DEBT COLLECTION

INDIANA COURT OF APPEALS HOLDS A DEBT BUYER WHO PURCHASED A PORTFOLIO OF DEFAULTED STUDENT LOANS AND PLACED AN ACCOUNT WITH A COLLECTION AGENCY QUALIFIES AS A "DEBT COLLECTOR" UNDER FAIR DEBT COLLECTION PRACTICES ACT

Rock Creek Capital LLC v. Tibbett, ___ N.E.2d ___ (Ind. Ct. App. 2024). https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/880/2024/05/Rock-Creek-Capital-v.-Tibbett_-_opinion.pdf

FACTS: On September 10, 2020, Rock Creek Capital LLC ("Rock Creek"), a company that purchases predominantly student loan debt as well as other types of debt, filed a complaint alleging Brianna Tibbett ("Tibbett") had enrolled as a student in a medical assistant education program with Ross Education, LLC, agreed to pay tuition, had an outstanding balance, and had breached her contractual obligations.

Tibbett later filed a motion for summary judgment alleging that she did not owe Rock Creek anything, Rock Creek lacked standing to collect any debt from her, and Rock Creek had no evidence that it owned any account or alleged debt. The motion was denied.

On April 20, 2021, Tibbett filed a Counterclaim and Class Action which asserted in part that Rock Creek committed unfair and deceptive acts which violated the Fair Debt Collection Practices Act ("FDCPA") because Rock Creek was not licensed to collect consumer debt in Indiana.

On June 9, 2021, Rock Creek filed an answer and affirmative defenses to Tibbett's counterclaim. Rock Creek denied "falsely representing that it had the legal right to collect the debt from Tibbett" and asserted that it possessed the legal right to do so.

On September 17, 2021, Rock Creek filed a motion for partial summary judgment asserting that it was "not a collection agency" as defined by the Indiana Code and did not need a license to collect on the underlying debt. Rock Creek requested partial summary judgment determining that an Indiana license to collect on the underlying debt was not required. The argument was that because they are collecting debt owed to their company on their own behalf they don't qualify as a collection agency because collection agencies collect debts owed to others. On March 31, 2022, Senior Judge Thacker entered an order granting the motion for partial summary judgment. Importantly, Senior Judge Thacker was sitting in for Judge Thompson when he granted the motion.

On June 7, 2022, Tibbett filed a Combined Memorandum in Response to Rock Creek's Motion for Summary Judgment and Supporting Tibbett's Cross-Motion for Summary Judgment which argued that Rock Creek was a debt collector as defined by 15 U.S.C. and was a supplier under the Indiana Deceptive Consumer Sales Act. She concluded that she was entitled to partial summary judgment because the FDCPA foundational requirements were met, and Rock Creek violated the FDCPA and the Indiana Deceptive Consumer Sales Act.

On August 4, 2022, Tibbett filed a Motion for Pending Matters to be Determined by Presiding Judge or Alternatively, for Designation of Judge. Tibbett asserted she had been prejudiced by inconsistent rulings and forfeiture of statutory right.

On January 10, 2023, Judge Thompson entered an order finding that Rock Creek was a debt collector and supplier and was subject to the FDCPA and the Indiana Deceptive Consumer Sales Act. The court granted Tibbett's motion for partial summary judgment and concluded that Rock Creek violated the FDCPA and the Indiana Deceptive Consumer Sales Act.

Rock Creek appealed the entry of partial summary judgment in favor of Tibbett.

HOLDING: Affirmed

REASONING: On appeal, Rock Creek argued that it was not a collection agency under the Indiana Collection Agency Act, asserting that the Act's definition of "collection agency" refers to entities collecting debts owed to another, not to themselves. Because Tibbett's debt was owed directly to Rock Creek and not "to another," Rock Creek maintained it was not a "collection agency" and therefore not required to obtain a license to collect its own debts. Rock Creek also argued it was not subject to the FDCPA because it did not meet the statutory definition of a debt collector.

The court analyzed the language of 15 U.S.C. § 1692a(6), which defines a "debt collector" as any person who uses any instrumentality of interstate commerce or the mails in any business with the principal purpose of collecting any debts.

