

RECENT DEVELOPMENTS

are not preempted, except to the extent specified by §1681t(b). The district court dismissed Purcell's common law claims without prejudice, leaving Purcell free to file her claims in state court. The Bank appealed, asserting the dismissal should have been *with* prejudice.

HOLDING: Reversed.

REASONING: The appellate court found the district court's reasoning eerily similar to that in *Swift v. Tyson*, 41 U.S. 1 (1842), where the Supreme Court interpreted the word "laws" in the Rules of Decision Act to mean only statutes. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), famously overruled *Swift* and held that a reference to state "laws" comprises all sources of legal rules, including judicial opinions.

As in *Swift*, the district court's ruling hinged on distinguishing the words "law" from "laws." The district court felt the need to make this distinction to avoid inconsistency between

§1681t(b)(1), and 15 U.S.C. §1681h(e). The appellate court reasoned that there was no basis for reading "law" to mean all laws while reading "laws" to mean only statutes, and questioned any actual legislative intent to distinguish statutory and common law. The court reasoned that §1681h(e) preempts some state claims that could arise out of reports to credit agencies, and §1681t(b)(1)(F) preempts more of these claims. An earlier statute does not defeat a later-enacted one, so there is no inconsistency between the two statutes. The Court found that §1681t(b)(1)(F) reduces the scope of state regulation without repealing any other law, which does not contradict the words of §1681h(e) due to the exceptions to §1681t(b)(1)(F). All claims of willful or malicious credit reports, such as Purcell's, were preempted, and the court remanded with instructions to enter judgment for the Bank on all of Purcell's claims, state and federal alike.

DEBT COLLECTION

DEBT COLLECTOR MAY BE LIABLE FOR DAMAGES UNDER BOTH STATE AND FEDERAL LAW

Gonzales v. Arrow Financial Services, LLC, 660 F.3d 1055 (9th Cir. 2011).

FACTS: Arrow Financial Services, a collection agency, purchased the debts of 40,000 California residents. All of the debts were "obsolete" because they were more than seven years old. In 2004, Arrow attempted to collect these debts by sending identical form

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letters to the California residents. The letters informed each person of a past due balance owed, and offered to settle the debt for half of the outstanding amount if paid by a specified date. The letter contained three references to credit bureaus, and stated that if Arrow reported the debt, it would notify the bureaus once the settlement funds cleared. The letters also informed the recipient that failure to fulfill obligations may result in negative information being sent to credit reporting agencies.

Gonzales, who received one of these letters, sued on behalf of himself and a class constituting everyone who received a letter, claiming violations of both California's Fair Debt Collection Practices Act ("Rosenthal Act") and the federal Fair Debt Collection Practices Act ("FDCPA"). The district court granted Gonzales summary judgment on the issue of liability under the FDCPA and the Rosenthal Act. Arrow appealed, contending that permitting damages under both acts violated the FDCPA.

HOLDING: Affirmed.

REASONING: Under the Fair Credit Reporting Act, an obsolete

debt cannot be reported to a credit reporting agency. 15 U.S.C. § 1681c(a)(4). Accordingly, the court found that under the "least sophisticated debtor" standard, the letters were misleading and impliedly threatened to take action that could not legally be taken — placing Arrow in violation of the FDCPA and the Rosenthal Act. Arrow argued that Gonzales was precluded from recovering statutory damages under both the FDCPA and the Rosenthal Act. The court found that that argument directly contradicted the language of both acts.

The FDCPA explicitly states that it "does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State . . . a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter." The court found this language, coupled with the FDCPA's express purpose to "promote consistent State action," as well as deter violations, established that Congress did not intend the FDCPA to preempt consistent state consumer protection laws. Next, the court showed that the Rosenthal Act also contemplated dual enforcement: its language states that it should be "cumulative and . . . in addition to any other . . . remedies under any other provision of law."

The court rejected Arrow's claim that as a general rule, a plaintiff may not receive multiple awards for the same item of damage. This general rule applies in contract and tort law, but is not applicable to the statutory damage provisions of both the FDCPA and the Rosenthal Act. The court noted that statutory damages under both provisions are not tied in any way to actual losses suffered by the plaintiff. Recognizing that state laws that permit recovery of additional statutory damages increase the protections given to consumers through further deterrence, the court held the Rosenthal Act's remedies are cumulative, regardless of the remedies afforded under the FDCPA simultaneously.