RECENT DEVELOPMENTS

DEBT COLLECTION

AN ACT OF FORECLOSURE IS "DEBT COLLECTION" FOR PURPOSES OF THE TEXAS DEBT COLLECTION PRACTICES ACT

Hennigan v. PHH Mortg. Corp., ___ F. Supp. 3d ___ (W.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txwdce/5:2025cv00115/1172823083/26/

FACTS: Defendant PHH Mortgage Corporation ("PHH") initiated foreclosure proceedings against Plaintiff Mark Hennigan's residence to service a mortgage loan for Defendant Mount North Capital ("Mount North"). Hennigan filed suit against both Defendants, alleging violations of the Texas Debt Collection Practices Act ("TDCPA") among other claims. Defendants jointly moved to dismiss the complaint for failure to state a claim.
HOLDING: Denied.
REASONING: Hennigan alleged that PHH failed to provide the required notice to cure default under Texas law and that PHH's misrepresentations caused him to delay seeking other options to avoid foreclosure. The court recognized that the TDCPA regulates foreclosure actions by mortgage servicers, including specific notice obligations under the Texas Property Code. While the Texas Supreme Court has not definitively ruled on whether the TDCPA applies to foreclosure, federal courts in Texas have held that foreclosure constitutes "debt collection" under the TDCPA. The court found that threatening to terminate a contract without providing the legally required notice could violate the TDCPA. Hennigan's allegations—that PHH proceeded with foreclosure despite notice deficiencies and misrepresented his eligibility for loss mitigation—were sufficient to state a plausible claim under the TDCPA. Accordingly, the motion to dismiss was denied.

Federal courts in Texas have held that foreclosure constitutes "debt collection" under the TDCPA.

TEXAS DEBT COLLECTION ACT CLAIMS ARE SUBJECT TO A TWO-YEAR STATUTE OF LIMITATIONS

PLAINTIFF DID NOT PLEAD SUFFICIENT FACTS TO PLAUSIBLY STATE A CLAIM FOR A WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT

Schultz v. HomeBridge Fin., Servs., Inc., 2025 U.S. App. LEXIS 12502 (5th Cir. 2025).
https://www.govinfo.gov/content/pkg/USCOURTS-ca5-24-50193/pdf/USCOURTS-ca5-24-50193-0.pdf

FACTS: Plaintiff Danielle Schultz ("Schultz") obtained a mortgage serviced by Defendant HomeBridge Financial Services, Inc. ("HomeBridge"). In August 2020, a duplicate payment processing error led HomeBridge to incorrectly report Schultz's account as delinquent. Schultz later purchased a Texas property but faced loan denial in November 2020 due to the erroneous delinquency reporting. Schultz sued HomeBridge in September 2021, alleging violations of the Fair Credit Reporting Act ("FCRA"). In February 2023, she amended her complaint to add claims under the Texas Debt Collection Act ("TDCA"), alleging HomeBridge made misrepresentations about her debt and refund between August and November 2020. HomeBridge moved to dismiss under Rule 12(b)(6). The district court granted the motion, finding that the TDCA claims were time-barred and that the FCRA claims did not plausibly plead a willful violation or actual damages. Schultz appealed.
HOLDING: Affirmed dismissal of the FCRA and TDCA claims. Reversed dismissal of negligent FCRA claim.
REASONING: The district court dismissed Schultz's TDCA claims as time-barred under Texas's two-year statute of limitations. The alleged misconduct occurred between August and November 2020, but Schultz first raised these claims in her amended complaint filed in February 2023. The court held that the TDCA claims did not "relate back" to the original September 2021 complaint under Fed. R. Civ. P. 15(c), which exclusively alleged FCRA violations related to credit reporting errors and included no factual allegations about debt collection practices or misrepresentations. Because the TDCA claims arose from distinct conduct and were filed after the limitations period expired, the court found them untimely.

Schultz also alleged that HomeBridge willfully violated the FCRA by knowingly failing to correct a payment error, refusing to reverse duplicate payments, and disregarding proof of payment. She argued this conduct amounted to reckless misrepresentation or concealment. The court disagreed, finding that her allegations did not show intentional or reckless disregard of FCRA obligations, which, under precedent, required a "substantially greater risk of harm" than mere negligence. It also emphasized that FCRA liability attaches only after a credit agency dispute—filed in January 2021—so pre-dispute conduct could not support a willfulness claim.

However, the court found that Schultz's inability to secure loan financing in November 2020 due to HomeBridge's error constituted "actual damages," satisfying the elements for an FCRA negligence claim. It therefore reversed the district court's dismissal of that claim and remanded for further proceedings.

COMPLAINT LACKED SUFFICIENT FACTUAL ALLEGATIONS TO SUPPORT A PLAUSIBLE CLAIM UNDER THE FDCPA

Rux v. Smart, 2025 U.S. Dist. LEXIS 104761 (W.D. Tex. 2025).
https://law.justia.com/cases/federal/district_courts/texas/txwdce/5:2024cv00577/1172789501/41/

FACTS: Plaintiff Thomas Vincent Rux ("Rux"), appearing pro se, sued Defendant Carl Arthur Smart ("Smart"), an attorney for Wells Fargo Bank, alleging violations of debt collection practices. Smart moved to dismiss, and the court granted the motion unopposed after Rux failed to respond or amend his complaint for four months. The court later granted Rux's motion to reopen the case. Rux then filed an amended complaint, alleging encroachment and trespass in violation of the Fair Debt Collection Practices Act ("FDCPA"). Smart again moved to dismiss, arguing that Rux failed to state a claim.
HOLDING: Granted.
REASONING: Rux's amended complaint asserted that Smart "trespassed and encroached" by pursuing a lawsuit without validating the debt and failed to "provide proof" that he was not impersonating Wells Fargo. The court found these assertions to be conclusory and lacking the factual allegations necessary to support a plausible FDCPA claim under § 1692g. Rux did not allege that Smart was a debt collector as defined by the FDCPA, that Rux was the object of collection activity by Smart, or that Rux properly disputed or sought validation of the debt. As a result, the court dismissed Rux's FDCPA claim with prejudice for failure to allege sufficient facts to state a plausible claim for relief under the statute.

