DEBT COLLECTION

DEBT COLLECTOR'S FAILURE TO USE THE FDCPA'S PRECISE LANGUAGE IN ITS NOTICES IS NOT A VIOLATION

Chaperon v. Sontag & Hyman, PC, ___ F.3d ___ (2d Cir. 2020). https://casetext.com/case/chaperon-v-sontag-hyman-pc-1

FACTS: Plaintiff-Appellant Julia Chaperon fell into arrears on her rental payments. Chaperon's debt was subsequently assigned to Defendant-Appellee Sontag & Hyman, PC ("Sontag") for collection purposes. Sontag delivered a debt collection notice to Chaperon. The notice did not explicitly state that Chaperon could dispute a portion of the debt.

Chaperon sued Sontag, alleging that Sontag violated the Fair Debt Collection Practices Act ("FDCPA") by not including the statutory information in the debt collection notice it had sent to Chaperon. Sontag filed a motion to dismiss and the court granted it. Chaperon appealed.

HOLDING: Affirmed.

REASONING: Chaperon argued that under the least-sophisticated-consumer test, the least sophisticated consumer who received Sontag's notice would be confused as to whether she was entitled to dispute a portion of the debt. Chaperon also argued that Sontag violated the FDCPA by attempting to collect a debt with notice that was false and misleading because Sontag did not convey to Chaperon that she had a right to dispute a portion of the debt.

The court noted that it has previously held that a debt collector's failure to use the FDCPA's precise language in its notices is not a violation, as there is no requirement in the statute that any of its provisions be quoted verbatim. Thus, the court concluded that the least sophisticated consumer would not, upon reading a letter stating that she has the right to dispute that she owes rent arrears totaling $12,209.26, rationally think that she does not also have a right to dispute a portion of that debt. Therefore, the court held that Chaperon's assertion that Sontag violated the FDCPA lacked merit.

A PERSON CANNOT QUALIFY AS A CONSUMER IF THE UNDERLYING TRANSACTION IS A PURE LOAN BECAUSE MONEY IS CONSIDERED NEITHER A GOOD NOR A SERVICE

STATEMENTS REGARDING LOAN MODIFICATIONS DO NOT CONCERN THE "CHARACTER, EXTENT, OR AMOUNT OF CONSUMER DEBT" FOR PURPOSES OF THE TDCA

Compass Bank v. Collier, ___ S.W.3d ___ (Tex. App. 2020). https://casetext.com/case/compass-bank-v-collier

FACTS: Appellees Everett Wayne Collier and Jan Collier attempted to modify their mortgage loan with Appellant Compass Bank ("Compass") after the Colliers defaulted to avoid foreclosure. Compass sent the Colliers a "Commitment Letter" outlining various conditions for loan modification approval. The Colliers signed the Commitment Letter. However, the Colliers failed to provide tax returns and failed to ensure that the Compass lien remained in first place. The Colliers made three required payments under the Commitment Letter. Due to the Colliers' failure to file tax returns, they could not produce tax returns and the IRS asserted federal tax liens on the property. Compass denied the loan modification.

The Colliers sued Compass alleging violation of both the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") and the Texas Debt Collection Act ("TDCA"). The Colliers prevailed against Compass. Compass appealed.

HOLDING: Reversed.

REASONING: Compass argued that the Colliers' DTPA claims should fail because the Colliers did not qualify for consumer status. The Colliers, however, contended that they were consumers because the original loan financed the expansion of their house.

The court agreed with Compass, holding a loan modification was similar to refinancing a loan because it was not sought for the acquisition of a good or service but instead to finance an existing loan on previously acquired property. None of the Colliers' evidence of alleged deceptive trade practices pertaining to the actual home sales transaction or a deceptive act related to the original financing of their home. Nor did the Colliers not seek to acquire a good or service with the loan modification. Rather, the Colliers merely attempted to refinance an existing loan on a previously acquired property.

Discussions regarding loan modification or the postponement of foreclosure.

Compass further argued that loan modifications were not actionable under the TDCA. The Colliers rebutted that Compass attempted to foreclose without authority and misrepresented amounts owed after modification was denied in violation of TDCA §392.304(a)(8).

