DEBT COLLECTION

DEBT COLLECTION SUIT OVER DISCLOSURE OF INFORMATION

A DEBT COLLECTOR'S COMMUNICATION OF A CONSUMER'S PERSONAL INFORMATION TO A THIRD-PARTY PRINT VENDOR VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT'S PROHIBITION ON THIRD-PARTY COMMUNICATIONS IN CONNECTION WITH DEBT COLLECTION

Hunstein v. Preferred Collection & Mgmt. Servs. Inc., ___ F.3d ___ (11th Cir. 2021).
https://scholar.google.com/scholar_case?case=16964404624440555939&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Plaintiff-Appellant Hunstein sued Defendant-Appellee Preferred Collection and Management Services, Inc. (Preferred) claiming Preferred electronically transmitted data concerning a consumer's debt to a third party vendor. The third party vendor then used the data to create, print and mail a letter to Hunstein. Huntstien filed suit alleging that by sending his personal information to the vendor, Preferred had violated the 15 U.S.C. §1692c(b).

The court found that Preferred's communication to Compumail was clearly in connection to debt collection.

The District Court rejected the Hunstein's reading of §1692c(b) and dismissed his suit. Hunstein appealed.
HOLDING: Reversed and remanded.
REASONING: Hunstein argued for a plain meaning statutory interpretation of the phrase "in connection with the collection of any debt." Preferred, conversely, argued a "factor-based analysis" that show that the communication with Compumail was not "in connection with the collection of any debt."

The court found that Preferred's communication to Compumail was clearly in connection to debt collection. The court disagreed with Preferred's arguments because the demand-for-payment interpretation rendered superfluous the exceptions spelled out in §1692c(b), the language "in connection with" would have no independent meaning or force, and operationally §§ 1692c(b) and 1692e involve different parties. Preferred made an industry practice argument citing the lack of FDCPA suits against mail vendors like Compumail. The court rejected the argument holding a lack of cases similar to this one does not prove such disclosures are lawful.

JUDGE REVERSES CLASS CERTIFICATION AND ENDS DEBT COLLECTION SUIT

Tataru v. RGS Fin. Inc.,___ F. Supp. 3d ___ (N.D. Ill. 2021).
https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2018cv06106/356249/109/

FACTS: Defendant debt collector, RGS, sent Plaintiff Gabriel Tataru a letter that incorrectly identified his creditor. On behalf of himself and others similarly situated, Tataru sued RGS claiming the letter's inaccurate disclosure of creditor's identity violated 15 U.S.C. § 1692g(a). Tataru believed the letter might be from a scammer and thus claimed his ability to use the information to address his debt as protected by the statute would have been threatened.
The Court granted Tataru's motion for summary judgement. RGS moved for reconsideration of their motion for summary judgement.
HOLDING: Motion Granted
REASONING: Taturu argued that RGS violated 15 U.S.C. § 1692g(a), which requires debt collectors to disclose the identity of the creditor to whom the debt is owed. RGS's letter misidentified his creditor as "FNB Omaha II," a non-existent entity, instead of his actual creditor, the First National Bank of Omaha, which caused him to suspect fraud.

The court reconsidered and reversed its decision in light of numerous Seventh Circuit cases making it clear that to establish standing FDCPA plaintiffs must show that they took detrimental steps resulting in a mishandling of their debt due to the statutory violation, establishing an injury. Cases have made it crystal clear that the state of confusion is not itself an injury.

In the light of the Seventh Circuit's recent decisions, the court held that Tataru needed to do more than demonstrate a threat that he would fail to exercise his rights because he deemed the letter a scam. He must have actually failed to exercise those rights and suffered some tangible adverse consequence as a result. Because Tatru failed to demonstrate that he suffered a concrete injury, RGS's motion for summary judgement was granted.

PLAINTIFF'S SUBJECTIVE INTERPRETATION OF A DEBT COLLECTION LETTER INSUFFICIENT TO CONFER FDCPA STANDING

Preisler v. Eastpoint Recovery Grp., (S.D. Fla. May 25, 2021).
https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/501/2021/06/Preisler-v.-Eastpoint-Recovery-Grp.-No.-20-CV-62268-RAR-S.D.-Fla.-May-25-2021.pdf

FACTS: Plaintiff Amir Preisler ("Preisler"), representing a class of similarly situated Florida debtors, owed a debt to Pentagon Federal Credit Union ("PFCU"). After PFCU sold the debt to another corporation, Defendant Eastpoint Recovery Group ("Eastpoint") sent Preisler a collection letter. The letter informed Preisler that Eastpoint was a debt collection agency and would be using any information obtained to enforce collection of the debt. Preisler felt the language used by Eastpoint in the letter emphasized demanding payment rather than notice of the debt collection process itself.

