CONSUMER CREDIT

DAMAGES AGAINST A CAR DEALER THAT VIOLATED THE FEDERAL TRUTH IN LENDING ACT WERE CAPPED AT $1,000

Koons Pontiac Buick GMC, Inc. v. Nigh, 125 S.Ct. 460 (2004).

FACTS: Nigh attempted to purchase a used truck from Koons Buick Pontiac GMC ("Koons Buick"). Unable to find a lender to complete the financing, Koons Buick twice revised the retail installment sales contract presented to Nigh. After signing the third contract, Nigh discovered the second contract contained an improperly documented charge for a car alarm that Nigh never requested, agreed to accept, nor received. Nigh made no payments on the truck and returned it to Koons Buick. He then filed suit against Koons Buick alleging, among other things, a Truth in Lending Act ("TILA") violation and sought uncapped recovery of twice the finance charge, $24,192.80, under clause (i) of section 1640(a)(2)(A). The District Court held that damages were not capped at $1,000, and the jury awarded Nigh the full uncapped amount. The Fourth Circuit affirmed. Koons Buick appealed to the Supreme Court and certiorari was granted.

HOLDING: Reversed and remanded.

REASONING: As enacted in 1968, the TILA civil-liability provision, 15 U.S.C. § 1640, authorized statutory damages for violations of TILA prescriptions governing consumer loans as follows: "(a) [A]ny creditor who fails in connection with any consumer credit transaction to disclose to any person any information required...is liable to that person in an amount... of...(1) twice the amount of the finance charge in connection with the transaction, except that liability under this paragraph shall not be less than $100 nor greater than $1,000." In 1995, Congress added a new clause (iii) at the end of section 1640(a)(2)(A), so that the statute now authorizes statutory damages equal to "(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease...25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $200 or greater than $2,000."

The court of appeals held that its previous view that the $1,000 cap applied to both clauses (i) and (ii) of section 1640(a)(2)(A) was rendered defunct when Congress struck the "or" preceding clause (ii) and inserted clause (iii) after the "under this subparagraph" phrase. According to the court, the inclusion of the new $200/$2,000 brackets in clause (iii) shows that clause (ii) $100/$1,000 brackets can no longer be interpreted to apply to all of subparagraph (A), but must now apply solely to clause (ii), so as not to render meaningless the new minimum and maximum recoveries articulated in clause (iii).

The Supreme Court disagreed with this view. The 1995 amendment left unaltered the $100/$1,000 limits prescribed from the start for TILA violations involving personal-property loans. Both the conventional meaning of "subparagraph" and standard interpretive guides point to the same conclusion: The $1,000 cap applies to recoveries under clause (i). Congress adheres to a hierarchical scheme in subdividing statutory sections. Under this scheme, the word "subparagraph" is used to refer to a subdivision preceded by a capital letter and the word "clause" to a subdivision preceded by a lower case Roman numeral. Congress followed this scheme in drafting TILA. For example, section 1640(a)(2)(B), which covers statutory damages in TILA class actions, states: "[T]he total recovery under this subparagraph (3)27 shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor...." Had Congress meant to repeal the longstanding $100/$1,000 limitation on section 1640(a)(2)(A)(i), thereby confining the $100/$1,000 limitation solely to clause (ii), Congress likely would have stated in clause (ii): "liability under this clause."

The statutory history resolves any ambiguity as to whether the $100/$1,000 brackets apply to recoveries under clause (i). Before 1995, clauses (i) and (ii) set statutory damages for the entire realm of TILA-regulated consumer credit transactions. Closed-end mortgages were encompassed by clause (i). The addition of clause (iii) makes closed-end mortgages subject to a higher floor and ceiling, but clause (iii) contains no other measure of damages. Clause (i)'s specification of statutory damages of twice the finance charge continues to apply to loans secured by real property as it does to loans secured by personal property. Clause (iii) removes closed-end mortgages from clause (i)'s governance only to the extent that clause (iii) prescribes higher brackets. There is scant indication that Congress meant to alter the meaning of clause (i) when it added clause (iii). The history demonstrates that, by adding clause (iii), Congress sought to provide increased recovery when a TILA violation occurs in the context of a loan secured by real property. It would be beyond strange to read the statute to cap recovery in connection with a closed-end, real-property-secured loan at an amount substantially lower than the recovery available when a violation occurs in the context of a personal-property-secured loan or an open-end, real-property-secured loan. The Court held the text of the statute did not dictate this result; the statutory history suggested otherwise; and there was scant indication Congress meant to change the well-established meaning of clause (i).

POTENTIAL CREDITOR'S REFUSAL TO PROVIDE LOAN APPLICATION FORM IS PART OF "CREDIT TRANSACTION" WITHIN EQUAL CREDIT OPPORTUNITY ACT'S PROHIBITIONS

ECOA CLASS ACTION CERTIFIED

Chiang v. Veneman, 385 F.3d 256 (3d Cir. 2004).

