DEBT COLLECTION

PLAINTIFF LACKS ARTICLE III STANDING IN DEBT COLLECTION SUIT

Sexton v. Target Corp. Servs., ___ F. Supp.3d ___ (E.D. Wis. Jul. 19, 2022).
https://casetext.com/case/sexton-v-target-corp-servs

FACTS: Plaintiff Tamara Sexton ("Sexton") received a letter about a debt she allegedly owed to TD Bank, an issuer of Target store-branded credit cards. The debt collection letter purportedly accelerated the installment payment due, described the installment as late, and placed Sexton's account into default, even though the letter was mailed two weeks before the payment was due.

Sexton filed a class action in state court against TD Bank and Target (collectively, "Defendants") alleging violations of the Wisconsin Consumer Act ("WCA"), which requires that a merchant provide a customer with notice of default and the customer's right to cure the default before a lender may accelerate the balance of a consumer credit transaction. The Defendants removed the action to federal court under the Class Action Fairness Act ("CAFA"). Sexton moved to remand the case back to state court for lack of subject matter jurisdiction.

HOLDING: Granted.

REASONING: Sexton argued her complaint fails to allege a concrete injury in fact and thus lacked Article III standing to pursue her WCA claims in federal court. The court agreed, holding that a case removed from state court must be remanded if it appears that the district court lacks subject matter jurisdiction.

Under the Supreme Court's ruling in *Trans Union LLC v. Ramirez,* a case or controversy under Article III requires a plaintiff to have a personal stake in the case. Under the Court's landmark decision in Lujan v. Defenders of Wildlife, standing requires: (1) a concrete and particularized injury in fact, (2) fairly traceable to the challenged conduct of the Defendant, and (3) likely redressable by a favorable judicial decision.

Sexton's complaint failed to allege she suffered a concrete injury in fact.

The court determined Sexton's complaint failed to allege she suffered a concrete injury in fact, mainly because an FDCPA violation must have presented an appreciable risk of harm to the underlying concrete interest that Congress sought to protect. Since Sexton's allegations regarding Defendants' alleged violations of the WCA were indistinguishable from those held as insufficient by the Seventh Circuit to allege a concrete injury in fact for Article III standing in the FDCPA context, i.e., that Defendant's letter was "misleading, deceptive and unconscionable, and did not fairly provide consumers with notice of their right to cure default," Sexton lacked Article III standing in her debt collection suit.

NONSIGNATORY TO CREDIT CARD AGREEMENT CANNOT COMPEL ARBITRATION IN DEBT COLLECTION CASE

Estrada v. The Moore Law Group, APC, ___ F. Supp.3d ___ (C.D. Cal. July 11, 2022).
https://buckleyfirm.com/sites/default/files/Buckley%20Infobytes%20-%20Estrada%20vs.%20The%20Moore%20Law%20Group-%20Order%20-%202022.07.11.pdf

FACTS: Allison Estrada ("Estrada") entered into a credit card agreement ("Agreement") with Citibank. Estrada's credit card was stolen and accrued charges she did not make. Citibank did not investigate or remove the charges. Citibank retained The Moore Law Group, APC ("TMLG") to collect the purported debt from Estrada. Estrada sued TMLG for violating the FDCPA and California's Rosenthal Fair Debt Collection Practices Act ("RFDCPA") in an unlawful debt collection attempt.

TMLG moved to compel arbitration on Estrada's claims based on the arbitration provision in the Agreement.

HOLDING: Denied.

REASONING: The concerted-misconduct test does not involve causation, but rather, considers whether a plaintiff is asserting claims against a nonsignatory that also implicates the signatory. TMLG argued that it was covered under the scope of the Agreement's arbitration provision as an "agent" of Citibank and could enforce the provision against Estrada. The court disagreed.

The court held Estrada did not allege "substantially interdependent and concerted misconduct" such that would allow TMLG, a nonsignatory, to enforce the arbitration provision against her. First, Estrada relied solely on TMLG's obligations pursuant to the RFDCPA and FDCPA and TMLG's debt collection practices. Second, Estrada did not rely on the Agreement in making her claims against TMLG. Lastly, Estrada's claims against TMLG were independent of her claims against Citibank and did not reference the Agreement. Therefore, since the presence of allegations common to both the signatory and nonsignatory is not enough to satisfy the concerted-misconduct test, TMLG could not compel arbitration in its debt collection case.

