DEBT COLLECTION

FDCPA PLAINTIFF MAY RECOVER COSTS OF THE ACTION, TOGETHER WITH A REASONABLE ATTORNEY'S FEE AS DETERMINED BY THE COURT

COURT FINDS REQUESTED ATTORNEYS' FEES ARE EXCESSIVE AND ARE THEREFORE REDUCED BY 50%

Beckler v. Rent Recovery Sols., ___ F. Supp. 3d ___ (D. Minn. 2022).
https://casetext.com/case/beckler-v-rent-recovery-sols

FACTS: Defendant Rent Recovery Solutions, LLC ("RRS") is a debt collection agency that contacted Plaintiff Adrianna Beckler to collect a debt. Beckler disputed the debt. RRS reported Beckler's alleged debt to a credit reporting agency. Beckler sued RRS, alleging that RRS's debt collection attempts violated the FDCPA.

Beckler sought actual damages, statutory damages, and an award of reasonable costs and attorneys' fees. RRS offered a settlement amount plus reasonable costs and attorneys' fees. Beckler accepted RRS's offer, notified RRS of the amount of requested attorneys' fees, and provided detailed billing records to support the request. RRS did not respond to Beckler's request. Beckler moved for an award of $18,810 in attorneys' fees. RRS opposed Beckler's request, arguing that the requested amount should be $1,944.

The court found the attorneys' fee rates objectively reasonable and the tasks reasonable, but the amount of time expended on the tasks unreasonable

HOLDING: Granted in part.

REASONING: Beckler argued that she was entitled to an award based on her attorneys' costs and fees. Beckler reasoned that her attorneys' rates were reasonable based on each attorney's declaration, billing statements, and curriculum vitae detailing the attorney's legal experience, including experience in FDCPA cases for one of the two attorneys. Under 15 U.S.C. § 1692k(a)(3), a plaintiff in "any successful action against a debt collector" may recover the costs of the action and reasonable attorneys' fees. The skill, experience, and reputation of counsel are factors of a rate's reasonableness. A court should also consider if the hours were reasonably expended.

The court found the attorneys' fee rates objectively reasonable and the tasks reasonable, but the amount of time expended on the tasks unreasonable based on the case's factual simplicity and early settlement. In comparable FDCPA cases, attorneys spent less than half of the number of hours that Beckler's attorneys spent on her case. Thus, the court held that Beckler's requested attorneys' fees were disproportionate to the amount of her recovery and were reduced by 50%.

COLLECTING A DEBT AND ENFORCING A SECURITY INTEREST ARE NOT THE SAME THING UNDER THE FDCPA

Adelson v. Ocwen Loan Servicing, LLC, ___ F.4th ___ (6th Cir. 2023).
https://casetext.com/case/adelson-v-ocwen-loan-servicing-llc-2

FACTS: Plaintiff-Appellant Wendy Adelson took out a loan from Sebring Capital Partners LP ("Sebring") that was secured by a mortgage initially assigned to Defendant-Appellee HSBC Bank USA N.A. ("HSBC"). Sebring transferred its right to collect payments to Defendant-Appellee Ocwen Loan Servicing, LLC ("Ocwen") who sent notification of the transfer to Adelson. After making several payments, Adelson questioned Ocwen's authority to collect and refused to continue making payments to Ocwen. Ocwen referred the loan to foreclosure.

Ocwen's lawyers at Trott Law P.C. ("Trott") sent Adelson a letter indicating that Ocwen had referred all legal matters regarding the foreclosure proceedings to Trott. HSBC then purchased the home at a sheriff's sale. Adelson filed a complaint challenging the validity of the sale. Adelson alleged that Ocwen and Trott had violated the FDCPA. The district court dismissed the claim. Adelson appealed.

HOLDING: Affirmed.

REASONING: Adelson claimed that Ocwen and Trott violated the FDCPA. The court disagreed.

The FDCPA's general terms only apply to debt collectors. Collecting a debt and enforcing a security interest are not the same thing under the FDCPA. The act of enforcing a security interest is an activity not bound by the FDCPA. When Adelson defaulted, HSBC's interest was to ensure that there is a present right to take the property, an intent to take possession, and no applicable property exemption by law. Trott's principal interest on behalf of Ocwen was to enforce a security interest. Thus, because HSBC had a right to possession of the house, intended to take possession, and was allowed to do so, Trott did not violate the FDCPA.

Regarding Ocwen, the court held that a mortgage servicer can only be a debt collector if it has acquired a debt in default or has treated the debt as if it were in default at the time of acquisition. Because Adelson made payments to Ocwen the first few months and there was no evidence of Ocwen treating the debt as if it were in default at the time of acquisition, Ocwen could not be defined as a debt collector.

