CONSUMER CREDIT

SUPREME COURT HOLDS FCRA CLASS ACTION REQUIRES CLASS MEMBERS SUFFER "INJURY IN FACT"

TransUnion LLC v. Ramirez, ___ U.S. ___ (2021).
https://www.supremecourt.gov/opinions/20pdf/20-297_4g25.pdf

FACTS: Defendant TransUnion LLC was a credit reporting agency, and it introduced an add-on product called OFAC Name Screen Alert. OFAC is the U.S. Treasury Department's Office of Foreign Assets Control, which maintains a list of terrorists, drug traffickers, and other serious criminals. This product helped businesses avoid transacting with individuals on OFAC's list. If the consumer's first and last name matched the first and last name of an individual on OFAC's list, then TransUnion would place an alert on the credit report indicating that the consumer's name was a "potential match" to a name on the OFAC list.

The Court held that class members whose credit reports were not provided to third parties had no Article III standing.

A class of 8,185 individuals with OFAC alerts in their credit sued TransUnion under the Fair Credit Reporting Act for failing to use reasonable procedures to ensure the accuracy of their credit files. Only some class members had their misleading credit reports containing OFAC alerts provided to third parties during the 7-month period specified in the class definition. The internal credit files of the other class members were not provided to third parties during the relevant period.

The district court ruled that all class members had Article III standing on their claims. The Ninth Circuit affirmed, and TransUnion petitioned to the Supreme Court.

HOLDING: Reversed and remanded.

REASONING: Plaintiffs argued that the existence of misleading OFAC alerts in TransUnion's internal credit files exposed them to a material risk that provided them standing to seek damages.

The Court agreed that class members whose credit reports were provided to third parties suffered a concrete harm that qualified as an injury in fact, because their injury was "closely related" to a traditionally recognized harm—reputational harm associated with the tort defamation.

However, the Court held that class members whose credit reports were not provided to third parties had no Article III standing. Because the class members sought retrospective damages instead of injunctive relief to prevent imminent and substantial future harm, and these class members did not present evidence that their exposure to the risk itself independently harmed them, the risk of future harm could not supply the basis for their standing. The Court agreed with TransUnion that mere risk of future harm, without more, could not qualify as a concrete harm in a suit for damages.

FAIR CREDIT REPORTING ACT NOTICE OF DISPUTE DOES NOT REQUIRE PRECISE LANGUAGE

AN INADEQUATE NOTICE DOES NOT ELIMINATE THE DUTY TO REINVESTIGATE ALTOGETHER

Davis v. Experian Info. Sols. Inc., 849 Fed.Appx. 690 (9th Cir. 2021).
https://cdn.ca9.uscourts.gov/datastore/memoranda/2021/06/10/20-15667.pdf

FACTS: Plaintiff-Appellant Cheryl Davis filed for Chapter 13 bankruptcy in 2011 and received a discharge in 2013. Davis's Chapter 13 plan obliged her to "pay the ongoing contract installment payment" on her Class 1 mortgage. In 2017, Defendant-Appellee, Experian Information Solutions Inc. ("Experian") sent Davis a consumer disclosure that indicated her mortgage was discharged through Chapter 13 bankruptcy/never late. Davis filed a dispute with Experian including her prior bankruptcy petition, a letter from her mortgage servicer about the disputed mortgage, and her bankruptcy discharge order. Experian denied Davis's request due to "limited amount of information regarding [her] dispute."

Davis filed suit, alleging Experian violated section 1681i of the Fair Credit Reporting Act by failing to conduct a reasonable reinvestigation of her account to correct misinformation. The district court granted Experian's motion to dismiss. Davis appealed.

HOLDING: Reversed and remanded.

REASONING: The district court argued that Davis failed to notify Experian of the nature of her dispute, thus Experian was not obliged to reinvestigate her bankruptcy and mortgage account.

The Ninth Circuit Court disagreed. The court held that "a notice of dispute does not require precise language, and an inadequate notification does not eliminate the duty to reinvestigate altogether." Davis's dispute letter and documents provided to Experian allow one to plausibly infer that Davis disputed the accuracy of her mortgage debt as discharged. On a motion to dismiss, the court must "construe all inferences in the plaintiff's favor," therefore, the district court erred in finding Davis did not plausibly claim she gave sufficient notice to Experian.

On a motion to dismiss, the court must "construe all inferences in the plaintiff's favor."