REQUIRED MONTHLY MORTGAGE STATEMENTS SENT BY SERVICER MAY BE SUBJECT TO THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

Daniels v. Select Portfolio Servicing, Inc., 34 F.4th 1260 (11th Cir. 2022).
https://media.ca11.uscourts.gov/opinions/pub/files/201910204.pdf

FACTS: After falling behind on her monthly mortgage payments, Constance Daniels ("Daniels") entered into a mortgage modification agreement with Countrywide. She agreed to make interest-only monthly payments (plus escrow amounts) for 10 years, with the principal balance remaining at $189,911. For over a year, Daniels made her interest-only monthly payments on time. Countrywide then sold the mortgage to Wells Fargo which refused to accept the interest-only payments and filed a foreclosure for default on the note and mortgage. The state court granted Daniels' motion to enforce the earlier mortgage modification agreement.

Following the conclusion of the foreclosure action, Select Portfolio Servicing, Inc. ("Select Portfolio"), the mortgage servicer, sent Daniels numerous monthly mortgage statements, varying in format, language, and amount. The statements included language such as "This is an attempt to collect a debt. All information obtained will be used for that purpose" and "You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure – the loss of your home." Daniels alleged that the statements significantly misstated the deferred principal balance, the outstanding principal balance, and the amount due for the interest-only payment.

Daniels sued Select Portfolio, arguing that by sending her the incorrect mortgage statements, it had violated the FDCPA's prohibitions on harassment or abuse, false or misleading representations, and unfair practices. The district court dismissed Daniels' complaint with prejudice, agreeing with Select Portfolio that the mortgage statements in question were not communications in connection with the collection of a debt and therefore were not covered by the FDCPA.

HOLDING: Reversed and remanded.

REASONING: Mortgage statements required by the TILA may constitute communications in connection with the collection of a debt under the FDCPA when the communications contain debt-collection language that is not required by the TILA or its regulations and when the context suggests that they are attempts to collect or induce payment on a debt. Select Portfolio asserted that the mortgage statements were required by the TILA and its regulations and therefore did not constitute communications "in connection with the collection of a[ ] debt" under the FDCPA or in connection with "collecting [a] . . . debt[ ]" under the FCCPA. The court disagreed.

The court held the communication by Select Portfolio labeled as "for the purposes of collecting a debt," and asking for payment of a certain amount by a certain date and assessing a late fee if the payment is not made on time was plausibly sent in connection with the collection of a debt. Therefore, such communications were in connection with the collection of a debt under the FDCPA. Importantly, monthly mortgage statements required by the TILA and its regulations do not automatically lead to liability under the substantive provisions of the FDCPA or the FCCPA.

THE TEXAS DEBT COLLECTION ACT DOESN'T CONTAIN A STATUTE OF LIMITATION

IT IS APPROPRIATE TO APPLY A TWO-YEAR LIMITATION PERIOD TO THE TEXAS DEBT COLLECTION ACT

Williams v. PHH Mortg. Corp., 2022, ____ F. Supp.3d ____ (S.D. Tex. 2022).
https://casetext.com/case/williams-v-phh-mortg-corp-1

FACTS: Plaintiffs Ursula N. Williams, Melbourne Poff, and Barbara Poff ("Plaintiffs") sued Defendant PHH Mortgage Corporation ("PHH") for violations of the Texas Debt Collection Act, as well as for declaratory and injunctive relief. The TDCA does not contain a statute of limitations, and the parties disputed whether a two- or four-year limitations period applied to the TDCA claims. The Plaintiffs' claims would be barred by a two-year limitations period but not a four-year limitations period.

PHH moved to dismiss all claims. The court granted the motion as to the claims for declaratory and injunctive relief but denied the TDCA claims. After Plaintiffs and PHH were ordered to undertake expedited discovery on the issue of limitations, PHH moved for summary judgment.

