DEBT COLLECTION

A TDCA CLAIM REQUIRES CALLS WERE MADE WITH INTENT TO ANNOY, HARASS OR THREATEN, WHICH REQUIRES A HIGH VOLUME OF CALLS UNDER CERTAIN CIRCUMSTANCES

Luna v. PHH Mortg. Corp., 2024 U.S. Dist. LEXIS 209753 (S.D. Tex. 2024).
https://casetext.com/case/luna-v-phh-mortg-corp

FACTS: Defendant PHH Mortgage Corporation (hereinafter "PHH") held the mortgage to Plaintiffs' Juan Luna and Raquel Spinoso (hereinafter "Plaintiffs") home. PHH commenced a non-judicial foreclosure, and Plaintiffs filed this lawsuit and obtained a temporary restraining order halting a planned foreclosure sale. Plaintiffs asserted causes of action against PHH for breach of contract and violations of the TDCA.

PHH moved to dismiss this case contending that the Plaintiffs' allegations failed to state a claim upon which relief can be granted.

HOLDING: Dismissed without prejudice.

REASONING: Plaintiffs asserted that PHH harassed them by continuously calling them without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a person at the called number and other various violations under the TDCA. The court disagreed.

The court rejected the argument stating that the Plaintiffs failed to state a claim for violations of the TDCA because their allegations were insufficient to establish that PHH made telephone calls to Plaintiffs with the intent to annoy, harass, or threaten them, which is fatal to a TDCA claim. The court explained that PHH's phone calls to Plaintiffs were not made with the requisite intent under the TDCA, for it must be shown that there was a great volume of phone calls and extenuating circumstances, such as making those calls at odd hours or threatening personal violence. There was no information regarding how many calls they received, the substance of the phone calls, or the circumstances surrounding the calls. Thus, Plaintiffs' allegations did not rise to the level of harassment that is actionable under the TDCA. The court granted the motion to dismiss, and the case was dismissed without prejudice.

THE PHRASE "COMMUNICATE WITH A CONSUMER" UNDER THE FDCPA AND FCCPA MEANS THE DEBT COLLECTOR MUST ACTUALLY TRANSMIT OR TRANSFER INFORMATION TO THE CONSUMER

MERELY SENDING AN EMAIL DOES NOT CONSTITUTE "COMMUNICATING WITH" THE CONSUMER UNTIL THE CONSUMER RECEIVES AND OPENS/READS THE EMAIL

Quinn-Davis v. TrueAccord Corp., ___ F. Supp. 3d ___ (S.D. Fl. 2024).
https://casetext.com/case/quinn-davis-v-trueaccord-corp

FACTS: Defendant TrueAccord Corp. (hereinafter "TrueAccord") sent Plaintiff Quinn-Davis (hereinafter "Quinn-Davis") an email concerning debt collection at 8:23 p.m. on November 29, 2022. The email was delivered to Quinn-Davis's inbox at 10:14 p.m. on November 29, 2022. Quinn-Davis first opened and read the e-mail at 11:44 a.m. on November 30, 2022.

Quinn-Davis argued that receiving a debt collection email at 10:14 p.m. was presumptively inconvenient and unlawful. However, TrueAccord contended that although the email was delivered to Quinn-Davis's email server at that time, it was not opened until the following morning. Quinn-Davis sued TrueAccord, asserting violations of the Fair Debt Collections Act ("FDCPA") and the Florida Consumer Collection Practices Act ("FCCPA"). TrueAccord moved for summary judgment on all of Quinn-Davis's claims.

HOLDING: Granted.

REASONING: Quinn-Davis alleged that the email from TrueAccord delivered at 10:14 p.m. was in violation of the FDCPA and FCCPA. The court disagreed. The FDCPA prohibits a debt collector from communicating with a consumer in connection with the collection of any debt at any unusual time or place, and the FCCPA prohibits a person collecting a consumer debt from communicating with the debtor between the hours of 9 p.m. and 8 a.m. The language in both the FDCPA and FCCPA is substantially similar and the court applied the same standard to both claims. To bring a claim of FDCPA/FCCPA violation, the plaintiff must show that (1) the plaintiff has been the object of collection activity arising from consumer debt, (2) the defendant is a debt collector as defined by the FDCPA, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA.

TrueAccord's email, though sent at night, was not opened until the next day during acceptable hours.

The parties agreed that Quinn-Davis met the first two elements of the FDCPA/FCCPA violation claim, so the court only considered the third element, whether TrueAccord's email was a prohibited communication under the FDCPA. The court held that the plain meaning of the phrase "communicate with the consumer" in the FDCPA means that a debt collector must transmit or transfer information to another person in order to "communicate with a consumer," not merely send it. By reaching this conclusion, the court explained that no e-mail communication with a consumer takes place until the consumer reads or at least receives it. It is not enough to merely send the communication prior to the statutory deadline. In this case, the court held that TrueAccord's email, though sent at night, was not opened until the next day during acceptable hours, and therefore did not constitute communication at an inconvenient time under the acts. Therefore, the court granted summary judgment.

