DEBT COLLECTION

FDCPA SUIT REVERSED BASED ON *SPOKEO* STANDING REQUIREMENT

Wadsworth v. Kross, Lieberman & Stone, Inc., ___ F.3d ___ (7th Cir. 2021).
https://casetext.com/case/wadsworth-v-kross-lieberman-stone-inc

FACTS: Plaintiff Audrey Wadsworth received a signing bonuses upon hiring on with a company. In the employment agreement, it stated that if the employee voluntarily ended her employment or the company fired the employee for cause within 18 months of the second payment, the employee would be obligated to repay the full bonus. Wadsworth signed the employment agreement and collected both signing bonuses. Wadsworth was fired after completing one year of employment, and the company hired Defendant, Kross, Lieberman & Stone, Inc. ("Kross"), to collect the bonus payments. Wadsworth received a letter and four calls from Kross and subsequently sued them claiming FDCPA violations. The district court entered summary judgment for Wadsworth. Kross appealed.
HOLDING: Reversed.
REASONING: *Spokeo* requires a concrete harm caused by the Defendant in order to adjudicate an FDCPA violation. Concrete harm satisfies the injury-in-fact requirement of standing under the FDCPA only if it impedes the debtor from using that information for a substantive and statutorily supported purpose, such as paying money not truly owed or would have disputed.

Spokeo requires a concrete harm caused by the Defendant in order to adjudicate an FDCPA violation.

Wadsworth alleged that Kross caused her various emotional harms. The court found that emotional harms comprised of anxiety, embarrassment, stress, annoyance, intimidation, infuriation, disgust, indignation, or confusion were not concrete injuries. Wadsworth did not establish that Kross's communications caused her any injury-in-fact. Due to the lack of injury-in-fact in her claim, the court held that Wadsworth did not have standing to file suit.

A VIOLATION OF §1692F CANNOT BE BASED ON CONDUCT THAT CONSTITUTES A VIOLATION OF ANOTHER PROVISION OF THE FDCPA

Vazzano v. Receivable Mgmt. Servs., LLC, ___ F. Supp. 3d ___ (N.D. Tex. 2021). https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2021cv00825/346648/19/

FACTS: Plaintiff Aprile Vazzano was a debtor of Progressive Advanced Insurance Company ("Progressive"). Progressive transferred Vazzano to Receivable Management Services, LLC (RMS) for debt collection. Vazzano sent a letter to RMS informing them that she would be disputing the debt and therefore refused to pay. The letter also indicated that all further communication should be in writing. RMS subsequently sent Vazzano a collection letter regarding the Progressive debt.

Vazzano sued RMS alleging their collection letter violated §§1692c(c), 1692d, and 1692f of the FDCPA and unspecified sections of the TDCPA. RMS moved for judgment on the pleadings under Rule 12(c).
HOLDING: Motion granted.
REASONING: RMS argued that Vazzano's complaint only alleged one instance of potential misconduct and that this act was insufficient to establish conduct that natural consequence of which was to harass, oppress, or abuse any person in connection with the collection of a debt under §1692d, or unfair or unconscionable means under §1692f. Further, RMS argued that §1692f did not apply because it did not cover instances of misconduct that were addressed by another section of the FDCPA.

The court held that because there was no Fifth Circuit decision on whether conduct could violate one part of the FDCPA and §1692f, the court looked to the district courts for guidance. The district courts have assumed that a violation of §1692f cannot be based on conduct that amounts to violations of other FDCPA provisions. Because RMS's conduct, if proven by Vazzano, would constitute a §1692c(c) violation, and she had alleged no other misconduct, she had failed to plead a plausible claim under §1692f.

IN A SUIT FOR DAMAGES UNDER THE FDCPA, THE MERE RISK OF FUTURE HARM, STANDING ALONE, CANNOT QUALIFY AS A CONCRETE HARM

Ward v. Nat'l Patient Account Servs. Sols. Inc., ___ F.3d___ (6th Cir. 2021).
https://law.justia.com/cases/federal/appellate-courts/ca6/20-5902/20-5902-2021-08-16.html

FACTS: Plaintiff Carl Ward incurred medical debt serviced by Defendant National Patient Account Services Solutions, Inc. (NPAS). NPAS sent Ward billing statements and left him voice messages about this debt. The billing statements identified NPAS by its full legal name, but the voice messages referred to NPAS as "NPAS." Eventually, Ward sent a cease-and-desist letter to "NPAS Solutions, LLC," a company entirely unrelated to NPAS; Ward later stated that NPAS's voice messages caused the confusion. Two months after NPAS's last call to Ward, he sued NPAS, alleging three FDCPA violations based on NPAS's voice messages.

The trial court granted summary judgment for NPAS at the close of discovery. Ward appealed.
HOLDING: Vacated and Remanded.
REASONING: Ward asserted two possible varieties of concrete injury. First, the violation of his procedural rights under the FDCPA alone constituted a concrete injury; second, the confusion he suffered, the expense of counsel, and the phone call that he received from NPAS qualified as independent concrete injuries. NPAS argued that Ward lacked Article III standing.

The court agreed with NPAS's argument and, citing *Spokeo* and *TransUnion*, concluded that Ward did not automatically have standing just because Congress authorized a plaintiff

to sue a debt collector for failing to comply with the FDCPA. The Supreme Court in those two cases required the harm to be independent and concrete and more than just a mere risk of harm. When Ward alleged confusion as to NPAS's name due to the voicemails, the court stated that confusion is not a concrete injury under Article III.

The court dismissed the case because Ward failed to show more than a bare procedural violation of FDCPA and did not establish an independent concrete injury.

NO INJURY UNDER *SPOKEO* FOR PARTIAL REVEAL OF ACCOUNT NUMBER IN DEBT COLLECTOR'S LETTER

Brewer v. Law Offices of Mitchell D. Blum & Assocs., LLC, ___ F. Supp. 3d ___ (N.D. Ill. 2021).
https://casetext.com/case/brewer-v-the-law-offices-of-mitchell-d-blum-assocs

FACTS: Plaintiff Tyrone Brewer received a debt collection letter from Defendants, The Law Offices of Mitchell D. Blum & Associates, LLC and CF Medical LLC. Brewer's account number was partially visible through the envelope. Brewer sued under FDCPA. Defendants moved to dismiss for lack of subject matter jurisdiction.

Prospective harm is sufficient to seek prospective relief; but a claim for damages must be accompanied by an allegation of a "concrete harm" that has already occurred.

HOLDING: Dismissed.

REASONING: Brewer argued that partially revealing his account number was an actionable harm because even if nobody deciphered the meaning of the account number, its public display created a real risk that the consumer's private information will be exposed. Under *Spokeo v. Robins*, this exposure was enough for Article III standing.

The court rejected Brewer's argument, holding that prospective harm is sufficient to seek prospective relief; but a claim for damages must be accompanied by an allegation of a "concrete harm" that has already occurred. Brewer was not seeking injunctive relief and had also not plausibly alleged that the disclosure of a partial account number was a concrete harm. Therefore, Defendants' motion to dismiss was granted.