HOLDING: Granted.

REASONING: In the absence of a state law decision by a state's highest court, a federal court relies on intermediate state appellate court decisions to predict what would have been the outcome. The state's highest court had not spoken on the issue and lower courts had reached different conclusions on whether a two or four-year limitations period applies to TDCA claims.
Opinions applying a four-year limitations period rely on the Texas Civil Practice and Remedies Code § 16.051. Opinions applying a two-year limitations period rely on the Texas Civil Practice and Remedies Code § 16.003(a). However, none of those opinions provided thorough explanations for their reasoning.

The state's highest court had not spoken on the issue and lower courts had reached different conclusions on whether a two or four-year limitations period applies to TDCA claims.

The Texas Supreme Court previously instructed courts to resolve this type of issue by looking to an analogous cause of action with an express limitations period. In the instant case, the court determined either an action arising under the Texas Deceptive Trade Practices Act or the common-law intentional tort of unreasonable collection to be the analogous cause of action, which are both subject to a two-year limitations period. Thus, the court decided it was appropriate to apply a two-year limitations period to Plaintiffs' TDCA claims. Because the two-year limitations period barred Plaintiffs' claims, the court granted PHH's motion for summary judgment.

SECTION 392.202 OF TEXAS DEBT COLLECTION ACT DOES NOT PLACE A DUTY ON A "CREDIT BUREAU"

Black v. Experian Info. Sols., Inc., ____ F. Supp.3d ____ (S.D. Tex. 2022).
https://casetext.com/case/black-v-experian-info-sols-4

FACTS: Plaintiff, J.B. Black ("Black"), in the process of purchasing a home, was denied financing. Defendant Early Warning Services, LLC ("EWS") and all other Defendants are either banks, creditors, or credit reporting agencies. Black claims that he "would have closed the deal but for Defendants' statutory violations, breaching of contract, and other tortious acts." Black provided a list of ways in which EWS and/or other defendants violated the TDCA, the Texas DTPA, and the federal FCRA.

Black also contended that the defendants' actions, collectively, constituted defamation and libel.

EWS filed a motion for judgment on the pleadings, asserting Black's claims failed because he did not plead any facts showing that EWS violated the statutes or committed defamation or libel. Black failed to respond to the motion. The failure to respond was taken by the court as a representation of no opposition.

HOLDING: Granted.

REASONING: EWS argued that Black's TDCA claims did not survive because the statute applies only to debt collectors, and Black made no allegation that EWS was a debt collector. Rather, Black asserted EWS was a "credit reporting agency" as defined in the Texas Finance Code § 392.001(4). But that section defines a "credit bureau," not a "credit reporting agency."

Indeed, Black alleged that EWS violated § 392.202 by "failing to properly investigate disputed matters on Plaintiffs' credit bureau [report] and further failed to accurately report Plaintiffs' dispute on Plaintiffs' credit bureau [report]." But the statute does not place a duty on a "credit bureau." Instead, it requires an individual who notices an inaccuracy in the credit bureau's file to notify in writing the third-party debt collector of the inaccuracy. The third-party debt collector then has a duty to investigate and advise parties that have received inaccurate reports of any inaccuracy. As such, the court found the burden or duty on "credit bureaus" outlined in the TDCA not applicable to the allegations in this case, mainly because § 392.202 does not place a duty on a "credit bureau." Thus, there are no obligations for credit bureaus under § 392.202 and Black failed to state a claim against EWS under the TDCA.

PLAINTIFF SUFFERED JUST THE SORTS OF INTANGIBLE BUT REAL INJURIES—INCLUDING EMOTIONAL DISTRESS, ANXIETY, FEAR, AND CONFUSION—THAT CONGRESS FORESAW AND FOR WHICH IT ENACTED FDCPA STATUTORY REMEDIES

DISSENT ARGUES PLAINTIFF SATISFIED THE CONSTITUTIONAL REQUIREMENTS OF *SPOKEO* AND *TRANSUNION*

Pierre v. Midland Credit Mgmt., ___ F.3d ___ (7th Cir. 2022).
https://law.justia.com/cases/federal/appellate-courts/ca7/19-2993/19-2993-2022-04-01.html

