

RECENT DEVELOPMENTS

CONSUMER CREDIT

THIRD CIRCUIT ADOPTS A “REASONABLE READER” STANDARD FOR EVALUATING WHETHER A CREDIT REPORT WAS INACCURATE OR MISLEADING UNDER FAIR CREDIT REPORTING ACT

Bibbs v. Trans Union LLC, 43 F.4th 331 (3d Cir. 2022).
<https://law.justia.com/cases/federal/appellate-courts/ca3/21-1350/21-1350-2022-08-08.html>

FACTS: Trans Union LLC published credit reports for Marissa Bibbs, Michael Parke, and Fatoumata Samoura (collectively “Appellants”) that included student loans borrowed from various lenders. Appellants were unable to continue making payments on their loans and their respective lenders closed their accounts and transferred their loans. The account balances with the Appellants’ previous creditors went to zero. Trans Union published credit reports for the Appellants, and each contained a “negative pay status” notation stating that the account was 120 days past due. The reports also stated that the loans were closed, transferred, and had an account balance of zero. Appellants’ attorney sent a letter to Trans Union claiming the reports were inaccurate and requested that the information be corrected. Trans Union launched an investigation and consequently stated that the account information was accurate. Trans Union did not update or correct the disputed information.

Appellants each sued Trans Union, alleging that Trans Union violated the Fair Credit Reporting Act (“FCRA”) by issuing credit reports that contained inaccurate or misleading information and refusing to revise the reports in response to the Appellants’ complaints. Trans Union was granted its motion for judgment on the pleadings in each suit. Each Appellant appealed and the matters were consolidated in the United States Court of Appeals for the Third Circuit.

HOLDING: Affirmed.

REASONING: Appellants argued that the district court erred in applying the “reasonable creditor” standard because the standard excludes unsophisticated creditors who make determinations on individuals using credit reports. Under Section 1691a(e) of the FCRA, the term “creditor” means “any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend renew, or continue credit.” Section 1681a(b) of the FCRA defines “person” to include “any individual.”

The court rejected Appellants’ argument but explained that the “reasonable creditor” standard the Pennsylvania federal judges applied did not reflect how the FCRA contemplates various parties using the reports, such as employers and investors, not just creditors. The court clarified the statute’s meaning by adopting a “reasonable reader” standard to determine whether credit reports issued by a credit reporting agency are inaccurate or misleading and how a reasonable reader would have comprehended a report in its entirety. The court’s new reasonable reader standard does not exclude unsophisticated creditors. It instead includes any person who regularly extends, renews, or continues credit as a creditor.

CREDIT REPORTING AGENCY’S ACTIONS WERE NOT UNREASONABLE UNDER THE FAIR CREDIT REPORTING ACT WHEN IT FAILED TO CATCH A MISREPORTED BANKRUPTCY ON A CREDIT REPORT

Hammoud v. Equifax Info. Servs., LLC, 52 F.4th 669 (6th Cir. 2022).
<https://www.opn.ca6.uscourts.gov/opinions.pdf/22a0234p-06.pdf>

FACTS: Mohamad and Ahmed Hammoud filed Chapter 7 bankruptcy petitions just over a year apart using the same attorney. Both petitions contained their similar names, identical address, and only Ahmed’s social security number. The attorney corrected the social security number on Mohamad’s bankruptcy petition the day after it was filed, but Experian Information Solutions, Inc. failed to catch the amendment and erroneously reported Mohamad’s bankruptcy on Ahmed’s credit report for nine years.

A h m e d sued Experian and Equifax Information Services, Inc., alleging it had violated section 1681e(b) of the Fair Credit Reporting Act (“FCRA”) by failing to “follow reasonable

procedures to assure maximum possible accuracy” of his reported information. 15 U.S.C. § 1681e(b). Equifax and Ahmed settled. Experian moved to dismiss the claim for lack of subject matter jurisdiction, and then moved for summary judgment. Ahmed cross-moved for summary judgment. The district court denied Experian’s motion to dismiss, denied Ahmed’s motion for summary judgment, and granted Experian’s motion for summary judgment. Ahmed appealed.

HOLDING: Affirmed.

REASONING: Ahmed argued that Experian’s credit reporting procedures were unreasonable because it blindly relied on summary data from LexisNexis, rather than evaluating court documents. Ahmed also alleged that Experian’s failure to implement a procedure to update or verify the status of the bankruptcy proceeding was unreasonable. The court disagreed.

The court reasoned that a credit reporting agency’s reliance on information gathered by outside entities is reasonable as long as it is not obtained from a source that is known to be unreliable, is not inaccurate on its face, and is not inconsistent with the information already on file. The court held that LexisNexis has long been thought to provide accurate reliable information and

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Experian had several safeguards in place to ensure the information it uses is accurate. The court rejected Ahmed's second argument because the docket entry listed the "Statement of Social Security Number" as not publicly available. Thus, Experian could not see it and to do so would have required a person with some legal training to manually review the docket. Section 1681e(b) of the FCRA does not require that level of investigation unless the credit agency has been alerted to the inaccuracy. Therefore, because Ahmed could not show Experian's procedures were unreasonable, his claim under § 1681e(b) failed and the court affirmed the district court's grant of summary judgment to Experian.

The contract also provided that her account may be subject to a charge set forth in the fee schedule whether the "item" was paid or returned. The court reasoned that the list ending with "other posted items" means that the previous terms are also "items," including ACH debits. Because an ACH debit occurs when a payee debits a person's account, defining "item" by reference to the debit rather than the transaction or purchase rendered Page's reading untenable. Thus, taken together, the contract and fee schedule permitted Alliant to charge an NSF fee each time it attempted to make an ACH debit from an account with insufficient funds, such as Page's.

CREDIT UNION MAY CHARGE MULTIPLE INSUFFICIENT FUNDS FEES WHEN PRESENTED WITH THE SAME TRANSACTION MORE THAN ONCE

Page v. Alliant Credit Union, ___ F.4th ___ (7th Cir. 2022).
<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D10-25/C:21-1983;J:StEve:aut:T:fnOp:N:2951555:S:0>

FACTS: Alicia Page was a customer of Alliant Credit Union ("Alliant"). The parties' contract and fee schedule permitted Alliant to charge nonsufficient fund ("NSF") fees when it rejected an attempted debit to Page's account due to insufficient funds to cover the transaction. Page was charged an NSF fee when she attempted to pay a bill that was greater than her available balance. Eight days later, Alliant charged multiple NSF fees for the same transaction.

Page sued Alliant, claiming that Alliant breached its contract by charging more than one NSF fee for a single transaction. The district court granted Alliant's motion to dismiss. Page appealed.

HOLDING: Affirmed.

REASONING: Page argued that Alliant breached the contract by charging additional NSF fees after the merchant repeatedly attempted to debit her account for the same transaction. Page asserted that under the contract and fee schedule, the term "item" meant a "payment order that a *member* draws against insufficient funds," and because Page made just one payment, Alliant could have charged only one fee.

The court disagreed with Page's interpretation of the contract and fee schedule, holding that the agreement did not prohibit Alliant from charging multiple NSF fees for a transaction that is presented and rejected several times. It noted that,

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under the overdraft liability provision, Alliant was not required to notify Page if her account did not have funds to cover "checks, ACH debits, debit card transactions, fees or other posted items."