DEBT COLLECTION

DEBT COLLECTOR'S FAILURE TO INCLUDE WARNINGS ABOUT PARTICIAL PAYMENTS DOES NOT VIOLATE FAIR DEBT COLLECTION PRACTICES ACT

Christie v. Contract Callers, Inc., ___ F. Supp. 3d ___ (N.D. Tex. 2021).
https://casetext.com/case/christie-v-contract-callers-inc

FACTS: Defendant Contract Callers, Inc. ("CCI") sent Plaintiff a 30-day debt validation letter dated May 27, 2019 (the "Letter"), in which CCI sought payment of a debt. CCI informed Plaintiff at the outset that the above referenced account has been listed with their office for collection. The Letter provided that the creditor was T-Mobile and that the amount owed was $64.60. The Letter further provided several different methods of payment. Finally, the Letter explained, "[t]he law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we [CCI] may report or continue to report it to the credit reporting agencies as unpaid."

Plaintiff filed a putative class action complaint against CCI, asserting a claim for violations of the Fair Debt Collection Practices Act ("FDCPA"). CCI filed a motion to dismiss.

HOLDING: Granted.

REASONING: CCI asserted that the quoted language of the Letter satisfied the FDCPA because the language was approved by the Fair Trade Commission ("FTC") and Consumer Financial Protection Bureau ("CFPB") in two consent decrees and because the Fifth Circuit has approved the language in *Manuel v. Merchants & Professional Bureau, Inc*. Plaintiff responded that CCI violated the FDCPA because although the Letter did state that "[b]ecause of the age of your debt, we will not sue you for it[,]" it failed to additionally disclose that a partial payment of the debt would revive the debt under Texas state law.

The court found that partial payment alone is not sufficient to revive a time-barred debt under Texas state law.

The court granted CCI's motion to dismiss Plaintiff's FDCPA claims based on CCI's failure to include warnings about partial payments. First, the court found that partial payment alone is not sufficient to revive a time-barred debt under Texas state law. Second, nothing in the FDCPA requires debt collectors to make disclosures that partial payments on debts may revive the statute of limitations in certain states. The court did not find any misrepresentation as to the legal enforceability of the debt from CCI in the Letter. Nor does the court find any "urgent language and vague threats of additional but unspecified collection efforts" that the Fifth Circuit has previously concluded to be violative of the FDCPA.

LETTER COLLECTING SERVICE FEE AUTHORIZED BY CONTRACT DOES NOT VIOLATE FDCPA

Martinez v. Integrated Capital Recovery, LLC, ___ F. Supp. 3d ___ (E.D. Cal. 2021).
https://casetext.com/case/martinez-v-integrated-capital-recovery-llc

FACTS: A debt was "allegedly" incurred to Build Card – Republic Bank in connection with a transaction by Plaintiff Brandon Martinez. Build Card – Republic Bank sold the debt to DNF Associates, LLC ("DNF"), who then contracted Integrated Capital Recovery ("IRC" and, together with DNF, "Defendants") to collect it. IRC sent a letter to the Martinez calling for several payments to pay off the alleged debt. The letter stated that "[a] service fee of $9.95 may be charged for payments if paying by Credit/Debit card depending on consumer's location and applicable contractual documents." Martinez stated that this service fee was not authorized by the agreement creating the debt or permitted by law and that he did not agree to the charge. therefore, creating a false representation in the collection of a debt.

Martinez brought a class action under the Fair Debt Collection Protection Act ("FDCPA"). Defendants filed a motion to dismiss for lack of standing and for failure to state a claim.

HOLDING: Granted.

REASONING: Martinez argued that in several cases, courts had found violations of the FDCPA in connection with statements regarding the collection of service fees. However, the court noted that those cases were scenarios in which the defendants made false statements in connection with collecting debts by representing that they were entitled to collect service fees that they were not entitled to collect. Specifically, in those cases, service fees were categorically applied to all transactions of a certain type, and statements concerning the collection of service fees did not reflect the conditions or limitations set forth in Section 1692f (1).

A collection notice statement does not violate the FDCPA if it is accurate and does not contain a false representation of the defendant's power with respect to collecting payment. Further, if the least sophisticated debtor would not construe the notice as a threat to take action, then the notice is not unfair or unconscionable. Accordingly, the court held that the service fee from IRC follows the rules set forth in the FDCPA itself, and there was no credible allegation that this statement contained any false representation as it related to Defendant's collection powers. Finally, the court reasoned that the least sophisticated debtor would see this as accurate information useful in selecting a mode of payment, not a threat to impose unlawful fees or a false representation of IRC's debt collection powers. For these reasons, the court found that the Martinez's action must be dismissed with prejudice.