FACTS: In 2006, Plaintiff-Appellee Renetrice Pierre ("Pierre") opened a credit card account with Target National Bank. Pierre defaulted on the debt accumulated on the account. Midland Funding, LLC, bought the debt and sued Pierre in 2010, later voluntarily dismissing the lawsuit. In 2015, Defendant-Appellant Midland Credit Management, Inc. ("Midland"), the collector of debts for Midland Funding, LLC, sent Pierre a letter seeking payment of the debt although the statute of limitations had already run. The letter included payment plans, the date of expiration for the offer, and a statement at the end informing Pierre that she would not be sued for non-payment of the debt due to the statute of limitations.

Pierre filed suit, alleging that Midland violated various provisions of the FDCPA by falsely representing the character and legal status of the debt, deceptively attempting to collect the debt, and using unfair or unconscionable means to attempt to collect the debt. The district court granted summary judgment in favor of Pierre. The court twice declined Midland's motion to dismiss for lack of Article III standing. Both parties cross-appealed and the court denied a hearing en banc. Four judges dissented from the denial, noting this case presents an important question on the extent of Congress's power under the Constitution to regulate interstate commerce—its power to authorize private civil remedies for statutory violations that cause intangible but concrete injuries, including emotional distress, fear, and confusion.

HOLDING: Vacated and remanded.

REASONING: Pierre argued that Midland's letter created the risk of her paying on a time-barred debt that would have restarted the statute of limitations period and that she suffered emotional distress, anxiety, and worry as a result of the letter. The court held that Pierre's "worry" and "confusion" were not legally cognizable harms sufficient to meet the concreteness requirement for Article III standing.

The FDCPA was meant to protect consumers against the very stress and fear Plaintiff experienced due to Midland's letter.

The dissent rejected this reasoning, relying on *Spokeo, Inc. v. Robins*, where the Supreme Court held that an intangible injury, such as emotional distress, could be concrete for purposes of standing under Article III. The dissent also relied on *TransUnion LLC v. Ramirez*, where the Supreme Court held that intangible harms close to those "traditionally recognized in the law" were sufficiently concrete for standing and that courts must respect Congress's creation of a private right of action for statutory violations. The dissent argued that Pierre satisfied the Constitutional requirements of *Spokeo* and *TransUnion* with evidence of harms foreseen by Congress when it enacted the FDCPA. The FDCPA was meant to protect consumers against the very stress and fear Plaintiff experienced due to Midland's letter. Pierre's injuries also bore close relationships to harms long recognized in both common and constitutional law. Thus, the dissent argued that Pierre's claims were concrete enough to meet the Article III standing requirement.

FDCPA IS A STRICT LIABILITY STATUTE, AND AS SUCH, IT "MAKES DEBT COLLECTORS LIABLE FOR VIOLATIONS THAT ARE NOT KNOWING OR INTENTIONAL"

Creager v. Columbia Debt Recovery, ___ F. Supp.3d ___ (W.D. Wash. 2022).
https://www.accountsrecovery.net/wp-content/uploads/2022/08/Creager-v.-Columbia-Debt-Recovery.pdf

FACTS: Plaintiff Meagan Creager ("Creager") rented an apartment from FSC Riverstone Associates, LLC ("Riverstone"). After Creager informed Riverstone that she was moving out early, Riverstone transferred a collections account to Defendant Columbia Debt Recovery d/b/a Genesis Credit Management, LLC ("Genesis"). The collections account consisted of Creager's remaining balance and included her $1,250 security deposit ("Balance"). Throughout the next few years, Genesis contacted Creager to collect the Balance and accumulated interest, but Creager did not believe that her lease permitted Riverstone to forfeit her security deposit and disputed the inclusion of the $1,250 in the Balance. Creager sued Genesis for violations of the FDCPA and the CAA.

Genesis did not dispute that Riverstone unlawfully withheld Creager's security deposit. Creager filed a motion for partial summary judgment on the issue of liability.

HOLDING: Granted in part.

