DEBT COLLECTION

MORTGAGEE'S DISCUSSIONS WITH HOMEOWNERS REGARDING LOAN MODIFICATION WERE NOT COMMUNICATIONS IN CONNECTION WITH A DEBT UNDER TDCA

Singha v. BAC Home Loans Serv., L.P., 564 Fed. App'x. 65 (5th Cir. 2014).
http://www.ca5.uscourts.gov/opinions%5Cunpub%5C13/13-40061.0.pdf

FACTS: Appellants, Robert and Amarjit Singha ("Singhas"), signed a promissory note deed of trust naming the Mortgage Electronic Registration System ("MERS") as beneficiary in connection with a residential home purchase. MERS subsequently assigned the deed to appellee, BAC Home Loans Servicing, L.P. ("BAC"). After defaulting on the loan two years later, the Singhas and BAC modified the loan agreement. BAC accepted several payments but then rejected a payment, asserting it would only accept full reinstatement. The Singhas again requested modification but did not finish the paperwork and submitted the partially completed application two weeks before the scheduled foreclosure sale. BAC denied their request for modification, and the property was sold at a foreclosure sale.

The Singhas brought suit in Texas state court. BAC removed the case to Texas federal district court. The district court dismissed the Singhas' claims for breach of contract, claims under the Texas Debt Collection Act ("TDCA"), and various tort claims. The Singhas appealed.
HOLDING: Affirmed.
REASONING: The Singhas claimed that BAC was not a proper mortgagee and had no right to foreclose, and by notifying the debtor of that foreclosure, BAC had falsely represented that it had such a right. Specifically, a BAC representative told the Singhas that BAC would modify the loan if they made all payments required under the first agreement and later represented that the loan had been modified. The court found that BAC was a proper mortgagee, so threatening foreclosure was expressly permitted by the TDCA.

While the court did not expressly hold that modification discussions would never be debt collection activities, it concluded that the Singhas' specific communications with BAC were not misrepresented communications in connection with debt collection. Rather, they were communications related to the negotiation of the modification of a debt.

DEBTOR GENERALLY IS NOT REQUIRED TO SHOW INTENTIONAL OR KNOWING VIOLATION UNDER FAIR DEBT COLLECTION PRACTICES ACT ("FDCPA") AND MAY ASSERT CLAIM WITHOUT FIRST DISPUTING THE DEBT

Russell v. Absolute Collection Servs., Inc., 763 F.3d 385 (4th Cir. 2014).
http://www.ca4.uscourts.gov/Opinions/Published/122357.P.pdf

FACTS: Appellee, Diane Russell ("Russell"), owed a debt to Sandhills Emergency Physicians ("Sandhills"), so Sandhills hired debt collector appellant, Absolute Collection Services, Inc. ("ACS"). Russell paid the debt to Sandhills directly instead of ACS. Despite this complete payment, ACS sent demand letters falsely asserting the debt remained due and threatened to report it to credit bureaus as past due.

Russell did not dispute the debt as authorized by the FDCPA, but filed suit under the Act. Russell claimed that she was not required to prove ACS intentionally or knowingly violated the FDCPA in order to recover damages. The district court denied ACS's motion for judgment as a matter of law. ACS appealed.
HOLDING: Affirmed.
REASONING: ACS argued that a debtor must: (1) dispute the debt before filing a claim under the FDCPA; and (2) prove an intentional or knowing violation on the part of the debt collector. The court held that the FDCPA does not require a debtor to first dispute the validity of a debt in order to state a claim under §1692e. ACS's interpretation would give collectors free rein to make false or deceptive representations about the status of a debt if the debtor failed to dispute the debt.

Russell did not dispute the debt, as authorized by the FDCPA, but filed suit under the Act.

The court also held that a debtor is not required to show an intentional or knowing violation on the part of the debt collector to recover damages. The FDCPA excludes liability for unintentional violations resulting from bona fide errors, Russell was entitled to recover damages because ACS did not prove the violations resulted from a bona fide error as defined in the Act.