Preisler filed suit one year after receiving the letter, alleging multiple FDCPA violations against Eastpoint. Eastpoint filed a motion to dismiss based on standing and failing to state a claim upon which relief can be granted.
HOLDING: Granted.

REASONING: Eastpoint argued that Preisler has not alleged an injury-in-fact sufficient to confer standing**.** Preisler argued that he suffered concrete injury because of the inclusion of the word "enforce" in Eastpoint's collection letter. Preisler claimed the language of the letter led him to feel threatened and confused as to the purpose of the letter, constituting a concrete injury sufficient to confer standing.

The court agreed with Eastpoint, concluding that Preisler had not suffered sufficient injury to establish standing for a FDCPA violation. Preisler lacked standing because of his subjective interpretation of the word "enforce" which did not result in a concrete and particularized injury necessary to confer Article III standing. Preisler's claims of misleading representation based on the language of the letter without claiming actual damages did not meet standing, nor were they traceable to the alleged FDCPA violations

FDCPA BOILER PLATE LANGUAGE DOES NOT TRIGGER PROTECTIONS OF FAIR DEBT COLLECTION PRACTICES ACT

COMMUNICATIONS WERE NOT IN CONNECTION WITH COLLECTION OF A DEBT

Heinz v. Carrington Mortg. Servs., LLC, ___ F.3d ___ (8th Cir. 2021). https://consumerfinancialserviceslawmonitor.lexblogplatform.com/wp-content/uploads/sites/501/2021/07/Heinz-v.-Carrington-Mortgage-Services-LLC.pdf

FACTS: Defendant-Appellee Carrington Mortgage Services, LLC ("Carrington") was the servicer of Plaintiff-Appellee David Heinz's loan. In 2008, Heinz took out a $247,344 loan, evidenced by a promissory note and a mortgage on Heinz's home. Heinz defaulted multiple times over the following years but was given loan modifications to cure his defaults. Bank of America, who was assigned both Heinz's mortgage and note, initiated the foreclosure process in 2016 after another default. Heinz applied for loss mitigation assistance but received two separate letters stating his application was incomplete due to his failure to provide the required documents to complete the application. In 2017, Carrington became the servicer of Heinz's loan. Heinz was represented by the Minnesota Attorney General's Office, who assisted him with his loan mitigation application and communicating with Carrington. In late 2017, a Carrington representative mistakenly told Heinz that his file had been considered complete, and as a result, the foreclosure sale would be postponed. This information was false, and Carrington proceeded with the foreclosure, selling Heinz's property to Bank of America. Carrington sent Heinz a cancellation notice regarding his loss mitigation application after the foreclosure; it also sent a letter stating the sale would not be rescinded after the redemption period for the foreclosure expired.

In 2018, Heinz filed suit against Carrington in Minnesota state court, alleging violations of both Minnesota law and the FDCPA. Carrington removed the action to federal court, and only the FDCPA claim remained. The district court granted summary judgment in favor of Carrington. Heinz appealed.
HOLDING: Affirmed.
REASONING: Heinz argued that the district court erred in granting summary judgement to Carrington because the evidence Heinz presented was sufficient to allow a jury to conclude that Carrington used false, deceptive, and misleading representations and unfair and unconscionable means to collect on the underlying mortgage debt.

The court held that to be in connection with the collection of a debt, each communications' purpose must have been to "induce payment" by the debtor. Heinz tried to argue that the letters and phone calls from and to Carrington contained false, deceptive, and misleading representations in order to collect on his debt. The court rejected Heinz's argument, pointing to the fact that Carrington's letters did not contain any information about his loan, and did not include demands for payment. Therefore, the animating purpose of these communications was not to collect payment. Although the letters contained a "Mini-Miranda" statement that stated "this communication is from a debt collector and is for the purpose of collecting a debt," the language did not trigger FDCPA protections. The substance of the letters did not focus on collecting on a debt, and some of the letters were sent after Carrington had already sold the house and there was no debt left to collect. Thus, the boilerplate language did not turn the communications into attempts to collect on a debt, and the FDCPA protections were not triggered.

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WHETHER CONDUCT VIOLATES FAIR DEBT COLLECTION PRACTICES ACT REQUIRES AN OBJECTIVE ANALYSIS THAT CONSIDERS WHETHER THE LEAST SOPHISTICATED DEBTOR WOULD LIKELY BE MISLED BY A COMMUNICATION

Mott v. PNC Fin. Servs. Grp., Inc., ___ F.3d ___ (9th Cir. 2021). https://www.leagle.com/decision/infco20210528170

FACTS: Trinity Financial Services and Trojan Capital Investments ("Defendants") attempted to foreclose on the home of the Plaintiff, Rodney Mott. Mott sued Defendants claiming violations of the FDCPA. Mott claimed that Trojan misrepresented the interest rate to him in letters specifying an 8.63 percent interest rate when the rate was 8.625 percent based on the mortgage note.