NOTHING IN THE STRUCTURE OF THE FDCPA SUGGESTS THAT THE SAME CONDUCT CAN'T VIOLATE SPECIFIC PROHIBITIONS IN MULTIPLE SECTIONS

Houser v. Ltd. Fin. Servs. LP, ___ F. Supp. 3d ___ (S.D. Tex. 2021). https://casetext.com/case/houser-v-ltd-fin-servs-lp

FACTS: Plaintiff Houser secured a home loan from United Guaranty Corporation ("UGC") in 2011. Houser defaulted on his payments by November 2018 and UGC turned his debt over to Defendant LTD for collection. LTD began making collection calls in November 2018 and Houser advised LTD in December 2018 that it was no longer allowed to call him. LTD continued to call him despite that request. Houser filed for Chapter Seven bankruptcy on December 18, 2018 and listed the debt he owed to UGC in his schedule of assets protected by the bankruptcy stay. Houser continued to receive letters and approximately fifteen phone calls from LTD after he requested that they stop, and he filed for bankruptcy.

Houser claimed multiple causes of action under the Fair Debt Collection Practices Act ("FDCPA"). LTD moved to for summary judgement.

HOLDING: Denied.

REASONING: LTD observed that Houser supported his claims under §1692(f) with the exact same facts as his claims under §1692(c) and (d). LTD argued that a claim under §1692(f) is limited to conduct not enumerated in the other provisions of the FDCPA.

The court rejected this claim relying on decisions from other circuit courts that have held that the same conduct can be both false, deceptive, or misleading under §1692(e).

The court rejected this claim relying on decisions from other circuit courts that have held that the same conduct can be both false, deceptive, or misleading under §1692(e) and unfair or unconscionable under §1692(f). Therefore, LTD had not precluded action from proceeding under §1692(f) generally, even when action may also proceed under §1692(e) generally or under other specific subsections of §1692(e) or (f). Houser's §1692(f)(1) claim in some way replicated his claim under §1692(e)(2). However, the fact remained that Houser pleaded his claim based on the conduct listed within the provisions of §1692(f) and nothing in the structure of the FDCPA suggested that same conduct cannot violate specific prohibitions in multiple sections.

LANGUAGE IN DEBT COLLECTION LETTER STATING CONSUMER MAY CALL TO ELIMINATE FURTHER COLLECTION ACTION DOES NOT VIOLATE THE FAIR DEBT COLLECTION PRACTICES ACT

Moyer v. Patenaude & Felix A.P.C., ___ F.3d___ (3d Cir. 2021). https://law.justia.com/cases/federal/appellate-courts/ca3/20-1937/20-1937-2021-03-16.html

FACTS: Plaintiff Candace Moyer failed to pay her credit-card debt, so the card issuer hired Defendant Patenaude & Felix A.P.C. ("Patenaude") to collect it. Patenaude sent a collection letter that included a Contact Sentence, stating "[i]f you wish to eliminate further collection action, please contact us at [phone number]". Following the Contact Sentence, the letter then instructed debtors to exercise their §1692g rights via written notification within 30 days in a Validation Notice.

Moyer sued under the Fair Debt Collection Practices Act ("FDCPA") because (1) the Contact Sentence would lead a debtor to believe that a phone call is a "legally effective way to stop such collection action" and (2) the Contact Sentence would make a debtor uncertain about her right to dispute the debt in writing. The District Court granted summary judgment in favor of Patenaude and Moyer appealed.

The court employed the "least sophisticated debtor" standard and found that the Contact Sentence does not violate the FDCPA.

HOLDING: Affirmed.

REASONING: The court employed the "least sophisticated debtor" standard and found that the Contact Sentence does not violate the FDCPA. Moyer argued that the letter is a deceptive means of debt collection in violation of § 1692e (10) because Patenaude indicated that a phone call was a legally effective means of stopping collection activity. The court disagreed, concluding that Patenaude invited Moyer to call to "eliminate" collection action, but never asserted, explicitly or implicitly, that the phone call would, by law, force Patenaude to cease its collection efforts.

Moyer also contended that Patenaude's insertion of the invitation to call in the Contact Sentence before the Validation Notice caused confusion regarding how to pursue her rights contained in the Validation Notice. The court concluded the rest of the collection letter instructed the debtor to write to exercise their §1692g rights, leaving no suggestion that a phone call would suffice. Likewise, the court concluded the Contact Sentence did not suggest that a debtor could exercise any § 1692g rights over the phone and the order of the paragraphs did not create confusion. For the foregoing reasons, the court affirmed the judgment of the district court.

