

RECENT DEVELOPMENTS

CONSUMER CREDIT

CUSTOMER CAN SUE OVER FORGED CONVENIENCE CHECKS UNDER FCRA

Meyer v. F.I.A. Card Services, N.A., ____ F.Supp.2d ____ (D.Minn. 2011).

FACTS: Nancy Meyer was a victim of fraud when her live-in fiancé, Jason Clark, stole convenience checks from two of her F.I.A. issued credit cards and forged her signature to cash the stolen checks. The accounts at issue were opened in 2000 and 2003, but at the time the fraudulent activity began, Meyer had not used the accounts in several years. Clark's scheme consisted of intercepting the checks at the couple's shared home, writing the checks out for cash, signing Meyer's name, and depositing the checks into Meyer's account. Clark pretended the deposited checks came from his own income. Clark would then

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ask Meyer to write him checks to cover his bills. In addition, he asked Meyer for checks in various amounts that he claimed were for paying contractors for a business he was allegedly starting. He filled in the "pay to the order" line himself, and instead of paying the fictitious contractors, he made payments to cover his tracks.

Meyer learned of the charges in 2008 when FIA called her to inquire about the past-due status of the two accounts. After realizing Clark had been defrauding her, she contacted FIA and informed them she was the victim of fraud. FIA denied her claim of fraud on the basis that the checks had been deposited into her own account. FIA reported the accounts to credit re-

porting agencies ("CRAs") as delinquent. Meyer disputed the accounts and FIA subsequently marked the bills as "in dispute," checked Meyer's identity information, and called her bank to verify that the checks had been deposited into her account. FIA then classified Meyer's claim as not being fraudulent and reported this to the CRAs. Meyer sent another dispute letter to the CRAs, and the CRAs requested that FIA check the signatures on the checks for possible forgery. FIA did not check the signatures as requested or conduct any further investigation, but followed the exact same procedure as before. Meyers filed a complaint, alleging FIA violated the Fair Credit Reporting Act by failing to conduct a reasonable investigation of her fraud claim. FIA moved for summary judgment.

HOLDING: Motion Denied.

REASONING: Pursuant to Section 1681s-2 of the FCRA, once FIA received notice of Meyer's dispute from a CRA, it was required to conduct a reasonable investigation to determine whether the disputed information could be verified. "The reasonableness of the investigation depends on the facts of the case, most importantly the CRA's description of the dispute in its notice." *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1160 (9th Cir. 2009).

The evidence indicated that Meyers informed FIA four times of potential fraud on her account, and, despite the multiple notices of fraud, the FIA conducted its standard investigation and went no further. The court found FIA's review of its records cursory and called into question the reasonableness of the investigation: "FIA did not check for forgery, despite clear evidence that it had notice of fraud, and specific requests from the CRAs to check for forgery." The court determined that Meyer's claim should survive a motion for summary judgment because the jury could find FIA's investigation unreasonable given the facts of the case.

DEBT COLLECTION

COMMUNICATION DIRECTED TO CONSUMER'S ATTORNEY IS ACTIONABLE UNDER FDCPA

Allen v. LaSalle Bank, 629 F.3d 364 (3rd Cir. 2011).

FACTS: Dorothy Rhue Allen purchased a home and failed to make the last payment of her mortgage. She was declared in default and Fein, Such, Kahn & Shepard, P.C. law firm ("FSKS"), brought a mortgage foreclosure action against Allen on behalf of the bank LaSalle Bank, N.A. FSKS sent a letter to Allen's attorney that contained overcharges in fees as well as the remaining balance on the principal. Allen claimed this communication violated the Fair Debt Collection Practices Act, which prohibits debt collectors from using unconscionable means to collect debt. FSKS asserted that the communication between a debt collector and a consumer's attorney is not covered under the FDCPA. The U.S. District Court for the District of New Jersey granted the law firm's motion to dismiss.

HOLDING: Vacated and Remanded.

REASONING: The purpose in enacting the FDCPA was to eliminate abusive debt collection practices. A debt collector may not use unfair or unconscionable means to collect or attempt to collect debt, and attorneys are regarded as debt collectors when they collect consumer debts through litigation regularly. The scope of the FDCPA is broad and applies regardless of to whom the communication was directed. A violation of the FDCPA exists even without proof of intent. A communication is defined under the statute as the conveying of information regarding a debt directly or indirectly to any person through any medium. The court held that communication to a consumer's attorney is an indirect communication to the consumer. Therefore, the communication should be analyzed from the perspective of a competent attorney.