FACTS: Between January 1, 1981 and January 10, 2000,

thousands of Virgin Island residents requested loan applications from the United States Department of Agriculture ("USDA"). Plaintiff alleged that these residents were forced to put their names on an unlawful waiting list instead of being actually provided an application. Plaintiff also alleged that this list did not exist for other places in the United States and constituted discrimination under the Equal Credit Opportunity Act ("ECOA") because the residents were "Black, Hispanic, women, and/or Virgin Islanders." In March of 1997, Plaintiff and 48 other residents filed an administrative class program complaint of discrimination with the USDA.

The USDA sent an investigative team to the Virgin Islands. Plaintiff alleged that the unpublished report from the investigation was ineffective and the Plaintiff then filed suit with the district court. The district court certified the class action under rule 23(b)(3). The certified class consisted of "all persons who were Black, Hispanic, female and /or Virgin Islanders who applied or attempted to apply for, and/or received, housing credit, services, home ownership, assistance, training, and/or educational opportunities from the USDA through its Rural Development offices (and predecessor designations) located in the U.S. Virgin Islands at anytime between January 1, 1981 and January 10, 2000, and who believed they were discriminated against on the basis of race, gender or national origin." Defendant, the Secretary of Agriculture, filed an interlocutory appeal claiming that the certified class was overbroad and unmanageable.

HOLDING: Affirmed.

REASONING: According to the ECOA, it is "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction…on the basis of race, color, religion, national origin, sex or marital status, or age." 15 U.S.C. § 1691(a). The ECOA regulation provides that a "credit transaction" means "every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit." 12 C.F.R. § 202.2(m). The language under the regulation is meant to be broadly interpreted. Case law also confirms that a potential creditor's refusal to provide an application is part of "credit transaction" within the meaning of the statute. *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000).

One of the requirements for class certification under Rule 23(b) is "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Defendant contended that because the damages sought in the case were so high and would require specific, individual proof, the common question did not predominate. The necessity for proving damages individually does not defeat class predominance or class action. *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3rd Cir. 1985). There might be situations where proving individual damages would outweigh the advantages of class certification; the court under such circumstance should give appropriate considerations, but this was not such a case. The predominance and superiority requirements under Rule 23(b) were met here, and the class was certified.

DEBT COLLECTION

LAW FIRM LIABILE UNDER FAIR DEBT COLLECTION PRACTICES ACT

Fields v. Wilber Law Firm, 383 F.3d 562 (7th Cir. 2004).

FACTS: Jodi Fields incurred $122.06 in charges at Kruger Animal Hospital ("Kruger") in Bloomington, Illinois. Despite signing an agreement promising to pay the bill at a later time, Fields had not yet paid any of the debt by November of 2002. Kruger hired the Wilber Law Firm ("Wilber") to collect the debt. A letter was sent to Fields stating that the "ACCOUNT BALANCE" was $388.54. The account balance reflected the original $122.06, plus interest and service charges assessed pursuant to the contract signed by Fields, plus $250 in attorney fees for the collection of the debt by Wilber. The collection letter provided no breakdown of the charges. Subsequent letters were sent that included additional interest but no additional attorney fees. Wilber included the $250 in fees pursuant to a clause in the contract that stated, "I understand that if collection action should become necessary for recovery of any monies due under this contract, I agree to pay any and all collection costs and attorney fees."

On March 25, 2003, Fields filed an action in federal court, alleging that Wilber violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"). Specifically, Fields asserted that the collection letters failed to accurately state the amount of the debt under section 1692g(a)(1), were misleading under section 1692e, and unfairly attempted to collect unauthorized fees under section 1692f(1). The district court dismissed Fields's FDCPA claims for failure to state a claim and held that $250 in attorney fees was reasonable as a matter of law. Fields appealed.

HOLDING: Affirmed in part, reversed in part, and remanded.

REASONING: If liability for attorney fees has not been awarded by court judgment, it is usually not appropriate to include an estimate in any correspondence with the debtor. The requirement in the FDCPA to include the amount of debt in the collection letter is to inform the debtor of how much debt is owed, not total future liability. However, when a debtor has contractually agreed to pay attorney fees and collection costs, a debt collector may, without a court's permission, state those fees and costs and include that amount in the dunning letter. Doing so does not violate the FDCPA.

Even if attorney fees are authorized by contract, as in this case, and even if the fees are reasonable, debt collectors must still clearly and fairly communicate information about the amount of the debt to debtors. This includes how the total amount due was determined if the demand for payment included add-on expenses like attorney fees or collection costs. It is unfair to consumers under the FDCPA to hide the true character of the debt, thereby impairing their ability to