



Newsletters

Consumer Law Hinsights - November 2019

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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.

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You can also expand each of the topics below to read our full analysis of the cases covered in this edition.

Eleventh Circuit Rejects Denial of Class Certification on Post-discharge Motion Statements

Convenience Fee Held to Be Permissible "Pass-through" Collection Cost

Courts Rule that Identity of Debt Collector is Clear in Collection Letters

The first case reported below is one that Hinshaw won on a motion for judgment on the pleadings.

In *Glass v. Afni, Inc.*, a debt collector sent a letter to collect on a defaulted loan. The letter, for purposes of identifying the loan, referred to three separate entities: the original creditor, the creditor, and the servicer. The plaintiff argued that without an explanation about the relationship among the named entities and without an identification using the words "current creditor," the collection letter was confusing and did not clearly identify the entity to whom the debt was owed. The Southern District of Indiana looked to the plain language of the letter, and explained:

The only reasonable interpretation of the collection letter is that "the name of the creditor to whom the debt is owed"—as required by 15 U.S.C. § 1692g(a)(2)—is Affirm Operational Loans III Trust. Although the letter does not use the phrase "current creditor," the letter identifies the original creditor as Cross River Bank and identifies the only other creditor as Affirm Operational Loans III Trust. The "basic logical deduction[] and inference[]" from the letter is that the only other listed creditor is the current creditor.... The FDCPA does not require the explicit use of the phrase "current creditor." Afni's debt collection letter contains no internal contradictions or inconsistencies as to the debt owed or the creditor.

Attorneys

Justin M. Penn

Service Areas

Consumer Financial Services



Furthermore, the collection letter does not use other terms such as "client," "owner," "assignee," or "transferee" that could lead to confusion about the name of the creditor to whom the debt is owed.

Accordingly, the court granted Afni's motion for judgment on the pleadings. The ruling should assist debt collectors not only on this issue, but also when plaintiffs claim that the FDCPA has requirements to include magic words such as "current creditor" when the plain meaning of the statement is apparent on the face of the letter.

The case is *Glass v. Afni, Inc.*, No. 18-cv-03990 (S.D. Ind. 2019). [Read the ACA Daily report on this decision.](#)

In *Lugo v. Forster & Garbus*, a New York court also found that proper identification of the entity to whom the debt is owed does not require the use of magic words such as "current creditor." In *Lugo*, a law firm's first letter to the plaintiff identified the law firm as the sender of the letter by placing its name in the upper right corner. The letter then listed the names of attorneys associated with the law firm. The letter referred to the subject of the letter as "Re: Barclays Bank Delaware." The body of the letter stated, "Please contact our office upon receipt of this letter with regard to the above matter ... Please note that we are required, under federal law, to advise you that we are debt collectors[.]" Finally at the end of the letter it states, "Make check payable to: [the law firm] as attorneys" and again states "Re: Barclays Bank Delaware."

The court looked to the letter as a whole, and found that, "...the [least sophisticated consumer] would understand that Barclays Bank Delaware is both the source and the current owner of the debt. The only other entity mentioned in the letter was [the law firm], which is clearly defined as debt collector and 'as attorneys.'"

The case is *Lugo v. Forster & Garbus, LLP*, No. 19-cv-0145ARRCLP (E.D.N.Y. Oct. 21, 2019).

[Plaintiff Lacks Standing to Challenge False Statement on Website Unrelated to Debt Collection](#)

[Consumer Law Regulatory Insights: CFPB Symposia Series on Section 1701 of the Dodd-Frank Act](#)