DEFENDANT'S RELIANCE ON THE FDCPA MODEL FORM LETTER "OVERSTATES BOTH THE MEANING AND SCOPE OF THE REGULATORY SAFE HARBOR PROVIDED BY THE CFPB"

CONSUMER ALLEGED PLAUSIBLE FDCPA CLAIMS FOR RELIEF BASED ON THE OMISSION OF THE DATE IN THE LETTER

UNDATED LETTER'S MISLEADING NATURE AS TO THE FULL AMOUNT OF THE DEBT MIGHT "BE 'UNFAIR OR UNCONSCIONABLE' TO THE LEAST-SOPHISTICATED CONSUMER"

Roger v. GC Services, LP, ___ F. Supp. 3d ___ (S.D. Fla. 2023). https://www.acainternational.org/wp-content/uploads/2023/02/rogers-gc-02-14.pdf

FACTS: Plaintiff Pablo Roger received a collection notice from Defendant GC Services. The letter was undated and requested payment of an outstanding debt. The Plaintiff contended that the omission of a date in the letter amounted to withholding a material term and characterized the letter as misleading and illegitimate. He alleged that the collection letter caused him to spend money and time mitigating risk of future financial and reputational harm.

The Plaintiff filed a complaint seeking relief from the Defendant's debt collection citing violations of the FDCPA. The Defendant moved to dismiss for failure to state a claim for relief.
HOLDING: Denied.
REASONING: The Plaintiff argued that Defendant's undated letter violated the FDCPA because the FDCPA requires collectors to supply certain information to debtors and prohibits use of false, deceptive, unfair, or unconscionable means. Defendant countered that the letter was protected by a safe harbor provision because the formatting mimicked the model form provided by the CFPB for debt collectors.

The court further held that the undated letter did not withstand the least-sophisticated consumer standard which asks whether such a consumer would have been deceived by the debt notice.

The court rejected this argument, holding that following the model format was not the same as meeting substantive requirements of the letter's contents, nor statutory compliance. Defendant's reliance on the model form, created to guide limited regulatory compliance, was misplaced. Defendant's reliance on the FDCPA model form "overstate[d] both the meaning and scope of the regulatory safe harbor provided by the CFPB."

The court further held that the undated letter did not withstand the least-sophisticated consumer standard which asks whether such a consumer would have been deceived by the debt notice. The least unsophisticated consumer could have been misled as to the amount of outstanding payment owed and disadvantaged by the unfair or unconscionable collection letter. Therefore, Plaintiff plausibly alleged violations of the FDCPA for relief based on the omission of the date in Defendant's letter.

ONE PRIVATE ENTITY KNOWING ABOUT THE PLAINTIFF'S DEBT IS NOT A PUBLIC DISCLOSURE OF PRIVATE FACTS AND DOES NOT RISE TO THE LEVEL OF SUSTAINING A CONCRETE INJURY NEEDED TO SUE UNDER THE FDCPA IN FEDERAL COURT

Shields v. Prof'l Bureau of Collections of Maryland, ___ F.4th ___ (10th Cir. 2022).
https://buckleyfirm.com/sites/default/files/Buckley%20InfoBytes%20-%20Shields%20v.%20Professional%20Bureau%20of%20Collections%20of%20Maryland%20-%20Order%20-%202022.12.16.pdf

FACTS: Defendant-Appellant Professional Bureau of Collections of Maryland ("Professional Bureau") used an outside mailer to compose and send Plaintiff-Appellee Elizabeth Shields three collection notices related to her student loans. Shields sued Professional Bureau under the Fair Debt Collection Practices Act ("FDCPA") for communicating her debt to the mailer.

Professional Bureau moved to dismiss Shields' claims due to lack of standing, arguing Shields had no concrete injury. The district court granted the motion. Shields appealed.
HOLDING: Affirmed.
REASONING: Shields relied on the tort of public disclosure of private facts to allege that Professional Bureau violated the FDCPA and subsequently injured her by publicly disclosing her debt total to a mailer. The court disagreed.

The element of publicity is necessary to sustain a claim of public disclosure. The court defined "publicity" as information conveyed to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The court held that without publicity, there is no invasion of privacy, and no harm suffered from public disclosure. The court determined that Professional Bureau's communication to the outside mailer did not constitute a communication to the public at large, nor to someone likely to widely communicate Shields' debt. One private entity knowing about a plaintiff's debt is not a disclosure of private facts and is not sufficient to constitute a concrete injury needed to sue under the FDCPA. Thus, because there was no public communication, the court concluded that Shields failed to establish evidence of a concrete injury.