home and the title to his Ford F350 pickup truck, to his son.⁵⁵ In conjunction with the Office of Command Judge Advocate at Fort McCoy, the Legal Services of Northern Michigan requested that the U.S. Attorney pursue criminal prosecution to obtain restitution.

United States v. McLeod

In September of 2006, the United States brought a criminal action against Mr. McLeod, alleging that "without a court order, [he] knowingly evicted and attempted to evict the dependents of a servicemember, during a period of military service of the servicemember, from premises that were occupied or intended to be occupied primarily as a residence, and for which the monthly rent did not exceed \$2,465."⁵⁶ In a pretrial pleading, the Government recited the admissions that Mr. McLeod had made to the FBI Special Agent in July of 2005.⁵⁷

Following discovery, and with the realization that he had already admitted to all of the elements of the crime to the FBI Special Agent, Mr. McLeod agreed to plead guilty. In the plea agreement filed in May of 2007, Mr. McLeod admitted

⁴³ Transcript of Sentencing Hearing, *supra* note 40, at 17-18.

⁴⁴ Jakubiak Memo, *supra* note 39.

⁴⁵ FBI Interview of McLeod, *supra* note 24.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Transcript of Sentencing Hearing, *supra* note 40, at 9.

⁴⁹ *Id.*

⁵⁰ Summons and Complaint, Flessert v. McLeod, No. 2005 18621 GC (95A D. C. Mich. Oct. 18, 2005).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Default Judgment, Flessert v. McLeod, No. 2005 18621 GC (95A D.C. Mich. Mar. 31, 2006).

⁵⁴ *Id.*

⁵⁵ Transcript of Sentencing Hearing, *supra* note 40, at 46.

⁵⁶ Class A Misdemeanor Information, United States v. McLeod, No. 2:06-cr-27.(W.D. Mich. Sept. 13, 2006).

⁵⁷ Government's Initial Pretrial Conference Summary Statement, United States v. McLeod, No. 2:06-cr-27 (W.D. Mich. Dec. 14, 2006).

violating 50 U.S.C. App. §§ 531(a)(1)(A), 531(a)(3), and 531(c)(1).⁵⁸ He agreed to a sentence of up to one year in prison and \$100,000 fine including restitution.⁵⁹

Mr. McLeod's sentencing occurred on August 28, 2007. Mr. McLeod was sentenced to six months of incarceration, followed by a period of supervision of one year, restitution to SPC Flessert and his spouse of \$15,300, a \$1000 fine, and an additional six month suspended sentence to be served should restitution not be paid during the one year period of supervision.⁶⁰

Mr. McLeod was released from federal prison on 12 May 2008.⁶¹ As indicated, pursuant to his sentence, during his one year of supervised release, he must make restitution to the family. In addressing this portion of the sentence, U.S. Magistrate Judge Greeley noted, "And Mr. McLeod, I'm telling you right now, and I'm making it very clear, if you don't pay that restitution during the supervised release you're going to do the other six months."⁶²

Conclusion

Legal Assistance attorneys should be cognizant that egregious unlawful evictions in violation of the SCRA may support federal criminal prosecutions. When appropriate cases arise that may be candidates for criminal prosecution by the U.S. Department of Justice, legal assistance attorneys must work closely with their supervisors, Staff Judge Advocates, and the OTJAG Legal Assistance Policy Division. As evidenced by the sentence in *United States v. McLeod*, the consequences for landlords ignoring servicemembers' rights can be severe.

⁵⁸ Plea Agreement, *supra* note 21, para. 1.

⁵⁹ *Id.* para. 3.

⁶⁰ Judgment in a Criminal Case, *United States v. McLeod*, No. 2:06-cr-27 (W.D. Mich. Sept. 21, 2007).

⁶¹ See Fed. Bureau of Prisons, Inmate Locator, <http://www.bop.gov/iloc2/InmateFinderServlet?Transaction=NameSearch&needingMoreList=false&FirstName=randall&Middle=&LastName=mcleod&Race=U&Sex=M&Age=&x=88&y=13> (last visited Sept. 17, 2008).

⁶² Transcript of Sentencing Hearing, *supra* note 40, at 73; Judgment in a Criminal Case, *McLeod*, No. 2:06-cr-27.