

RECENT DEVELOPMENTS

DEBT COLLECTION

TO PREVAIL UNDER THE FDCPA AND THE TDCA, THE DEBT AT ISSUE MUST BE A CONSUMER DEBT DEFENDANT PRODUCED A COPY OF THE LOAN PAPERWORK INDICATING THAT THIS WAS A COMMERCIAL DEBT

Johnson v. Bankers Healthcare Grp., LLC, 2026 U.S. Dist. LEXIS 194849 (W.D. Tex. 2026).

FACTS: Plaintiff Bryant Lanear Johnson entered into a loan agreement with Defendant Bankers Healthcare Group, LLC. Defendant maintained that the loan was commercial and Plaintiff represented the funds would be used for business purposes. Plaintiff, however, claimed the loan was for personal use. Plaintiff sued Defendant under the Fair Debt Collection Practices Act (“FDCPA”) and Texas Debt Collection Act (“TDCA”).

The parties filed cross-motions for summary judgment. Defendant argued that Plaintiff’s FDCPA and TDCA claims failed because the underlying obligation was a commercial debt rather than a consumer debt.

HOLDING: Recommended Defendant’s motion for summary judgment be granted.

REASONING: Defendant argued Plaintiff could not prevail under the FDCPA or TDCA because both statutes applied only to consumer debts. The court agreed, explaining the FDCPA defined “debt” as an obligation arising from a transaction primarily for personal, family, or household purposes. The court further explained the TDCA similarly required an obligation primarily for personal, family, or household purposes.

Plaintiff asserted he sought the loan for personal use. Defendant, however, produced signed loan paperwork expressly identifying the loan as commercial. The paperwork also indicated the loan was for business development. Plaintiff did not identify any record evidence creating a material dispute regarding the nature of the loan. Because the record showed a commercial debt rather than a consumer debt, Plaintiff could not maintain his FDCPA or TDCA claims.

COURT REASONED ALLEGED HARMS EXCEEDED MERE CONFUSION, INCLUDING CONCRETE FINANCIAL AND EMOTIONAL CONSEQUENCES FROM DEFENDANTS’ ACTIONS, SUFFICIENT TO ESTABLISH STANDING

Sheinkopf v. Faloni L. Grp., LLC, 2026 U.S. Dist. LEXIS 152729 (2026).

<https://law.justia.com/cases/federal/district-courts/new-jersey/njdce/3:2025cv14092/580761/24/>

FACTS: Plaintiff Gittie Sheinkopf (“Sheinkopf”) incurred a debt from Synchrony Bank. After Sheinkopf defaulted, Defendant LVNV Funding, LLC (“LVNV”) acquired the Synchrony Bank debt and hired Defendant Faloni Law Group (“Faloni”) to collect it. Faloni filed a state court collection action against Sheinkopf on LVNV, alleging Sheinkopf was indebted to the Synchrony Bank.

However, the bill of sale attached to the collection action did not mention Synchrony Bank in the debt’s chain of title. Instead, the chain listed entities Sheinkopf did not recognize. Sheinkopf allegedly attempted to obtain clarification from Defendants, but Defendants did not resolve the issue, and the collection action was later dismissed without prejudice.

Sheinkopf sued Defendants under the Fair Debt Collection Practices Act (“FDCPA”), alleging Defendants’ conduct caused her financial and emotional harm, including a reduced credit score, interference with her work and family responsibilities, delayed financial commitments, and anxiety. Defendants moved to dismiss the claim for lack of Article III standing and failure to state a claim.

HOLDING: Denied.

REASONING: The court held that Sheinkopf had standing because she alleged concrete harm from the Defendants’ actions. The court explained that, to establish Article II standing for her FDCPA claims, Sheinkopf had to allege physical, monetary, or cognizable intangible harm that flowed from her reliance on the Defendants’ misrepresentations.

Sheinkopf alleged more than mere confusion. She argued the collection action negatively affected her credit score, the time she spent reviewing Defendants’ filings and her own records interfered with her work schedule and ability to care for her family, she delayed making financial commitments, and she suffered significant anxiety affecting her sleep, focus and everyday family life. Accordingly, the court held that these allegations were sufficient to establish a concrete injury and denied the Defendants’ motion to dismiss.

DEFENDANT QUALIFIED AS A DEBT COLLECTOR. ITS PRINCIPAL BUSINESS WAS VEHICLE REPOSSESSION, AND IT USED MAIL AND EMAIL

DEFENDANT “BREACHED THE PEACE” AS A MATTER OF LAW WHEN IT CONTINUED REPOSSESSING THE VEHICLE OVER HUSBAND’S ORAL PROTEST

Hart v. Hill & Assocs. of Ga., Inc., 2026 U.S. Dist. LEXIS 154232 (N.D. Ga. 2026).