FEARS OF HYPOTHETICAL FUTURE HARM[S] DO NOT PROVIDE ARTICLE III STANDING

BECAUSE PLAINTIFF "DIDN'T MAKE A PAYMENT, PROMISE TO DO SO, OR OTHERWISE ACT TO HER DETRIMENT IN RESPONSE TO ANYTHING IN OR OMITTED FROM THE LETTER," SHE FAILED TO ESTABLISH A SUFFICIENT INJURY-IN-FACT FOR ARTICLE III STANDING

A READING OF THE ENTIRE FINAL LETTER WOULD LEAD THE LEAST SOPHISTICATED CONSUMER TO UNDERSTAND THAT DEFENDANT INTENDED TO FOLLOW ALL STATE AND FEDERAL LAWS REGARDING ACCELERATION AND FORECLOSURE

Whitfield v. Selene Fin. LP, 2024 U.S. Dist. LEXIS 161062 (M.D. Ga. 2024).
https://law.justia.com/cases/federal/district-courts/georgia/gamdce/5:2024cv00153/133325/23/

FACTS: Plaintiff Lequita R. Whitfield was a homeowner with a mortgage funded by U.S. Bank Trust National Association (hereinafter "U.S. Bank"). Defendant Selene Finance (hereinafter "Selene") obtained the servicing rights to Plaintiff's mortgage through U.S. Bank by becoming an agent of the Bank.

Plaintiff defaulted on the mortgage and became more than 45 days delinquent. Selene sent a "GA Final Letter" to Plaintiff to "coerce and intimidate her into paying the entire default amount of the loan." Plaintiff claimed she was "anxious and terrified" and that she was afraid Selene was going to foreclose on her home at any moment. In response to the letter, Plaintiff borrowed money from her brother but did not ultimately have to use the funds borrowed.

Plaintiff alleged the GA Final Letter violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 ("FDCPA"). The district court denied Selene's first Motion to Dismiss as moot considering Plaintiff's Amended Complaint. Selene alleged a Second Motion to Dismiss.
HOLDING: Dismissed.
REASONING: Selene argued that Plaintiff's amended complaint was faulty due to lack of standing and lack of violation of the FDCPA. The court agreed.

The court explained that to have Article III standing, Plaintiff must establish a sufficient injury-in-fact. Selene contended that because Plaintiff neither incurred financial loss nor took detrimental action based on the allegedly deceptive or unfair statements in the notice, she did not suffer an injury-in-fact. The court agreed, claiming that fears of hypothetical future harm[s] do not provide Article III standing. Further, because Plaintiff "didn't make a payment, promise to do so, or otherwise act to her detriment in response to anything in or omitted from the letter," she failed to establish a sufficient injury-in-fact for Article III standing. Borrowing money from her brother was not necessitated by any action or omission related to the letter, the court held. Therefore, she lacked sufficient injury-in-fact to establish Article III standing.

The circumstances giving rise to an alleged FDCPA violation are evaluated from the perspective of the least sophisticated consumer.

Second, the FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. §1692e. The circumstances giving rise to an alleged FDCPA violation are evaluated from the perspective of the least sophisticated consumer. Plaintiff alleged the GA Final Letter was deceptive and threatened action it did not intend to take. However, because Selene used the appropriate language that they would comply with all applicable laws in accelerating and foreclosing, the court explained a reading of the entire final letter would lead the least sophisticated consumer to understand that Defendant intended to follow all state and federal laws regarding acceleration and foreclosure. Therefore, Plaintiff failed to state a claim under §1692e. The court granted the Second Motion to Dismiss.

PLAINTIFF ALLEGED CONCRETE HARMS STEMMING FROM FDCPA VIOLATIONS, INCLUDING MONETARY EXPENDITURES, REPUTATIONAL HARM, AND PHYSICAL/EMOTIONAL DISTRESS, WHICH ARE SUFFICIENT TO ESTABLISH ARTICLE III STANDING UNDER *TRANSUNION V. RAMIREZ*

THE DEBT COLLECTION NOTICES CONTAINED MATERIALLY FALSE STATEMENTS ABOUT DEBT AMOUNTS THAT WOULD MISLEAD THE LEAST SOPHISTICATED CONSUMER

Carrasquillo v. Nat'l Credit Sys., 2025 U.S. Dist. LEXIS 28252 (S.D.N.Y. 2025).
https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2024cv01029/615515/46/

FACTS: Plaintiff Carrasquillo received two collection notice letters, one from NCS and another from Borland (jointly known as "Defendants"), regarding an outstanding debt she owed to Faxon Commons Apartments ("Faxon"). Carrasquillo believed that the remaining debt she owed to Faxon was $260.54. However, the collection notice she received from NCS reported that she owed $5,534.20, and the letter from Borland stated that she owed $3,922.20 to Faxon. Both letters represented that the debt amounts were "verified" or "validated," and referred to the same creditor and client account numbers, suggesting they were for the same debt. These letters caused Carrasquillo to experience distress, anxiety, humiliation, embarrassment, difficulty sleeping, and an increased heart rate from fear that debt collectors would come after her for the debt she did not owe. Carrasquillo expended time and money to clarify the issue regarding the erroneous outstanding debt amounts. However, the debt sought was reported to Carrasquillo's credit report, resulting in a lower score.