In response, Tibbett argued that the Indiana collection agency statute provides two independent bases for determining if a person is a collection agency, including entities engaging in collecting claims owed or asserted to be owed to another. She also contended that Rock Creek was a debt collector under the FDCPA, emphasizing that the key question for FDCPA coverage of debt buyers is whether their principal purpose is debt collection.

The court analyzed the language of 15 U.S.C. § 1692a(6), which defines a "debt collector" as any person who uses any instrumentality of interstate commerce or the mails in any business with the principal purpose of collecting any debts or who regularly collects or attempts to collect debts owed or due to another. The court explained that this definition includes entities like Rock Creek that collect their own debts, particularly when their primary business is the purchase and collection of defaulted debt. The court noted that Welch, a manager at Rock Creek, testified under oath that purchasing defaulted debt was Rock Creek's primary business pursuit.

Therefore, the court held that Rock Creek was a "debt collector" under both the FDCPA and the Indiana Deceptive Consumer Sales Act. It concluded that the statutory definitions and Rock Creek's business practices met the criteria for a debt collector as defined by 15 U.S.C. § 1692a(6).

DEBT COLLECTOR SENT PLAINTIFFS COLLECTION LETTERS SEEKING TO RECOVER ALLEGED OVERPAYMENTS ON GRANTS

DEBT COLLECTOR'S LETTERS THREATENED LEGAL ACTION BUT DID NOT STATE THE DEBT MAY BE TIME-BARRED OR UNENFORCEABLE

Calogero v. Shows, Cali & Walsh, LLP, 2024 U.S. Dist. LEXIS 102444 (E.D. La. 2024).
https://caselaw.findlaw.com/court/us-5th-circuit/115937731.html

FACTS: This case arises from alleged violations of the Fair Debt Collection Practices Act ("FDCPA") stemming from Shows, Cali & Walsh LLP's ("Defendant") attempt to collect repayment of grant funds Iris Calogero and Margie Nell Randolph ("Plaintiffs") received from the Louisiana Road Home program following Hurricanes Katrina and Rita.

Following the devastation from these hurricanes, the State tasked the Louisiana Office of Community Development (the "OCD") and the Louisiana Recovery Authority with administering the Road Home program, which distributed Department of Housing and Urban Development's Community Block Grant's funds to Louisiana homeowners who sustained unreimbursed hurricane-related damage.

Plaintiffs contracted with the OCD for a homeowner's compensation grant in 2007 and received the money the same year. When they signed their grant agreements, Plaintiffs acknowledged their obligation to disclose any funds they received from FEMA or private insurers and that they could be sued for their failure to do so.

The State later hired Defendant to assist with efforts to recover the amount of unreported funds that resulted in grant overpayments. In 2017 and 2018, Defendant sent Plaintiffs collection letters seeking to recover overpaid grant funds. The letters also advised Plaintiffs that if no action was taken to resolve the matter within 90 days, Road Home may proceed with legal action against them.

Plaintiffs claimed that the Defendant's communications were intimidating and caused emotional distress. They subsequently entered into payment plans to repay the alleged overpayments. Plaintiffs then filed a lawsuit against the Defendant, alleging FDCPA violations, including the improper attempt to collect a time-barred debt.

In 2021, the parties filed cross-motions for summary judgment. The lower court granted summary judgment in favor of Defendant. Plaintiffs appealed.

HOLDING: Reversed and remanded

REASONING: The Fifth Circuit reversed the summary judgment ruling of the lower court and held that a reasonable jury could find that Defendant violated the FDCPA in multiple ways, one of which was by misrepresenting the judicial enforceability of the time-barred debts.

While the court did not definitively decide which statute-of-limitations period applied to Plaintiffs' time-barred debt allegation, the court held that the letters were untimely even under the most liberal 10-year window.

PLAINTIFF HAS STANDING BASED ON THE LIEN PLACED ON HER HOME AND DEFENDANT'S ALLEGED IMPROPER LAWSUIT.

DISPUTED ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT ON PLAINTIFF'S §1692E CLAIMS BASED ON DEFENDANT'S CONDUCT IN OBTAINING THE DEFAULT JUDGMENT.

PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON HER §1692E CLAIMS BASED ON DEFENDANT'S CONDUCT IN OBTAINING THE DEFAULT JUDGMENT.

