



News

David Schultz Analyzes in ARM Compliance Digest: Judge Grants MSJ For Defendant in FDCPA Case Over Business Debt

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In the August 19, 2024, edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discussed a recent case where a plaintiff's claim under the Fair Debt Collection Practices Act (FDCPA) was dismissed due to insufficient evidence proving the debt was for consumer purposes.

Schultz highlighted how this case emphasizes the importance of demonstrating a debt is true "consumer debt" for purposes of FDCPA claims and the roles both parties play in proving or disputing this aspect.

Schultz writes:

In *Johnson v Credit Control*, plaintiff had a business account with Bank of America that went into default. He claimed the debt was for consumer purposes and defendant failed to comply with the FDCPA. However, he failed to present sufficient evidence on the debt at the summary judgment stage. One of the facts he relied upon was that the collector addressed collection efforts to him as opposed to the company. That was not sufficient.

The case highlights some basic FDCPA concepts. The FDCPA plaintiff has the burden to plead and later prove: (1) plaintiff is a consumer, (2) there is a consumer debt, (3) defendant is a debt collector, (4) there is a violation of an FDCPA provision, and (5) plaintiff is entitled to some amount of statutory or actual damages. In the past few years, we can add Article III injury to the list.

The cases typically focus on #4. #2 sometimes is overlooked or is so obviously true that not much attention is paid to it. Damages are usually left to the (rare) trial, though they may be the focus of discovery if plaintiff claims actual damages.

Defendants usually deny or state insufficient knowledge about whether there is a "consumer debt." Just because the debt is in an individual's name is not determinative. Defense lawyers need to explore the debt further. I had a case in which the debt was in plaintiff's name for painting equipment. In most instances that will be for a personal, family or household purpose. However, the plaintiff/debtor turned out also to have a painting business. We won by investigating the debt. This case addresses the sufficiency of evidence on the consumer debt issue, which is a less

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Service Areas

Consumer Financial Services



common issue than the other elements.

Read the full August 19, 2024 edition of the *AccountsRecovery.net Compliance Digest*.

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