Rux did not allege that Smart was a debt collector as defined by the FDCPA, that Rux was the object of collection activity by Smart, or that Rux properly disputed or sought validation of the debt.

IN DETERMINING WHETHER A COMMERCIAL LOAN IS USURIOUS UNDER TEXAS STATE LAW, THE "ACTUARIAL METHOD" MUST BE EMPLOYED

A LOAN IS NOT DEEMED USURIOUS WHEN THE INTEREST EXCEEDS THE MAXIMUM AMOUNT ALLOWED BY LAW, BUT INSTEAD WHEN THE LOAN'S INTEREST IS SPREAD OUT OVER THE CONTRACT'S ENTIRE TERM

Am. Pearl Grp., L.L.C. v. Nat'l Payment Sys., L.L.C., 2025 Tex. LEXIS 424 (Tex. 2025).
https://www.txcourts.gov/media/1460588/240759.pdf

FACTS: Plaintiff-Appellant American Pearl Group ("Pearl"), a commercial borrower, sued its lender, National Payment Systems ("NPS"), seeking a declaratory judgment that the loan and associated option agreement imposed unlawful interest charges, specifically, that the agreement imposed interest in excess of the 28% per annum maximum permitted by Texas law. The district court calculated allowable interest using the "equal parts" method—multiplying the original principal by the maximum lawful rate and the loan's full term—to conclude the loan did not violate usury laws. The district court granted NPS's motion to dismiss and later denied Pearl's motion for reconsideration. Pearl appealed this decision, asserting that Texas law required use of the "actuarial method."

On appeal, the Fifth Circuit Court of Appeals certified the issue to the Texas Supreme Court.
HOLDING: Affirmed.
REASONING: NPS advocated for applying the "equal parts" method of interest calculation, claiming it provided a simpler and predictable standard for usury analysis.

The Texas Supreme rejected NPS's argument, emphasizing in 1997, the Texas Legislature amended Texas Finance Code Section 306.004(a) to replace interest "spread in equal parts" with interest "amortized or spread, using the actuarial method." The court reasoned that this statutory revision was a deliberate change, mandating use of the actuarial method.

Although the statute does not define "actuarial method," the court adopted its plain meaning, requiring that interest be calculated on the declining principal balance for each payment period. The court concluded that applying the "equal parts" method to a loan with periodic principal payments would miscalculate interest by ignoring the declining balance. Therefore, the statute mandates that interest be calculated based on the declining principal for each payment period.

Under this approach usury is determined by calculating whether the total interest, when amortized period by period using the declining outstanding principal, exceed the lawful maximum over the entire loan term. Thus, even if scheduled interest exceeds the maximum rate in any one year, a loan is not usurious unless the total contracted interest, spread over the full term and calculated on the declining principal, surpasses the maximum allowed.

CONSUMERS WHO RECEIVED LETTERS THREATENING LEGAL ACTION IF THEY DID NOT PAY DEBT COLLECTOR CAN'T GET CLASS CERTIFICATION

Lezark v. I.C. Sys., 2025 U.S. Dist. LEXIS 101679 (W.D. Pa. 2025).
https://law.justia.com/cases/federal/district-courts/pennsylvania/pawdce/2:2020cv00403/265302/142/

FACTS: Plaintiff ("Lezark") received a debt collection letter ("540 Letter") from Defendant ("I.C. System"), stating that failure to make contact regarding payment could result in "additional remedies to recover the balance due, including referring the account to an attorney." Lezark filed suit, alleging that the letter violated the Fair Debt Collection Practices Act ("FDCPA") and sought class certification on behalf of other consumers who received similar letters. Lezark argued that the Proposed Class and Proposed Alternative Class satisfy all the requirements for certification under Rules 23(a) and 23(b)(3).
HOLDING: Motion denied.

REASONING: Lezark argued that Rule 23(b)'s predominance requirement was met because based on the Claim Form Questionnaire, the Proposed Alternative Class members have all identified injuries similar to his own.

The court found that Lezark did not satisfy the predominance requirement of Rule 23(b). The court emphasized that the question at the class certification stage is not whether putative class members can make an initial showing of standing, but whether it is "likely" that they can establish through summary judgment and at trial, that they have standing without the need for the court to resolve individualized questions that will overwhelm common questions. Where the Proposed Alternative Class members' standing is premised on suffering emotional distress in response to the 540 Letter, the evidence required will be necessarily individualized and highly specific to each member.

Determining whether a member suffered emotional distress would necessarily entail the development of a considerably more robust factual record than the one-sentence response provided in the Claim Form Questionnaire.

Here, determining whether a member suffered emotional distress would necessarily entail the development of a considerably more robust factual record than the one-sentence response provided in the Claim Form Questionnaire. It could involve deposition testimony, direct and cross examination, and the production of documents and medical records. Because Lezark has not met his burden regarding Rule 23(b)(3)'s predominance requirement, the court denied his motion for class certification.

Lezark relied on the Supreme Court's decision in *Havens* to establish class member standing. However, the court noted that *Havens* was brought under the Fair Housing Act, not FDCPA and the injury suffered was different from the one in the current case. Subsequently, the court held that establishing standing and predominance under the FDCPA would still necessitate resolving individual factual issues for each member.