Carrasquillo sued Defendants and later amended her complaint to allege that they had violated provisions of the FDCPA. Defendants moved to dismiss the amended complaint.
HOLDING: Defendants' motion to dismiss was denied.

REASONING: Defendants claimed the court lacked subject matter jurisdiction under Article III and, therefore, lacked standing to pursue Plaintiff's FDCPA claims.

To pursue an FDCPA claim under Article III, a plaintiff must allege a concrete harm that is both independent of and stems from, a procedural or legal violation. The *TransUnion* Court recognized that physical and monetary harms, as well as reputational harms, readily qualify as concrete injuries under Article III. Analyzing Article III standing in the context of FDCPA violations, the *Markakos v. Medicredit* court stated concrete injuries can arise if a defendant's misrepresentation caused "a plaintiff to pay extra money, affected a plaintiff's credit, or otherwise altered a plaintiff's response to a debt." Here, the court held that Carrasquillo sufficiently established that she suffered concrete harms caused by Defendants' allegedly false and misleading debt collection notices, as she expended money to clarify the unpaid debt amount, the supposed debt amount decreased her credit score, and Carrasquillo experienced physical and emotional distress, such as anxiety and difficulty sleeping, from the erroneous debt collection notices.

To pursue an FDCPA claim under Article III, a plaintiff must allege a concrete harm that is both independent of and stems from, a procedural or legal violation.

The court in *Cohen v. Rosicki* stated that statements made by a debt collector must be materially false or misleading to be actionable under the FDCPA. The *Cohen* court explained that to satisfy materiality, it must show that the challenged statement would be false, deceptive, or misleading from the objective perspective of the least sophisticated consumer.

The court here reasoned Carrasquillo's argument was persuasive because the debt obligations were misstated. Further, because Defendants "verified" or "validated" that the debt obligations they sent to Carrasquillo were correct, the least sophisticated consumer would be misled by the letters' false statements. The court denied Defendant's motion to dismiss for failure to state a claim.

NINTH CIRCUIT FINDS STANDING BASED ON RECEIPT OF DEBT COLLECTION LETTER

Six v. IQ Data International, Inc., ___ F.3d ___ (9th Cir. 2025). **https://cdn.ca9.uscourts.gov/datastore/opinions/2025/02/24/23-15887.pdf**

FACTS: Defendant-Appellee IQ Data International ("IQ") acquired a debt obligation for Plaintiff-Appellant Ryan Six's ("Six") alleged breach of a residential lease. Six mailed a letter disputing the debt and requested documentation of it. The same day, Six's attorney mailed a letter directly to IQ to provide notice of Six's representation by counsel and to send all correspondence to the attorney. IQ received Six's letter and then submitted an internal request to generate and send the requested documentation to Six's mailing address. The next day, IQ updated its records to show it had processed Six's counsel's letter, but on the same day, IQ sent the verification of debt letter to Six's mailing address. Upon receiving the records directly from IQ, Six sued in the District of Arizona under the Fair Debt Collection Practices Act ("Act"). The Act prohibits debt collectors from directly communicating with a consumer in connection with the collection of any debt when the collector knows that an attorney represents the consumer. *See* 15 U.S.C. § 1692c(a)(2). The district court dismissed the case, ruling that Six lacked Article III standing because he could not show that he suffered any injury in fact. Six appealed the dismissal to the Ninth Circuit court of appeals.

HOLDING: Reversed and remanded.

REASONING: To determine whether Six had standing to bring his claim, the court of appeals considered whether he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1042 (9th Cir. 2017). The Ninth Circuit Court of Appeals held that Six had standing under the Act to bring a suit for the unwanted letter from IQ. In doing so, the court rejected the district court's argument that Six receiving one unwanted letter was not akin to the traditional types of harm meant to be prevented by the Act.

The court of appeals acknowledged that a mere breach of the Act was not necessarily enough to grant standing. However, the court explained that Six suffered an injury in fact because Congress, in passing the Act, recognized the privacy interest of consumers who would be the recipient of a letter from a debt collection agency. The court held that the letter Six allegedly received from IQ was akin to a violation of Six's privacy.

The court of appeals then assessed whether Six had identified a close analogue for his asserted injury that is traditionally recognized as providing a basis for a lawsuit in American courts. The court reasoned that Six had satisfied this requirement because actions similar to an invasion of privacy has been heard before in American courts; trespass and nuisance were cited by the court as analogues cases. Last, the court held that Six further met the requirements for standing by ruling that he suffered harm that was both particularized and actual that could be redressed by a favorable judicial decision. The Ninth Circuit reversed and remanded.