REASONING: Creager alleged that Genesis unlawfully collected amounts that Creager did not owe. Genesis, on the other hand, argued that it cannot be held liable because it reasonably relied on Riverstone's interpretation of the lease agreement.

The court rejected Genesis' argument because the FDCPA imposes strict liability, and makes debt collectors liable for violations that are not knowing or intentional. Indeed, determining whether conduct violates the FDCPA requires an objective analysis and does not inquire into the defendant's knowledge. Here, Genesis was objectively representing an incorrect amount of debt owed by Creager each time it contacted her. Likewise, Genesis objectively attempted to collect principal and interest that were not owed. As such, Genesis's "reasonable belief" in the Balance's accuracy did not matter.

MESSAGE SENT AS A RESULT OF COVID-19, REMINDING CONSUMERS OF ALTERNATIVE METHODS TO RECEIVE INFORMATION ABOUT THEIR ACCOUNT, OR TO MAKE PAYMENTS, DOES NOT VIOLATE FDCPA

James Hurster v. Specialized Loan Servicing, LLC, ___ F. Supp.3d ___ (E.D. Mo. 2022).
https://www.accountsrecovery.net/wp-content/uploads/2022/08/Hurtser-v.-Specialized-Loan-Servicing.pdf

FACTS: Plaintiff James Hurster ("Plaintiff") took out a home mortgage loan with U.S Bank N.A ("U.S. Bank"). U.S. Bank transferred Plaintiff's mortgage and deed of trust to Selene Finance, LP ("Selene Finance"). Plaintiff defaulted on his mortgage debt. Selene Finance transferred Plaintiff's defaulted mortgage debt to Specialized Loan Servicing ("SLS"). At that time, Plaintiff was in Chapter 13 bankruptcy. Plaintiff received a pre-recorded voice message from SLS reminding customers of alternative methods to receive information on their accounts and make payments. Due to the COVID-19 pandemic, wait lines for the customer service phone line were longer than usual, so these alternative methods were encouraged to serve customers more quickly through self-service via the website.

Plaintiff filed a class action lawsuit alleging SLS violated the FDCPA by failing to disclose in its voice messages that it was a debt collector attempting to collect a debt. SLS moved for summary judgment.

HOLDING: Granted.

REASONING: SLS argued that it was not liable under the FDCPA because informational communications, such as a voicemail message, were not communications in connection with the collection of a debt. The court agreed.

To establish an FDCPA violation, a plaintiff must show that (1) he is a consumer, (2) the defendant is a debt collector, and (3) the defendant violated, by an act or omission, a provision of the FDCPA to collect a debt. Here, the court reasoned that the voicemail did not communicate "in connection with the collection of a debt," but rather, merely communicated alternative methods of accessing accounts and making payments. Further, because there was no mention of Plaintiff's debt, nor was there a request or demand for payment, the court held that no reasonable jury could find that the purpose of SLS's voicemail message was to induce payment. Therefore, SLS did not violate the FDCPA.

MONTHLY MORTGAGE STATEMENTS REQUIRED BY THE TRUTH IN LENDING ACT, CAN CONSTITUTE COMMUNICATIONS IN CONNECTION WITH THE COLLECTION OF A DEBT UNDER THE FDCPA

Daniels v. Select Portfolio Servicing, Inc. 34 F.4th 1260 (11th Cir. 2022).
https://media.ca11.uscourts.gov/opinions/pub/files/201910204.pdf

FACTS: Appellant Constance Daniels ("Daniels") received mortgage statements from Select Portfolio Servicing, Inc. ("Select Portfolio") that contained inaccurate invoice amounts and debt collection language. Daniels entered into a mortgage modification agreement with Countrywide Home Loans ("Countrywide") that enabled her to make interest-only payments for ten years, with the principal balance remaining unchanged. Daniels' mortgage account was assigned to Wells Fargo who declined to accept interest-only payments. The company filed a foreclosure action asserting Daniels defaulted on her note and mortgage. The state court ruled for Daniels and reinstated the mortgage modification agreement. Select Portfolio, the mortgage servicer, proceeded to send Daniels monthly mortgage statements that miscalculated the principal balance and interest due, including a "delinquency notice," payment coupons, and debt collection language.