The court rejected Collier's arguments. Federal courts have repeatedly held that statements regarding loan modifications did not concern the character, extent, or amount of consumer debt under §392.304(a)(8). Other evidence and the Commitment Letter, signed by the Colliers, established that the Colliers knew they were in default, the amount they owed, the steps to cure default, and the risk of foreclosure. Discussions regarding loan modification or the postponement of foreclosure were not representations or misrepresentations of the amount or character of a debt nor were those discussions a deceptive means to collect a debt.

DUNNING LETTER STATING ZERO BALANCE FOR INTEREST NOT MISLEADING UNDER FDCPA

Degroot v. Client Serv., 977 F.3d 656 (7th Cir. 2020). https://law.justia.com/cases/federal/appellate-courts/ca7/20-1089/20-1089-2020-10-08.html

FACTS: Plaintiff-Appellant Joseph Degroot defaulted on a debt owed to Capital One Bank. Capital One placed that debt for collections with AllianceOne Receivables Management, Inc. Allian-

ceOne sent Degroot a letter stating, "[t]he amount of your debt is $425.86. Please keep in mind, interest and fees are no longer being added to your account. This means every dollar you pay goes towards paying off your balance." Degroot understood this to mean that his debt would no longer accrue interest, late charges, or other fees. Capital One reassigned the account to Defendant-Appellee Client Services Incorporated ("CSI") for collections. CSI then sent Degroot a letter with an itemized summary of his debt. In that letter there was a zero-balance next to "[i]nterest." The letter included an "account resolution offer" with terms including a notice stating that "no interest will be added to your account balance through the course of Client Services, Inc. collection efforts concerning your account."

Degroot filed suit, alleging that CSI's letter violated the Fair Debt Collection Practices Ac ("FDCPA") by misleadingly implying that Capital One would begin to add interest and possible fees to previously charged-off debts if consumers failed to resolve their debts with CSI. CSI filed a motion to dismiss. The district court granted that motion, concluding that CSI's letter was not false, misleading, or deceptive. Degroot appealed.

HOLDING: Affirmed.

REASONING: Degroot argued that CSI violated 15 U.S.C §1692(e) by using false, deceptive, and misleading representations or means to collect a debt and 15 U.S.C §1692(g) by failing to disclose the amount of the debt in a clear and unambiguous fashion. The question in this case was whether CSI, by providing a breakdown of Degroot's debt that showed a zero balance for "interest," violated 15 U.S.C §1692(e) and 15 U.S.C §1692(g) by implying that interest would accrue if the debt remained unpaid.

The court reasoned that the unsophisticated consumer would not construe a zero-balance to be forward looking and, therefore, misleading.

The court held that a debt collector violates §1692(e) by making statements or representations that "would materially mislead or confuse an unsophisticated consumer." The court concluded that Degroot's understanding of the letter and the zero-balance for interest was "bizarre." The court reasoned that the unsophisticated consumer would not construe a zero-balance to be forward looking and, therefore, misleading. Further, just because an interest balance is zero and "interest and fees are no longer being added" does not mean that interest would never be added. Therefore, the court held that the letter was not misleading under the FDCPA.

CONSUMER FAILS TO SUPPORT CLAIM UNDER EITHER TDCPA OR FDCPA

Smith v. First Choice Loan Servs., ___ F. Supp. 3d ___ (N.D. Tex. 2020).
https://casetext.com/case/smith-v-first-choice-loan-servs

FACTS: Plaintiff purchased a home with a home mortgage loan from Defendant First Choice Loan Service, Inc. ("First Choice"). The loan, evidenced by a note and secured by a deed of trust, was later assigned to Defendant Amerihome Mortgage Company, LLC ("Amerihome").

Plaintiff filed suit under the Texas Debt Collection Practices Act and the Fair Debt Collection Practices Act, alleging that First Choice failed to include the taxes owed to Mansfield ISD in its disclosure statement, which lead to a miscalculation of payments that resulted in an escrow shortage, late fees, and penalties. Plaintiff also alleged that Amerihome failed to accurately calculate taxes owed and the escrow payment necessary on the loan. Defendants subsequently filed motions to dismiss for failure to state a claim.

HOLDING: Granted.

REASONING: Defendants argued that the case should be dismissed because Plaintiff failed to state a TDCPA claim or an FDCPA claim.

The court accepted Defendants' arguments and granted the motion to dismiss. The court held that Plaintiff failed to state a TDCPA claim against Amerihome or First Choice. First Choice was not a third-party debt collector, which is mandated by TDCPA for the requirement of a surety bond. The petition also failed to allege any false or misleading statement by Amerihome, as required by the TDCPA.