FACTS: Plaintiff Kimberly Hart purchased a vehicle subject to a lien held by DK Auto, LLC (“DK Auto”). After Plaintiff defaulted, DK Auto submitted an order to Defendant Hill & Associates of Georgia, Inc. to repossess the vehicle. Defendant’s principal business purpose was enforcing security interests through automobile repossessions. Defendant received customer payments by mail and repossession assignments through its company email. During the repossession of Plaintiff’s vehicle, Plaintiff’s husband, Jerome Hart (“Mr. Hart”), orally protested the taking. Bystanders called the police, and the confrontation escalated to threats against the tow truck drivers. Mr. Hart was arrested and later pled guilty to threatening the tow truck drivers. Defendant continued the repossession and towed the vehicle.

Plaintiff brought claims under the Fair Debt Collection

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Practices Act (“FDCPA”) and for wrongful repossession. Plaintiff moved for partial summary judgment on both claims.

HOLDING: Recommended Plaintiff’s motion for partial summary judgment be granted.

REASONING: Defendant argued it did not qualify as a debt collector under the FDCPA. The court rejected this argument, reasoning that a repossession company qualified as a debt collector when its principal business purpose was enforcing security interests and it used the mails or an instrumentality of interstate commerce. Defendant’s principal business purpose was automobile repossession, it received customer payments by mail, and it received repossession assignments through its company email. Therefore, the court held that Defendant qualified as a debt collector under the FDCPA.

Defendant also argued that any oral protest occurred after the vehicle had been immobilized and whether it breached the

A breach of the peace occurred when a repossession continued despite the unequivocal oral protest of the debtor or a qualifying third party such as the debtor’s spouse.

peace was a question for the jury. The court rejected these arguments, reasoning that a nonjudicial repossession was wrongful when it breached the peace. A breach of the peace occurred when a repossession continued despite the unequivocal

oral protest of the debtor or a qualifying third party such as the debtor’s spouse. Once such a protest occurred, self-help repossession was no longer a lawful alternative.

Although breach of the peace is generally a question for the jury, the court noted it was undisputed that bystanders and Plaintiff called the police. Mr. Hart was arrested and pleaded guilty to threatening the tow truck drivers in connection with the repossession. Because these undisputed facts showed Defendant’s continued repossession over Mr. Hart’s oral protest had escalated to violence, the court held that Defendant breached the peace as a matter of law and therefore the repossession was wrongful.

THE FAIR DEBT COLLECTION PRACTICES ACT’S PLAIN LANGUAGE REQUIRES THE TRANSACTION BE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES

THE UNDISPUTED EVIDENCE SHOWED KELLY INTENDED TO AND ACTUALLY USED LOAN PROCEEDS FOR BUSINESS PURPOSES

TYPE OF COLLATERAL SECURING A LOAN DOES NOT CONTROL FDCPA APPLICABILITY WHEN TRANSACTION PURPOSE IS BUSINESS

FACTS: Republic Bank & Trust Co. (“Republic”) issued a \$32,000 home equity line of credit to Plaintiff James Kearney’s son, Kelly Kearney (“Kelly”). Kelly secured the loan with a mortgage intended to cover his residence. Because of an error by Republic’s vendor, however, the mortgage contained the property description for Plaintiff’s home rather than Kelly’s. After Kelly defaulted, Republic hired Defendant Morgan & Pottinger, P.S.C. to pursue collection and foreclosure, resulting in foreclosure proceedings against Plaintiff’s property. Although the loan application described the proceeds as being for home improvement, Kelly testified that he told Republic’s loan officer that he intended to use the loan proceeds to invest in his family’s business. Kelly deposited \$30,000 of the proceeds into a checking account and transferred \$25,000 to one of his brother’s businesses.

Plaintiff sued Defendant under the Fair Debt Collection Practices Act (“FDCPA”) based on Defendant’s mistaken foreclosure efforts involving Plaintiff’s property. Defendant moved for summary judgment, arguing that Kelly’s loan did not constitute a “debt” under the FDCPA because it was not incurred “primarily for personal, family, or household purposes.”

HOLDING: Granted.

REASONING: Defendant argued that Kelly’s loan did not qualify as a “debt” under the FDCPA because the loan was incurred for business purposes. The court agreed, explaining that the FDCPA’s plain language defines “debt” as an obligation arising from a transaction primarily for personal, family, or household purposes. The court found it undisputed that Kelly intended to use the loan proceeds primarily for business purposes. Kelly testified that he told Republic’s loan officer he intended to use the proceeds to invest in his family’s business. The court also found it undisputed the loan proceeds were primarily used for business purposes. Based on Kelly’s intended and actual use of the proceeds, the court held the loan was primarily for business purposes and therefore did not qualify as a “debt” under the FDCPA.

Plaintiff argued the loan nevertheless fell within the FDCPA because Kelly’s primary residence secured it. The court rejected this argument, explaining that the type of collateral securing a loan did not determine whether the FDCPA applied. Instead, the court focused on the purpose for which the loan was incurred. Because Kelly incurred the loan for business purposes, the fact that his residence secured it did not bring the loan within the FDCPA.

Kearney v. Morgan & Pottinger, P.S.C., 2026 U.S. Dist. LEXIS 180185 (W.D. Ky. 2026).

<https://law.justia.com/cases/federal/district-courts/kentucky/kywdce/3:2024cv00299/134905/29/>