

# RECENT DEVELOPMENTS

## DEBT COLLECTION

### LIMITATIONS IS AN AFFIRMATIVE DEFENSE AND DEFENDANTS HAVE THE BURDEN OF PROOF

### PLAINTIFF MUST “SHOW A FACTUAL BASIS TO TOLL THE LIMITATIONS PERIOD”

### FAIR DEBT COLLECTION PRACTICES ACT AND DECEPTIVE TRADE PRACTICES ACT CLAIMS BARRED BY LIMITATIONS

### TEXAS DEBT COLLECTION ACT CLAIM DISMISSED ON SUMMARY JUDGMENT

Fuller v. Cig Fin., \_\_\_ F. Supp. 3d \_\_\_ (N.D. Tex. 2023).  
<https://casetext.com/case/fuller-v-cig-fin-5>

**FACTS:** Plaintiff Edrick Fuller (“Fuller”) purchased a pickup truck in January 2019 under a financing agreement that was later assumed by Defendant CIG Financial, LLC (“CIG”). After several months of inconsistent payments, CIG sent Fuller a final notice on December 30, 2019, indicating that the truck would be written off as a loss and would be repossessed. Defendant Car Source, LLC (“Car Source”) attempted to repossess the truck on December 31, 2019. Fuller resisted by refusing to exit the truck. While Fuller remained inside the truck, a Car Source agent proceeded to tow the truck out of Fuller’s driveway. The police were notified and instructed the agent to release the truck back to Fuller.

Fuller filed suit on June 14, 2022, bringing claims under the Federal Fair Debt Collection Practices Act (“FDCPA”), Texas Deceptive Trade Practices–Consumer Protection Act (“DTPA”), and Texas tort law. Fuller additionally claimed violations under the Texas Debt Collection Act (“TDCA”) concerning coercive debt collection practices. CIG and Car Source both moved for summary judgment.

**HOLDING:** Granted.

**REASONING:** CIG and Car Source argued that Fuller’s FDCPA, DTPA, and Texas tort law claims were precluded by the statute of limitations and that Fuller failed to make a proper showing for equitable tolling. Fuller was required to prove that equitable tolling applied to the FDCPA, DTPA, and Texas tort law claims. The court granted summary judgment for CIG and Car Source and held Fuller’s claims exceeded the statute of limitations, rendering the claims time barred.

Limitations constitute an affirmative defense and summary judgment required defendants establish all the essential elements of the defense. The relevant statute of limitations for FDCPA claims mandated a one-year filing period commencing from the date of the alleged wrongdoing by the defendant.

Here, the filing period expired December 31, 2020. Fuller’s DTPA and Texas tort law claims were subject to a two-year statute of limitations from the date of the alleged incident, with the filing period expiring December 31, 2021. However, Fuller did not file suit until June 14, 2022. Consequently, the court held that Fuller’s claims under the FDCPA, DTPA, and

Texas tort law were time-barred due to the expiration of the limitations period, absent equitable tolling.

To justify equitable tolling, the plaintiff must “show a factual basis to toll the limitations period.” Fuller claimed CIG conspired with Fuller’s former attorney to prevent him from filing the lawsuit. Fuller later admitted to lacking concrete evidence

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of such conduct and admittedly relied solely on insinuations. Defendants contended Fuller failed to show factual basis for equitable tolling. The court concurred and held

Fuller did not provide enough evidence to toll the limitations period or justify the continuation of these claims.

Fuller subsequently asserted violations under the TDCA of coercive debt collection practices. Under the TDCA, the plaintiff must provide sufficient evidence to substantiate he was injured and that his injury was caused by an act of the defendants to sustain a claim. Here, Fuller asserted various injuries from the day of the repossession incident including stress, anxiety, emotional distress, and a poor credit score caused by the defendants’ actions. However, Fuller could not provide documentation, medical records, or proof to corroborate his injuries and presented no other evidence to substantiate his allegations. The court held a reasonable jury could not find Fuller satisfied his burden under the TDCA.

The court dismissed the TDCA claim on summary judgment.

### PLAINTIFF’S TEXAS DEBT COLLECTION ACT PLEADING IS NOT SUFFICIENT TO OVERCOME DISMISSAL UNDER RULE 12(b)(6)

Kemp v. Regions Bank, \_\_\_ F. Supp. 3d \_\_\_ (N.D. Tex. 2023).  
<https://law.justia.com/cases/federal/district-courts/texas/txndce/4:2023cv00841/380151/36/>

**FACTS:** Plaintiff Reginala Kemp (“Kemp”) alleged that Defendant Regions Bank (“Regions”) failed to properly review an application for loss mitigation and attempted to foreclose while Kemp’s application was pending.

