DEBT COLLECTION

DEBT COLLECTOR'S LETTER STATING FORGIVENESS OF THE DEBT WILL BE REPORTED TO THE IRS MAY VIOLATE FDCPA

Schultz v. Midland Credit Mgmt., Inc., 905 F.3d. 159 (3d Cir. 2018).
https://law.justia.com/cases/federal/appellate-courts/ca3/17-2244/17-2244-2018-09-24.html

FACTS: Plaintiff-Appellants, Robert A. Schultz, Jr. and Donna Schultz (the "Schultzes") were debtors of Defendant-Appellee, Midland Credit Management, Inc. ("Midland"). On six occasions, Midland sent letters to the Schultzes, attempting to collect three separate outstanding debts that had been outsourced to Midland for collection after default. Each letter offered to settle for less than the full amount owed. Four of the letters stated, "[i] f you pay your full balance we will report your account as Paid in Full. If you pay less than your full balance, we will report your account as Paid in Full for less than the full balance." All of the letters stated, "[w]e are not obligated to renew this offer. We will report forgiveness of debt as required by IRS regulations. Reporting is not required every time a debt is canceled or settled, and might not be required in your case." None of the Schultzes' three debts exceeded the $600 minimum amount at which the Department of the Treasury requires an entity or organization to report a discharge of indebtedness to the IRS.

The Schultzes filed a punitive class action, asserting that the inclusion of the language was false or misleading, in violation of the FDCPA. Midland moved to dismiss, claiming the Schultzes failed to plead a plausible violation of the FDCPA. The district court granted Midland's motion, concluding that the language set forth in the letters was not violative of the FDCPA. The Schultzes appealed.

HOLDING: Reversed and remanded.

REASONING: The Schultzes argued that by including the language, "[w]e will report forgiveness of debt as required by IRS regulations," Midland presented a false or misleading view of the law in order to scare or intimidate the Schultzes into paying the outstanding debts listed in the letters, even though Midland knew that any discharge of the Schultzes' debt would not be reported to the IRS. Midland argued that in order to conclude that a consumer would be misled by this statement, one would have to ignore the conditional word "might" in the qualifying statement that "[r]eporting is not required every time a debt is canceled or settled, and might not be required in your case." Midland argued that usage of "might" should signal to the least sophisticated debtor that reporting will occur only under certain circumstances.

Is not merely the inclusion of a lie, but also incomplete or inapplicable language in a collection letter that may form the basis for a potential FDCPA violation.

The court agreed with the Schultzes' argument, holding that because the reporting requirement under the Internal Revenue Code is wholly inapplicable to the Schultzes' debts, including the reporting language on letters addressing debts of less than $600 might persuade the least sophisticated debtor into thinking that the discharge of any portion of their debt, regardless of the amount discharged, may be reportable.

The court further held that it is not merely the inclusion of a lie, but also incomplete or inapplicable language in a collection letter that may form the basis for a potential FDCPA violation. Therefore, because under no set of circumstances would reporting ever occur, the least sophisticated debtor could be left with the false impression that reporting could occur, even with the qualifying statement.

DEBT COLLECTION LETTER COULD BE FOUND TO BE DECEPTIVE AND MISLEADING TO THE LEAST SOPHISTICATED DEBTOR

Knight v. Midland Credit Mgmt., ___ F. 3d ___ (3d Cir. 2018).
https://law.justia.com/cases/federal/appellate-courts/ca3/17-3786/17-3786-2018-11-08.html

FACTS: Plaintiff Reneisha Knight owed $944.08 of personal credit card debt to Capital One Bank. The debt was later purchased by defendant Midland Funding, LLC ("Midland"). In order to collect on the debt, Midland sent Knight a letter. Below the basic information of the debt was the statement: "We can't change the past, but we can help with your future." The remainder of the letter offered three loan payment options, two of which expressly extended discounts for swift payment. The letter expressed that Midland "believes that everyone deserves a second chance," and encouraged Knight "to accept one of these discounts." The remainder of the letter affirmed that the account would be considered paid upon receipt of final payment. An asterisk on the word "paid" referred to a note at the bottom of the page saying, "If you pay your full balance, we will report your account as **Paid in Full**. If you pay less than your full balance, we will report your account as **Paid in Full for less than the full balance**." Knight sued Midland under §1692(e) of the FDCPA, alleging that the letter was false, deceptive, and misleading.

Midland filed motions to dismiss each of Knight's amended complaints for failure to state a claim. The district court granted each motion without prejudice, concluding that the debt collection letter was not confusing or misleading as a matter of law. Knight appealed.

HOLDING: Reversed and remanded.