The mortgage statements expressed an attempt to collect a debt and included loan and payment due dates and interest-bearing and deferred principal balances.

Daniels sued Select Portfolio for unfair debt collection practices, alleging that the erroneous monthly mortgage statements were harassing, misleading, and false. The district court dismissed the claims with prejudice, holding that the mortgage statements complied with TILA regulations and were not debt collection communications subject to the FDCPA. Daniels appealed.

HOLDING: Reversed and remanded.

REASONING: Daniels argued that Select Portfolio's mailings were subject to regulation under the FDCPA due to the monthly statements containing incorrect debt information, such as increased balances and past due amounts. She asserted that this constituted harassment or abuse, false or misleading representations, and unfair practices of collection.

The court agreed, noting that the mortgage statements expressed an attempt to collect a debt and included loan and payment due dates and interest-bearing and deferred principal balances, alongside an attached payment coupon that specified a mailing address, late fee information, and payment instructions. Select Portfolio's incorporation of unpaid loan sums on the statements influenced the court's decision. The court noted that the mailed mortgage communications could be related to debt collection, that such communications could have multiple purposes, and one such objective could be providing information. Consistent with precedent, the court held that mortgage statements that comply with mandated TILA regulations can plausibly constitute debt communications under the FDCPA when they include debt collection language, request payment by a certain date, solicit late fees, and when the history between parties suggests the correspondence attempts to collect debt. The court reversed the district court's dismissal of Daniels' complaint and remanded the case for further proceedings under the least sophisticated consumer standard.

CONSUMER CREDIT

CONSUMERS CAN BRING PRIVATE SUITS FOR VIOLATIONS OF FAIR CREDIT REPORTING ACT § 1681s-2(b)

Spencer v. Experian Info. Sols., Inc., ___ F. Supp. 3d ___ (E.D. Tex. 2022).
https://casetext.com/case/spencer-v-experian-info-sols

FACTS: Plaintiff Karen Spencer ("Spencer") obtained her credit file from Defendant Experian Information Solutions, Inc. ("Experian") and discovered that Defendant Mountain Run Solutions LLC ("Mountain Run") was reporting a tradeline for a debt that Spencer alleged did not belong to her. Spencer's attorney sent a letter to Experian explaining that the debt did not belong to Spencer, as she was a victim of identity theft. Experian forwarded Spencer's dispute to Mountain Run. Mountain Run received the notice but did not conduct a proper investigation or delete the false tradeline from Spencer's credit report.

Spencer sued Mountain Run, alleging that it violated the FCRA by reporting a false tradeline on her Experian credit disclosure. Mountain Run failed to file an answer or provide a defense. Spencer filed a motion for default judgment.

HOLDING: Granted in part.

REASONING: Spencer argued Mountain Run violated the FCRA by willful and negligent failure to comply with the requirements of § 1681s-2(b). Courts in the Fifth Circuit have previously held that consumers can bring private suits for violations of § 1681s-2(b). This section requires a "furnisher of information," upon receiving notice of a dispute from a consumer reporting agency ("CRA") regarding information provided to that agency to (1) conduct a reasonable investigation of the disputed information; (2) review all relevant information provided in the notification; (3) report the results of its investigation to the CRA; (4) report the investigation results to other CRAs if the information furnished is incomplete or inaccurate; and (5) modify, delete, or block reporting of inaccurate or incomplete information.

Courts in the Fifth Circuit have previously held that consumers can bring private suits for violations of § 1681s-2(b).

The court accepted this argument, reasoning that Spencer proved all the required elements to recover on a claim against a furnisher of credit information. A plaintiff must prove that (1) the furnisher provided inaccurate credit information about plaintiff to a CRA; (2) plaintiff notified a CRA that the information in her credit report was inaccurate; (3) the CRA notified the furnisher of the dispute; and (4) after receiving this notice, the furnisher failed to conduct a reasonable investigation and provide notice to the CRA to correct the reporting errors. Because these elements were included in Spencer's pleadings, the court found that Spencer had sufficiently stated a claim against Mountain Run under the FCRA and granted her motion for default judgment with respect to the issue of liability.