Kemp alleged violation of the Texas Debt Collection Act (“TDCA”) and claimed injunctive relief against Regions Bank. Regions filed a Motion to Dismiss.

**HOLDING:** Granted.

**REASONING:** Kemp argued that Regions misled her by conducting a foreclosure sale after the submission of her loss mitigation application. Regions countered that Kemp failed to demonstrate that Regions was a “debt collector” within the meaning of the TDCA and thus failed to sufficiently allege a violation of the TDCA. The court agreed.

A 12(b)(6) Motion to Dismiss is granted when the plain-

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tiff fails to state a claim upon which relief can be granted. In order to properly state a claim under the TDCA, Kemp had to “show: (1) the debt at issue is a consumer debt; (2) the defendant is a debt

## The court held that Kemp’s allegations were conclusory and lacked specific instances of false or misleading statements by Regions regarding the loan modification application status.

collector within the meaning of the TDCA; (3) the defendant committed a wrongful act in violation of the TDCA; (4) the wrongful act was committed against the plaintiff; and (5) the plaintiff was injured as a result of the defendant’s wrongful act.” Here, the court held that Kemp’s allegations were conclusory and lacked specific instances of false or misleading statements by Regions regarding the loan modification application status. Consequently, the pleading was insufficient to overcome dismissal under Rule 12(b) (6). The court also stated that the TCDA does not prohibit debt collectors from “exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.” Therefore, the court held that Kemp failed to state a claim as a matter of law and was not entitled to injunctive relief.

The court dismissed Kemp’s claims with prejudice.

## REQUEST FOR \$450 ADDITIONAL DOLLARS FOR ATTORNEYS’ FEES WAS A COUNTEROFFER IN A CONTINUING NEGOTIATION, RATHER THAN A DEMAND FOR COLLECTION OF A DEBT.

### REQUEST DID NOT VIOLATE FDCPA.

Morton v. Lien Filers, Etc. of Heath W. Williams, L.L.C., 2024 U.S. App. LEXIS 7042 (11th Cir. 2024).

<https://www.casemine.com/judgement/us/6604f297943a733d6b9615d9>

**FACTS:** Appellants Sherman Morton, III and Ashlyn Morton (“Mortons”) engaged in a dispute with Tigeski, L.L.C., over a bill Tigeski issued the Mortons for remediation work it performed at their residence.

The Mortons’ attorney, Ronald Daniels, mailed Tigeski’s attorney, Heath Williams from Lien Filers, Etc. of Heath W. Williams, L.L.C., a \$2000 settlement offer. A Tigeski employee accepted the offer without Williams’s approval. Williams disapproved of Daniels resolving the settlement with his client without him. When Daniels sought clarification if the settlement was accepted, Williams stated it would be if \$450 was added for attorneys’ fees. The Mortons filed a motion to enforce the original \$2000 settlement.

Afterwards, the Mortons filed suit alleging that Williams’s request for \$450 in attorneys’ fees violated the FDCPA. The District Court adopted a magistrate judge’s report and recommendation, granting summary judgment to Williams, holding the e-mail was not considered debt collection activity. The

Mortons appealed.

**HOLDING:** Affirmed.

**REASONING:** The court looked to the language of the FDCPA which prohibits a “debt collector” from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt,” as well as using “unfair or unconscionable means to collect or attempt to collect any debt.” The court noted that an FDCPA claim requires a plaintiff to show (1) that the defendant is a debt collector, (2) that the challenged conduct related to debt collection, and (3) that the challenged conduct was prohibited under the statute.

The court held that the Morton’s challenge failed because the second requirement of an FDCPA challenge was not met because the email contained none of the recognized hallmarks of debt collection activity. The email did not state it was “attempting to collect a debt” or demanding “full and immediate payment,” nor did it threaten legal action if the Mortons did not pay the attorneys’ fees within a given time frame.

Therefore, the court held the proposed settlement agreement of \$2000, with a request of \$450 in attorneys’ fees, as a counteroffer in a continuing negotiation, rather than a demand for a collection of debt. This meant the email was not debt collection activity and fell outside the scope of the FDCPA.