The court further held that Plaintiff failed to state an FDCPA claim against Defendants. To allege an FDCPA claim, defendant must be a "debt collector." The court found that First Choice was the original lender and creditor, rather than a debt collector, under FDCPA. Plaintiff also ignored the requirement that Amerihome must have become the mortgage lender and servicer. Therefore, Plaintiff could not file the FDCPA suit against Amerihome.

DEBT COLLCTOR'S LETTER MAY OVERSHADOW VALIDATION NOTICE

Mizrachi v. Wilson, Elser, Moskowitz, Edelman & Dicker LLP, ___ F.3d ___ (2nd Cir. 2020).
https://casetext.com/case/mizrachi-v-wilson-elser-moskowitz-edelman-dicker-llp

FACTS: Defendant-Appellee law firm Wilson, Elser, Moskowitz, Edelman & Dicker, LLP ("Wilson Elser") sent Plaintiff-Appellant Jordan Mizrachi a debt collection letter stating the firm had been instructed by the creditor "to commence litigation against [Mizrachi] in order to collect" the debt and warned "THERE MAY BE NO FURTHER NOTICE OR DEMAND IN WRITING FROM [WILSON ELSER] PRIOR TO THE FILING OF SUIT." The letter also contained a validation notice, informing Mizrachi that he could avoid legal consequences by "paying . . . now or making a suitable payment arrangement." Pursuant to the Fair Debt Collection Practices Act ("FDCPA"), the letter also included a notice explaining Mizrachi's right to dispute the debt by demanding validation within 30 days.

Mizrachi filed suit, claiming that the letter violated the FDCPA because the apparent demand for immediate payment in combination with a threat of severe legal consequences overshadowed the validation notice. The district court dismissed the suit for failure to state a claim. Mizrachi appealed.

HOLDING: Reversed.
REASONING: Mizrachi argued the letter from the law firm could not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt because the statement from the law firm made him uncertain about his rights.

Wilson Elser argued that the word "now" only applied to payment and not the making of "a suitable payment arrangement."

The court identified two reasons why the letter threatened a lawsuit, cataloged myriad consequences of such a suit, and suggested payment or arrangement of payment "now" was the sole means of avoiding suit. First, even if the letter did not literally demand immediate payment, these warnings, combined with the all-caps admonition that no further notice might follow before a lawsuit is filed, could have created the misimpression that immediate payment is the consumer's only means of avoiding a parade of collateral consequences, thereby overshadowing the Mizrachi's validation rights. Second, the letter contained no "transitional language" explaining that the demand for payment did not override Mizrachi's validation rights, so the uncertainty created by the demand was left unmitigated. The letter failed to mention that Mizrachi's demand for validation pauses the collection process, causing uncertainty not only as to whether he could dispute the debt but also as to he could withhold payment while doing so. Thus, the court reversed the decision in favor of Mizrachi.

LETTER THAT PROVIDES NOTICE OF CHANGE IN DEBT OWNERSHIP MAY BE ACTIONABLE UNDER FDCPA

Valenzuela v. Axiom Acquisition Ventures, LLC, ___ F. Supp. 3d___ (M.D. Fla. 2020).
https://casetext.com/case/valenzuela-v-axiom-acquisition-ventures-llc

FACTS: Plaintiff Robert Valenzuela defaulted on a personal loan he took out from Cross River Bank. The bank then sold the debt to Defendant Axiom Acquisition Ventures, LLC ("Axiom"). Axiom sent a letter to Valenzuela informing him of a change in ownership of the underlying debt.

Valenzuela filed suit against Axiom, claiming that the letter violated the Fair Debt Collection Practices Act ("FDCPA"). Axiom filed a motion for summary judgment.
HOLDING: Denied.
REASONING: Axiom argued that the letter did not qualify as communication in connection with the collection of a debt because the purpose of the letter was merely to inform Valenzuela of a change in ownership of the underlying debt. Thus, Axiom contended that it did not violate the FDCPA.

After reviewing the letter in issue, the court concluded the letter had dual purposes: (1) to give notice to Valenzuela of changing in ownership and (2) a call of action for Valenzuela to remit payment. The court held that the demand for payment constituted a communication in connection with collection of a debt. Therefore, Axiom's motion for summary judgment was denied.