Carrera v. Allied Collection Servs., Inc., ___ F. Supp. ___ (D. Nev. 2024).
https://casetext.com/case/carrera-v-allied-collection-servs-4

FACTS: Plaintiff Margarita Carrera ("Carrera") alleged that Allied Collection Services, Inc. ("Allied") obtained a default judgment against her based on a debt she did not owe. Carrera claimed she only began banking with Chase in 2019, well after the alleged debt was incurred. In 2022, Allied renewed the judgment and placed a lien on Carrera's home, preventing her from selling the property and obtaining a home equity loan. Carrera filed suit under the Fair Debt Collection Practices Act (FDCPA), asserting that Allied's conduct in obtaining and enforcing the judgment was improper and caused her tangible harm. She contended that Allied's actions violated §1692e of the FDCPA, which prohibits false, deceptive, or misleading representations in debt collection. Carrera also claimed that Allied misrepresented her ownership of a Chase Bank account in state court proceedings, leading to the default judgment against her, and that Allied failed to produce any agreement proving her liability for the debt.

HOLDING: Granted in part; denied in part.

REASONING: Carrera argued that the lien on her home and the alleged improper lawsuit by Allied constituted concrete injuries that conferred standing under Article III. The court accepted this argument, noting that the lien was a tangible harm that affected Carrera's property rights and financial opportunities. The court further reasoned that the alleged improper conduct by Allied in initiating the state court lawsuit bore a close relationship to the well-recognized tort of wrongful use of civil proceedings, thus establishing a concrete injury necessary for standing.

The court rejected Allied's motion for summary judgment on Carrera's §1692e claims, explaining that a genuine dispute of material fact existed regarding Carrera's ownership of the account. The court noted that Allied had not produced the underlying agreement proving Carrera's liability, and Carrera's sworn statements disavowing ownership created a triable issue. This unresolved factual dispute precluded summary judgment on the §1692e claims.

The court found that Carrera provided sufficient evidence to establish that Allied misrepresented her ownership of the

debt, specifically its failure to produce the agreement proving her liability. Allied's actions were deemed improper and constituted a violation of §1692e. Consequently, the court granted summary judgment in favor of Carrera on her §1692e claims.

DEBTOR FAILED TO SHOW AN INJURY IN FACT, LACKED ARTICLE III STANDING IN FDCPA SUIT

George v. Rushmore Serv. Ctr., LLC, ___ F. 4th ___(3d Cir. 2024).
https://caselaw.findlaw.com/court/us-3rd-circuit/116478089.html

FACTS: Appellant Alison George filed a lawsuit against Defendant Rushmore Service Center, LLC, i.e. Rushmore, alleging violations of the Fair Debt Collection Practices Act ("FDCPA") based on a collection letter she received in April 2018. The letter identified Premier Bankcard, LLC, the collection arm, as the "current/original creditor" for George's credit card debt. George claimed the naming of the collection arm on the letter was misleading because First Premier Bank, not Premier Bankcard, was the actual creditor.

The court noted that under Article III, a plaintiff must show a concrete injury to have standing.

George sought to represent a class of consumers who received similar letters as the deceptive letters would have left "the least sophisticated consumer" confused about whom the debt was owed and if it was legitimate. The District Court granted Rushmore's motion to stay proceedings and compel individual arbitration, who ruled in Rushmore's favor, and before the District Judge, who declined to vacate the arbitration award. George appealed.

HOLDING: Vacate and remanded.

REASONING: In asserting a FDCPA claim, the court agreed the complaint lacked specificity as it did not allege that George herself was confused or suffered any specific harm because of the letter. George called into question whether confusion alone is sufficient to allege a concrete injury in this context.

The court noted that under Article III, a plaintiff must show a concrete injury to have standing. In George's case, the amended complaint only suggested that the letter might confuse "the least sophisticated consumer," but did not claim that George herself was confused or suffered any adverse consequences. The court cited precedents, including TransUnion LLC v. Ramirez and Huber v. Simon's Agency, Inc., which emphasize the need for a concrete and particularized injury to establish standing. Because George did not allege such an injury, the court held that she lacked standing from the outset, rendering the District Court's orders void. The case was remanded with instructions to dismiss for lack of jurisdiction.