

RECENT DEVELOPMENTS

DEBT COLLECTION

FAIR DEBT COLLECTION PRACTICES ACT DOES NOT REQUIRE ABSOLUTE CERTAINTY OF A CONSUMER DEBT.

A JURY NEED ONLY FIND IT MORE LIKELY THAN NOT THAT THE BALANCE ON THE CREDIT CARD WAS A CONSUMER DEBT

Woods v. LVNV Funding, LLC, 27 F.4th 544 (7th Cir. 2022).
<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D02-28/C:21-1981;J:Scudder;aut:T;fnOp:N:2839828;S:0>

FACTS: Plaintiff Kevin Woods had a fraudulent credit card opened in his name that went into default, and the debt was sold to defendants, LVNV Funding, LLC, who hired debt collector

Where the nature of a disputed debt permitted a reasonable inference that it was undertaken “for personal, family, or household purposes,” an FDCPA plaintiff has met his burden.

Resurgent Capital Services, L.P. (together, “Resurgent”). The identity thief opened a credit card in Woods’s name and purchased a one-way airline ticket. The thief used Woods’ old address and an unknown email to open the account. Woods disputed the account with Resurgent, filed a police report, and disputed the debt with the credit re-

porting agencies. Resurgent informed Woods that their investigation concluded the debt belonged to him.

Woods sued Resurgent for violating FDCPA, among others. The district court granted summary judgment for Resurgent. Woods appealed.

HOLDING: Affirmed.

REASONING: Resurgent argued that Woods did not meet his burden of proving that the debt fell within the statutory definition of FDCPA consumer debts because he did not subpoena the airline company to identify the person who took the flight.

The court disagreed with Resurgent yet affirmed that there was no FDCPA violation on other grounds. FDCPA defines consumer debts as any obligation to pay money arising out of a transaction entered into primarily for personal, family, or household purposes. To make out a cause of action under the FDCPA, a plaintiff must offer evidence permitting a jury to conclude that the debt at issue falls within this statutory definition. The court stated that Congress would not expect consumers to hunt down identity thieves and depose them. Where the nature of a disputed debt permitted a reasonable inference that it was undertaken “for personal, family, or household purposes,” an FDCPA plaintiff has met his burden.

Here, because common sense could provide that business travelers do not often purchase one-way airline tickets, a reasonable jury could conclude that it was more likely than not that the purchase was made for consumer purposes. Therefore, the plaintiff met his burden under FDCPA.