REASONING: Knight argued four ways in which the letter could be found false, deceptive, and misleading. First, the letter appeared to promise financial benefit to those who paid off their delinquent debt. Knight argued that this was untrue because doing so would actually hurt the debtor's credit score. Second, the letter was unclear to whom payments would be reported. Knight contended that a debtor could assume Midland would report payments to the original creditor, to the credit reporting agencies, or to both. Third, the letter was ambiguous as to when a payment would be reported "Paid in full" or "Paid in Full for less than

the full balance." Knight pointed out multiple possible answers to this question that would materially affect a debtor's choice of payment method. Finally, the letter was misleading in failing to distinguish the ramifications of the two above reporting statuses. Knight contended that a debtor may inappropriately conclude that the two statuses had the same effect.

The court agreed with Knight and concluded that the debt collection letter was false, deceptive or misleading for each of the four reasons she proposed. In order to reach this conclusion, the court found that FDCPA claims are analyzed under the "least sophisticated debtor" standard, which is lower than that of the "reasonable debtor" standard. Under this standard, the plaintiff did not need to prove that she was actually confused or mislead by the letter in order to state a claim. Furthermore, a letter is deceptive as a matter of law when it could be "reasonably read to have two or more different meanings, one of which is inaccurate," and when the ambiguity would affect the "decision-making process of the least sophisticated debtor." Applying these rules, the court determined that Knight's claim was sufficient to survive Midland's motions to dismiss.

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EXTREME FACTS JUSTIFY THE DISTRICT COURT'S DENIAL OF ATTORNEY'S FEES IN FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) CASE

Davis v. Credit Bureau of the South, 908 F.3d 972 (5th Cir. 2018).
https://caselaw.findlaw.com/us-5th-circuit/1901953.html

FACTS: Plaintiff-Appellant Crystal Davis ("Davis") brought a FDCPA claim against Defendant-Appellee Credit Bureau of the South ("CBOTS") for misrepresenting itself as a credit bureau in an attempt to collect a debt. Davis was awarded summary judgment and statutory damages as a result of the CBOTS violation. Davis filed a motion for attorney's fees in the amount of $130,410. The motion was denied by the magistrate judge based on special circumstances that rendered an award of attorney's fees unjust. The magistrate judge found that Davis and her attorney's had colluded to create the claim against CBOTS in order to charge incredibly high attorney's fees. The judge further found that the hours claimed by Davis's attorneys were excessive given the simple nature of the case, and the hourly billable rate was excessive by orders of magnitude given the caliber of the work. All told, the judge found that the facts constituted extraordinary circumstances that warranted the denial of attorney's fees.

Davis appealed the denial.

HOLDING: Affirmed.

REASONING: Davis argued that the magistrate judge erred in denying her motion for attorney's fees as she had received a favorable summary judgment ruling and, therefore, under the plain language of the FDCPA, had a statutory right to attorney's fees.

However, the Fifth Circuit held that the magistrate's findings were reasonable. Further, because no actual damages had been proven, the court relied on Johnson v. Eaton, 80 F.3d 148 (5th Cir. 1996), to support the denial. In *Johnson,* the court interpreted the FDCPA to require attorneys to look for more than a technical violation of the FDCPA before bringing suit in order to deter attorneys from bringing cases as a means to generate attorney's fees.

The court found that, although the denial of otherwise mandatory attorney's fees is a rare and drastic sanction, the circumstances created by Davis and her attorneys were not in line with the purpose of the FDCPA, requiring a denial for deterrence purposes.

PERSON MAY HAVE A CLAIM UNDER THE FAIR DEBT COLLECTION PRACTICES ACT EVEN IF HE DENIES OWING THE DEBT

Loja v. Main St. Acquisition Corp., 906 F.3d 680 (7th Cir. 2018).
https://law.justia.com/cases/federal/appellate-courts/ca7/17-2477/17-2477-2018-10-18.html

FACTS: A credit card was opened under the name of Mario Loja. After the card fell into default, the bank sold off the $4,018.07 debt to Main Street Acquisition Corporation. Main Street filed a collection action in small claims court against Loja. Loja insisted the debt was not his. Loja then filed this action seeking damages under the FDCPA. Main Street moved to dismiss, contending that Loja had failed to allege a qualifying debt, and, therefore, he could not sue under the FDCPA.

Loja appealed.

HOLDING: Reversed and remanded.

REASONING: The court accepted Loja's argument he was a qualifying consumer under the FDCPA, because the FDCPA defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." The court pointed out that "consumer" under the FDCPA included consumers who have been alleged by a debt collector to owe a debt that the consumers themselves contended they did not owe. Because Main Street alleged that Loja owed the debt, that claim was sufficient to qualify Loja as a consumer under the FDCPA.