

RECENT DEVELOPMENTS

DEBT COLLECTION

A BARE STATUTORY VIOLATION DOES NOT SATISFY THE FDCPA INJURY-IN-FACT REQUIREMENT

A CLOUD THAT WAS PLACED ON TITLE OF A HOME CONSTITUTES AN INJURY-IN-FACT

UNDER FDCPA, A PLAINTIFF MAY RECOVER ACTUAL DAMAGES FOR EMOTIONAL DISTRESS AND MENTAL ANGUISH

Corbitt v. Old Republic Ins. Co., 2023 U.S. Dist. LEXIS 86147 (N.D. Tex. 2023).

<https://law.justia.com/cases/federal/district-courts/texas/txdce/5:2022cv00031/359614/49/>

FACTS: Old Republic Insurance Company (“Defendants”) recorded an abstract of judgment before Chris and Amy Corbitt (“Plaintiffs”) sold their home. The title company notified Plaintiffs that the sale could not close unless they removed the cloud from the title. Plaintiffs then filed a release of abstract that was recorded days before the closing.

Plaintiffs sued Defendants for alleged violations of the FDCPA and TDCA. Defendants moved for summary judgment. **HOLDING:** Denied.

REASONING: Plaintiffs argued they were injured because the abstract of judgment put a cloud on the title to their home. Defendant argued that Plaintiffs did not have standing to assert their FDCPA claims because they did not suffer an injury-in-fact.

The court explained that Plaintiffs did not satisfy the injury-in-fact requirement under the FDCPA just from Defendants’ violation of a

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purported statutory right as it was not a concrete injury. However, a cloud placed on Plaintiffs’ title to property during the close of the sale of their home did constitute an injury-in-fact. This is because it is an actionable harm traditionally remedied by bringing a quite title claim, which requires that 1) Plaintiffs have an interest in a specific property, 2) their title to the property be affected by Defendant, and 3) Defendant’s claim was invalid or unenforceable. The court ruled Plaintiffs met all three elements of the quite title action. Therefore Plaintiffs had standing to assert their FDCPA claims because they suffered an injury-in-fact.

Further, Plaintiff were allowed to recover actual damages for emotional distress and mental anguish even after not specifically requesting them, because the “low bar of Rule 8(a)(3)” is satisfied by Plaintiffs’ general prayer for “actual damages” only.

PROCEDURAL INJURIES THAT PLAINTIFF ASSERTED DID NOT BEAR A CLOSE RELATIONSHIP TO THE TRADITIONAL HARM HE POSITS

PLAINTIFF DID NOT DEMONSTRATE STANDING BASED ON THE STATUTORY VIOLATIONS ALONE

Van Vleck v. Leikin, Ingber & Winters, P.C., 2023 U.S. App. LEXIS 10455 (6th Cir. 2023).

FACTS: In 2020, Plaintiff Van Vleck was served with a summons in connection with a lawsuit filed by Defendant Leikin, Ingber, & Winters, P.C. The summons, served in person, indicated that Van Vleck had 21 days to answer the complaint, but did not notify Van Vleck that the Michigan Supreme Court had temporarily suspended the response deadline due to the COVID-19 pandemic.

Van Vleck sued Ingber for violations of the FDCPA and RCPA, alleging that in-person service of process during Michigan’s COVID-19 state of emergency constituted harassment. Van Vleck also alleged the summons was false and misleading because it failed to inform him of the suspended deadline. Ingber moved to dismiss Van Vleck’s complaint, arguing that it failed to allege standing to assert his claims sufficiently. The district court granted the motion. Van Vleck moved to vacate the court’s dismissal, arguing that the court erred by ruling on the merits of his complaint when evaluating his standing. The district court denied his motion, reasoning that its previous order properly held that Van Vleck did not allege a concrete injury and that his alleged injury was not akin to the traditional harm of abuse of process. Van Vleck appealed.

HOLDING: Affirmed.

REASONING: Van Vleck had the burden of establishing standing by showing that he suffered an injury in fact, that the injury was traceable to Ingber’s conduct and that the court would redress the injury vis-à-vis judicial relief. Van Vleck also had to establish an ulterior purpose and an improper use of process to plead an abuse of process claim sufficiently.

Ingber personally served Van Vleck when two pandemic regulations were in place: (1) the Michigan Supreme Court’s requirement of electronic service of process and (2) the state-wide stay-at-home executive order. The court held that Ingber’s use of personal service despite these requirements was not enough for Van Vleck to plausibly allege that the process server acted with an ulterior purpose. Van Vleck did not allege that the process server meant to deprive him of the knowledge of the suspended deadline. Ingber’s summons also lacked an ulterior purpose because the State Court Administrative Office pre-printed the summons on a form. Van Vleck’s allegation fell short of resembling abuse of process. Because the procedural injuries that Van Vleck asserted did not bear

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a close relationship to the traditional harm he posited, he did not demonstrate standing based on the statutory violations alone.