TEXAS AND FEDERAL DEBT COLLECTION ACTS REQUIRE CONSUMER DEBT

Garcia v. Jenkins Babb, L.L.P., 569 Fed. App'x. 274 (5th Cir. 2014).
https://www.ca5.uscourts.gov/opinions%5Cunpub%5C13/13-10886.0.pdf

FACTS: Appellants, Israel and Melissa Garcia ("Garcias") incurred a debt that appellees, Jenkins/Babb, L.L.P. ("Jenkins Defendants"), were contracted to collect. The Jenkins Defendants initiated a collection action in state court against the Garcias, and a judgment was entered.

The Garcias responded by filing suit in federal court alleging that the Jenkins Defendants' attempts to collect the debt violated the FDCPA and the TDCPA. The district judge found that the Garcias' complaint lacked any facts to suggest that their debt was incurred through a consumer transaction, and dismissed the claims with prejudice. The Garcias appealed.
HOLDING: Affirmed.
REASONING: The court held that for a collection practice to be actionable under the FDCPA and TDCPA, the debt at issue must have arisen from a consumer transaction. The Garcias failed to factually support this allegation. The court noted that the FDC-

PA and TDCPA both expressly require consumer debt obligations to have been incurred primarily for personal, family, or household purposes.

In determining whether a debt is a consumer debt, the court focused on the precise transaction for which the loan proceeds were used. A complaint based on the FDCPA or TDCPA could not survive a motion to dismiss if it merely restates language from the statute without any accompanying facts. The court explained that because the Garcias did not specify what item was purchased, what service was paid for, or whether the item or service was intended for personal or family use, they failed to identify facts fundamental to their claim.

FDCPA REQUIRES SUIT TO BE FILED IN THE SMALLEST GEOGRAPHIC AREA THAT IS RELEVANT FOR DETERMINING VENUE

Suesz v. Med–1 Solutions, L.L.C., 757 F.3d 636 (7th Cir. 2014). http://law.justia.com/cases/federal/appellate-courts/ca7/13-1821/13-1821-2013-10-31.html

FACTS: Defendant Med-1 Solutions ("Med-1"), a debt collector, sued Plaintiff Mark Suesz ("Suesz") in small claims court. The court where Med-1 filed suit was located in a township where neither Suesz lived nor where the contract for which he was being sued was signed. Subsequent to a judgment entered against him, Suesz asserted that Med-1 had a practice of filing collection lawsuits in small claims courts located in townships where the debtor defendants neither live nor sign the contracts on which they are sued.

Suesz filed suit against Med-1 for violating the FDCPA venue provision. The district court dismissed the case, stating that pursuant to the standard for the key statutory term "judicial district" set out in *Newsom v. Friedman*, 76 F.3d 813 (7th Cir. 1996), townships were not separate judicial districts, and that debt collectors were permitted to file suit in any township within the county. Suesz appealed, and the Seventh Circuit affirmed. Suesz' petition for rehearing en banc was granted.

HOLDING: Reversed and remanded.

REASONING: The court evaluated the *Newsom* approach for defining the FDCPA's venue protection provision's statutory term in controversy, "judicial district." To protect vulnerable debtors from forum-shopping—a common abusive debt collection tactic that makes default more likely—the FDCPA states that a debt collector must sue to collect a debt only in the "judicial district or similar legal entity" in which the consumer signed the contract in question or in which the consumer resides at the commencement of the action. The court reasoned that the township small claims courts in the county in this case must be regarded as occupying separate judicial districts in order to effectuate the statute's protection, and thus overturned *Newsom*.

The correct interpretation of "judicial district" is the smallest geographical area relevant to venue in the court system in which the case is filed.

The Seventh Circuit then sought to determine a new standard for defining a relevant judicial district or similar legal entity. The court stated that *Newsom*'s plain language approach did not provide meaningful guidance because the language was too vague. The court also highlighted the inadequacy of *Newsom*'s alternative court administration approach, displaying how the approach resulted in more debt collection abuse in the present case. The court adopted a venue approach that focuses on geographic divisions rather than jurisdiction and thus concluded that the correct interpretation of "judicial district" is the smallest geographical area relevant to venue in the court system in which the case is filed.