VICARIOUS LIABILITY FOR CREDITOR IS NOT AUTOMATIC FOR FDCPA CLAIMS

Reygadas v. DNF Assocs., LLC, 982 F.3d 1119 (8th Cir. 2020). https://law.justia.com/cases/federal/appellate-courts/ca8/19-3167/19-3167-2020-12-14.html

FACTS: Defendant DNF Associates, LLC ("DNF"), purchased a debt that Plaintiff Stephanie Reygadas owed to an online retailer and hired a licensed debt collection agency, Radius Global Solutions, LLC ("RGS"), to collect Reygadas's debt. RGS, unaware that Reygadas had retained an attorney to represent her in a previous collection action brought by DNF in state court, sent her a letter offering to settle.

Reygadas sued DNF, alleging that by using RGS services, it had violated the FDCPA §1692c(a)(2). She argued that RGS acted wrongfully by contacting her directly without the consent of her attorney and DNF was liable for that violation because it hired RGS to perform a task DNF could not lawfully perform. DNF moved for summary judgment but the district court denied the motion and granted partial summary judgment *sua sponte* in favor of Reygadas on the question of DNF's liability. The district court also declined to certify an interlocutory appeal, provided Reygadas a $4,000 offer of judgment and entered final judgment in her favor. DNF appealed.

HOLDING: Vacated and remanded.

REASONING: DNF argued that it knew that Reygadas was represented by counsel in the state court action, but it was RGS that sent the offending letter. Therefore, Reygadas was required to show DNF was responsible for RGS's action.

Vicarious liability, under traditional agency law, is established only through the agent's knowledge transferred to the principal, not the opposite.

The court held Reygadas could not recover from DNF based on a theory of vicarious liability for RGS's action. Courts are required to establish vicarious liability against a legal background of ordinary tort-related vicarious liability rules that apply traditional agency law to the question of actual knowledge under §1692c(a)(2). Under traditional agency law, DNF would have been liable for a violation of §1692c(a)(2) if RGS, the purported agent debt collector, had actual knowledge that Reygadas was represented by counsel. Whether DNF was aware of that fact was irrelevant because vicarious liability, under traditional agency law, is established only through the agent's knowledge transferred to the principal, not the opposite.

Reygadas failed to prove an agency relationship to establish that DNF, as the principal, was responsible for RGS's acts as a matter of law. Case precedents relied on in this case found that liability did not apply to situations where no agency relationship could be established in a creditor and debt-collector relationship under the FDCPA.

DEBT COLLECTION LETTER NOT FALSE OR MISLEADING

Hopkins v. Collecto, Inc., 2021 WL 1345203 (3d Cir. Apr. 12, 2021).

https://law.justia.com/cases/federal/appellate-courts/ca3/20-1955/20-1955-2021-04-12.html

FACTS: On behalf of Appellees US Asset Management, Inc. ("USAM"), Collecto, Inc. d/b/a EOS CCA ("Collecto") sent a letter to Apellant Randy Hopkins to collect a debt that Hopkins initially owed to Verizon. The letter included an itemization of the debt in a table that assigned a "$0.00" value for interest and collection fees and concluded that Hopkins owed $1,088.34 that could be "resolved in full" if he paid a reduced amount of $761.84.

Hopkins filed a putative class action complaint Jersey against USAM and Collecto and alleged that the itemized table in Collector's letter that denoted "$0.00" in interest and collection fees falsely implied that interest and collection fees were materially likely to accrue on the static debt. Thus, Collecto's letter violated the Fair Debt Collection Practices Act's ("FDCPA") prohibition on deceptive and unfair or unconscionable means of collecting consumer debts. The district court dismissed Hopkins' complaint and concluded that Hopkins' complaint failed to show that Collecto's debt itemization violated the FDCPA as it would not have left one in doubt of the nature and legal status of the underlying debt. Hopkins appealed.

HOLDING: Affirmed.

REASONING: Hopkins argued that the least sophisticated debtor, less savvy than the merely unsophisticated debtor, would have been plausibly misled or deceived about the nature of his debt if a collection letter listed it as including $0.00 in interest and fees.

The court rejected Hopkins' argument and noted that debt collection letters spoke only about the past and that even the least sophisticated debtor would not interpret debt collection letters that stated their respective balances due without discussing interest or fees as misleading nor as collector's threat to charge them in future.

The court further noted that even the least sophisticated debtor would understand that collection letters, as reflected by their fonts, formatting, contents and fields, often derive from templates and may contain information not relevant to one particular situation. Thus, the court held that the debt collection letter did not violate the FDCPA and affirmed the district court's dismissal.