CURRENT WAGES FOR PERSONAL SERVICES ARE EXEMPT FROM SEIZURE UNDER A TURNOVER ORDER

COMMISSION PAYMENTS WERE NOT EXEMPT FROM SEIZURE PURSUANT TO A TURNOVER ORDER BECAUSE THEY WERE NOT FOR PERSONAL SERVICES

Pamplin v. Stephenson, 2023 Tex. App. LEXIS 2006

FACTS: Plaintiff-Appellee Kelly Stephenson, trustee of the Coffee Time, Inc.'s 401k, was granted a default judgment against Defendant-Appellant Richard Pamplin and Networth Cashflow Systems, LLC (collectively Pamplin), in a Kansas district court.

Stephenson's collection efforts were unsuccessful and a trial court signed a turnover order and appointed a receiver. The Receiver seized funds payable to Pamplin from LifeVantage, a multilevel marketing company that uses independent distributors to sell products. The Receiver filed a Verified Motion to Approve Distributions, Fees, and Ongoing Receivership (Limited Receivership) to turn over funds to Stephenson. The motion asserted that the LifeVantage funds were not exempt from seizure, and it asked for permission to distribute the funds to Stephenson. Pamplin objected to the motion.

After a hearing, the trial court issued its order approving the distributions, fees, and ongoing receivership. Pamplin appealed.

HOLDING: Affirmed.

REASONING: Pamplin argued the LifeVantage payments were exempt from seizure because they were current wages for personal services, and they were unpaid commissions for personal services.

The court rejected both arguments holding that LifeVantage's payments to Pamplin were not current wages for personal services but instead commissions, which were not exempt from seizure under a turnover order. The tax returns in evidence showed LifeVantage did not treat its commission payments to Pamplin as wages for personal services because Pamplin reported his payments from LifeVantage as a business income on his Schedule C, not as salary or wages. Pamplin's testimony revealed that Pamplin was only paid for product sales, and he was acting as an independent LifeVantage distributor, not as a LifeVantage employee. Therefore, the evidence was legally and factually sufficient to support the trial court's implied finding that the payments were not compensation—either wages or commissions—for personal services.

BASED ON EVIDENCE OF EMOTIONAL DISTRESS, COURT FINDS EVIDENCE \$4,000 IN ACTUAL DAMAGES UNDER THE FDCPA IS APPROPRIATE

UNDER THE FDCPA LOSS-OF-USE DAMAGES MAY BE MEASURED BY THE REASONABLE RENTAL VALUE OF A SUBSTITUTE VEHICLE, EVEN IN THE ABSENCE OF ACTUAL RENTAL

Espinosa v. Metcalf, ___ F. Supp. 3d ___ (D. Mass. 2023).
<https://casetext.com/case/espinosa-v-metcalf-3>

FACTS: Defendants Andrew Metcalf and Champion Funding wrongfully seized Plaintiffs' Sergio Espinosa Sr. ("Senior") and Sergio Espinosa Jr. ("Junior") cars after a default judgment was entered against Senior. Defendants were hoping to collect against Senior and impounded each of Plaintiffs' cars. Defendants seized Junior's car even though it had no connection to the judgment against Senior, and maintained it in their possession for sixteen days before returning it and taking possession of Senior's leased vehicle. Defendants soon released Senior's vehicle after learning it was a lease. However, Defendants continued to possess Senior's car for seven months, because Plaintiffs were unable to pay towing and storage fees for Senior's vehicle.

Plaintiffs filed suit against the Defendants with claims under the FDCPA and Massachusetts' conversion statute. Junior and Senior testified to the embarrassment and distress this situation caused them at the suit's bench trial. While the Defendants possessed the vehicles, the Plaintiffs made loan and lease payments despite being without their cars. While without their vehicles, Plaintiffs experienced shame, embarrassment, and trouble sleeping after having to walk to work and other destinations and having to reveal Senior's indebtedness to friends and family.

HOLDING: So ordered.

REASONING: The Plaintiffs argued they were entitled to actual damages under the FDCPA since the Defendants' noncompliance caused them embarrassment and emotional distress. The Plaintiffs claimed they were also entitled to loss-of-use damages for conversion when the Defendants wrongfully possessed their vehicles.

The district court entered judgment for the Plaintiffs based on the evidence presented. Because the Plaintiffs suffered emotional distress with reasonable certainty due to the Defendants' noncompliance under the FD-

Owners of detained property are entitled to damages even when the owners do not rent replacement property.

CPA, the court awarded \$2,500 to Junior and \$4,000 in actual damages related to the emotional distress and embarrassment they endured. After establishing their conversion claim with reasonable certainty, the court awarded Senior and Junior loss of use damages. When owners eventually retake converted property, they are also entitled to loss of use damages for the time their property was wrongfully detained. Damages are calculated by finding the daily fair rental value of the converted property and multiplying it by the number of days the property was wrongfully converted. The court held that owners of detained property are entitled to damages even when the owners do not rent replacement property. Here, the court awarded Junior \$960 for the sixteen days the Defendants wrongfully possessed his car and Senior \$12,240 for the 204 days the Defendants wrongfully retained his car.