



News

Carlos Ortiz Analyzes in ARM Compliance Digest: Judge Grants MTD in FDCPA Case Over Process of Service During Pandemic

April 19, 2021

In the April 19, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner Carlos Ortiz discusses the grant by a Michigan District Court judge of a defendant's motion to dismiss after it was sued for allegedly violating the Fair Debt Collection Practices Act when the plaintiffs were served with a summons and complaint in a debt collection lawsuit because the process servers purportedly harassed them by serving them without wearing proper protection to prevent the possible spread of COVID-19:

While Article III standing is not a new requirement in federal litigation, recently, an increasing amount of federal courts have held that a plaintiff must do more than simply allege violations of the FDCPA in order to satisfy it. That is, in order to satisfy Article III standing, the plaintiff must allege that the violation either harmed the plaintiff or caused an appreciable risk of harm. In *Eickenroth*, a Michigan district court dismissed a FDCPA putative class action based on the plaintiffs failing to sufficiently allege facts showing they had Article III standing. *Eickenroth* is interesting because the plaintiffs attempted to creatively use their fear of contracting the COVID-19 pandemic as the basis for their FDCPA claim. The plaintiffs alleged that when they were personally served with a summons and complaint in a collection action that process servers were not wearing the necessary clothing to help avoid the transmission of the virus.

The plaintiffs' claims were primarily based on the following three theories. First, the plaintiffs alleged that under section 1692d of the FDCPA personal service of a summons and complaint in a debt collection matter was not necessary to sustain or protect life or to conduct minimum basic operations under the emergency order that was in place in Michigan due to the pandemic. Second, the plaintiffs alleged that under section 1692c of the Act personal service was inconvenient. Third, under section 1692e, the plaintiffs alleged that the defendant misled them into believing that they only had 21-days to respond to the Complaint when, in fact, Michigan had extended that deadline. As to the plaintiffs claim under 1692d, the court held that while Michigan's emergency order generally required Michigan citizens to "stay at home," it allowed workers to leave their homes as necessary to work to sustain or protect life or to "conduct minimum basic operations." The emergency order expressly permitted litigation to continue. Thus, the plaintiffs could not maintained that they were harmed

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when the law permitted exactly what the defendant was alleged to have done. In regards to the plaintiff's claim under 1692c, the court held that while the plaintiffs fear of contracting COVID-19 may have been real, they did not allege that the process servers were infected. Thus, the plaintiffs claim under that section was too speculative. As to the plaintiffs' claim under 1692e, the court held that the plaintiffs had also received documentation with the summons and complaint notifying them that the time frame within which they would have needed to respond to the complaint had been extended, and that plaintiffs immediately hiring a lawyer to defend them did not *detrimentally* harm them. As a result, the court held that the plaintiffs failed to establish Article III standing and dismissed the lawsuit.

This case underscores the importance of always reviewing whether the plaintiff has satisfied Article III standing in a federal court case. It is also important to remember that lack of Article III standing can be raised at any point in the case.

[Read the full April 19, 2021 edition of the AccountsRecovery.net Compliance Digest.](#)