Consumer Law Hinsights

December 2019

Consumer Law Hinsights is a monthly compilation of nationwide consumer protection cases of interest to financial services and accounts receivable management companies, brought to you by Hinshaw & Culbertson LLP.

SCOTUS Holds Discovery Rule Does not Apply to FDCPA Claims

This week, in an 8:1 opinion delivered by Justice Thomas, the Supreme Court concluded that the one-year statute of limitations in the Fair Debt Collection Practices Act (FDCPA) begins to run when the violation occurs, not when the violation is discovered. In doing so, they overturned rulings by the Fourth and Ninth Circuit, that had held the FDCPA's statute of limitations was subject to equitable tolling.

Rotkiske's unpaid credit card debt was referred to Klemm & Associates in 2008 for collection, Klemm filed suit in 2008 to collect the unpaid debt, but served the wrong person at Rotkiske's old address. Klemm withdrew the suit because Rotkiske could not be located, but then refiled and attempted service at the same address again in 2009. Rotkiske did not respond to the summons, Klemm obtained a default judgment, and Rotkiske discovered the default judgment against him in 2014 when he was denied a mortgage because of the judgment. Within one year of learning about the default judgment, Rotkiske filed suit against Klemm for violating the FDCPA in commencing the 2009 debt-collection lawsuit after the state-law limitations period expired.

The Third Circuit affirmed dismissal of Rotkiske's suit for failure to file within one year of the alleged FDCPA violation by concluding that the text of the FDCPA mandated application of the occurrence rule. In doing so, the Third Circuit split with the Fourth and Ninth Circuit's application of the discovery rule. The Supreme Court resolved the circuit split by concluding that the FDCPA unambiguously requires the limitations period to begin from the date of the violation, whether or not discovered, because FDCPA section 1692k(d) states that the action may be brought "within one year from the date on which the violation occurs." Moreover, the court refused to impose a discovery rule when Congress has not expressly provided one under the FDCPA.

The Supreme Court's decision provides much needed clarity on a statute of limitations that has been the subject of significant disagreement and a statute in general that has involved tremendous uncertainty on the whole.

Seventh Circuit Explains 1099C Notice can be Misleading under the FDCPA

The Seventh Circuit recently held that a debt collector, who had indicated it "may file a 1099C form" if the debtor paid a discounted amount, could be in violation of the FDCPA if the debt collector sought to discharge less than $600 in principal. Here, the debt collector's letter offered several settlement options, in which the debt collector agreed to discharge a certain amount of the debt if the debtor made timely payments. The amount of discharged debt would have been less than $600 in the options offered. The letter also disclosed that "[s]ettling a debt for less than the balance owed may have tax consequences and Discover may file a 1099C form."

The debtor claimed that the letter she received violated the FDCPA because it was confusing and misleading. The Seventh Circuit found that the consumer had plausibly alleged that the letter violated the FDCPA. The court explained that because the creditor could not have filed a 1099C form, due to the amount of the debt forgiven, the use of the phrase, "may file" could be misleading. The court explained that "in the case of the November 11, 2016 letter, [the creditor] would never file a 1099C form regardless of which settlement offer [the debtor] accepted, because in no circumstances would [the creditor] be forgiving at least $600 in principal… therefore, [the debtor] could plausibly allege that it is, in fact, misleading to state that [the creditor] may file a Form 1099C, when it never would."

The Seventh Circuit vacated the district court's judgment and remanded the matter for further proceedings.

The case is *Heredia v. Capital Mgmt. Servs., L.P.*, No. 19-1296, 2019 WL 5849901 (7th Cir. Nov. 8, 2019).

Reporting Monthly Payments on a Charged off Debt Does not Violate the FCRA

A debtor entered into a contract with the creditor where she received $1,400 in financing and, in return, agreed to make 24 monthly payments of $72.04 to repay the debt. The debtor defaulted, and the debt was accelerated. The debtor reviewed her credit report, which showed a trade line from the creditor with a scheduled monthly payment of $72. The debtor claimed that the creditor had charged off the account, and therefore, the monthly payment amount should be listed as $0. The debtor disputed the trade line to the bureaus and the creditor verified the information.

The debtor then filed suit claiming that the creditor violated the Fair Credit Reporting Act (FCRA) by reporting a scheduled monthly payment when the account was in fact charged off and closed, claiming that the creditor did not adequately investigate her dispute notice.

The district court rejected the debtor's theory and held that the tradeline was reported accurately. The court noted that it was undisputed that Cowley was obligated to make 24 monthly payments in the amount of $72.04. Because this is precisely what was reported, the tradeline was accurate. The court went on to explain that there was no evidence to sufficiently show that the tradeline was materially misleading because the debtor "submitted no proof that the report misled a creditor." The court further noted that the evidence contained "only [the debtor's] opinion without admissible evidence that the allegedly inaccurate report created a misleading impression of her consumer credit file." the court held that this evidence was insufficient under the Sixth Circuit's well settled standard "that a personal opinion, by itself, cannot support an inaccuracy claim under FCRA."

The case is *Cowley v. Equifax Information Services, LLC, et al.*, No. 18-2846, 2019 WL 5847851 (W.D. Tenn. Nov. 7, 2019).

Multiple Addresses in Initial Letter do not Violate the FDCPA's Initial Disclosure Requirements

A debtor claimed a debt collector's initial letter violated the FDCPA because it contained multiple addresses, which created confusion as to where a consumer should mail a written dispute and also took the consumer's attention away from the validation notice by deemphasizing some text and highlighting other sections of the letter. The letter supplied the FDCPA validation notice in the second paragraph of the letter. The letter later stated, "mail all correspondence and payments to the address listed below." After this statement the front page of the letter states, "Office Location: 60 Motor Parkway Commack, NY 11725-5710[.]" Directly below this address is a detachable coupon which reads "MAKE CHECK PAYABLE TO: [debt collector] as attorneys AND RETURN COUPON WITH PAYMENT TO PO BOX 9030, Commack, NY 11725-9030 IN[.]" The bottom-right corner of the coupon has an arrow pointing to the same P.O. Box address, and to its left the debtor's name and address is listed.

According to the court, the letter was not confusing and did not overshadow the mandatory validation notice. The court explained, "[b]ecause the [least sophisticated consumer] could reasonably read the collection letter only to instruct him to submit written disputes to the P.O. Box address, … the presence of multiple addresses neither overshadows the validation notice nor renders the letter deceptive or misleading." As to the validation notice, the court found that the letter's structure encouraged the least sophisticated consumer to read the validation notice first before moving on to other parts of the letter.

The case is *Park v. Forster & Garbus, LLP*, No. 19-3621, 2019 WL 5895703, (E.D.N.Y. Nov. 12, 2019).