The district court granted summary judgment in favor of Defendants. Mott appealed.
HOLDING: Affirmed.
REASONING: Mott argued that Defendants violated the FDCPA by misrepresenting the interest rate and late fees in the letters sent to him.

The court disagreed, stating that Denfendants' minor misrepresentations were immaterial. Since Mott did not contend a material effect upon his debt quantity, and the erroneous letters were followed by subsequently correct ones, Mott could

not have reasonably been misled by the letters. Objectively, the court found the misrepresentations were unlikely to mislead the least sophisticated consumer and thus were unactionable under FDCPA.

UNDER TEXAS DEBT COLLECTION LAW, FORECLOSURE OR THE THREAT OF FORECLOSURE IS NOT AN ACTION PROHIBITED BY LAW

Stricker v. Deutsche Bank Nat'l Tr. Co., ___ F. Supp. 3d ___ (W.D. Tex. 2021).
https://casetext.com/case/stricker-v-deutsche-bank-national-trust-co

FACTS: In 2006, a buyer who had taken out a loan and secured it with a promissory note in the amount of $144,000 purchased a residential property. Defendant Deutsche Bank National Trust Co. ("Defendant") later became the mortgage loan owner and the promissory note holder.

The original buyer transferred her interest in the property as part of a divorce proceeding, although she remained the borrower on the note. She defaulted on the note in April of 2015, and in May of that year, Defendant provided her with a notice of default which included the amount owed and a warning regarding foreclosure being a possible result of failure to pay.

In 2017, Plaintiff Robert Stricker executed an Affidavit of Adverse Possession, in which he argued that he held an interest in the property derived from possession "due to abandonment." Defendant foreclosed on the property anyway in 2019, prompting Plaintiff to file suit alleging wrongful foreclosure and violation of the Texas Finance Code for threatening to foreclose. Defendant filed a motion for summary judgment.
HOLDING: Motion granted.
REASONING: Stricker argued that Defendant foreclosed on the home without notice and committed a deceptive practice in wrongful foreclosure, a violation of Texas Finance Code. He further argued that Defendant then had no authority to collect on the note or hold a substitute trustee sale because of this violation.

The court disagreed with Sticker, stating that under Section 329.301 of the Texas Finance Code, foreclosure, or the threat of foreclosure is not an action prohibited by law when a plaintiff defaults on their mortgage. Since Defendant was the owner of the loan at the time of foreclosure and was in possession of the promissory note, it was entitled to the contractual right of seizure, repossession, or sale that are expressly permitted by the TDCA.

MONTHLY STATEMENTS FROM A DEBT COLLECTOR CAN SUPPORT A MISREPRESENTATION CLAIM UNDER THE TEXAS DEBT COLLECTION ACT

Doyle v. Nationstar Mortg., LLC, ___ F. Supp. 3d ___ (S.D. Tex. 2021).
https://lawsintexas.com/wp-content/uploads/2021/06/Doyle-v.-Nationstar-Mortg.pdf

FACTS: Plaintiffs Kelly Doyle and Walter Doyle (the "Doyles") alleged that Defendant Nationstar Mortgage LLC ("Nationstar"), their mortgage servicer, had been improperly withholding amounts from their loan payments for property taxes and insurance that were not escrowed, improperly crediting their payments, and improperly threatening foreclosure. Nationstar claimed the Doyles did not pay their property taxes, resulting in increased monthly payments from penalties and interest, and the Doyles claimed they paid their property taxes.

The Doyles sued Nationstar for violation of Texas Debt Collection Act and Nationstar moved to dismiss.
HOLDING: Motion denied.
REASONING: The Doyles alleged that Nationstar violated TDCA by misrepresenting the character, extent, or amount of a consumer debt, and that Nationstar sent a "balance statement" inappropriately assessing escrow balances, penalties, and interest and improperly increased the amount owed under the mortgage.

The court agreed with the Doyles because they properly alleged facts that show that the debt collector made a misrepresentation that led them to be unaware (1) that they had a mortgage debt, (2) of the specific amount they owed, or (3) that they had defaulted. Taking the allegation that the Doyles made proper payments under the loan documents as true for the purposes of Nationstar's motion, Nationstar's representations of default and threat of foreclosure could be material false statements that could violate TDCA.

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