SpencerFane

7th Circuit Issues 5 Rulings Clarifying Standing Under Fair Debt Collection Practices Act

Setting up the potential for the U.S. Supreme Court to confirm and strengthen its 2016 opinion in *Spokeo v. Robins*, the United States Court of Appeals for the Seventh Circuit issued a raft of five rulings this week that clarify Article III standing issues related to claims under the Fair Debt Collection Practices Act (FDCPA). Through these five opinions, the Seventh Circuit has unequivocally aligned itself with the Eleventh and D.C. Circuits in requiring a plaintiff to plead and provide "competent proof" of a concrete injury in fact to establish Article III standing. What follows is a brief analysis of each opinion as it relates to a plaintiff's burden to survive a motion to dismiss for lack of standing.

Gunn v. Thrasher, Buschmann & Voelkel, P.C., 2020 WL 7350278 (7th Cir. Dec. 15, 2020)

The court dismissed plaintiffs' claims for lack of standing where they asserted an alleged substantive violation of the FDCPA and alleged feelings of annoyance and intimidation. The court rejected the plaintiffs' distinction between "substantive" and "procedural" FDCPA violations, holding that alleged "substantive" violations do not automatically confer standing. In short, the plaintiff must still allege and ultimately present evidence of a concrete injury no matter whether the alleged violation is "substantive" or "procedural".

Larkin v. Finance System of Green Bay, Inc., 2020 WL 7332483 (7th Cir. Dec. 14, 2020)

The court dismissed plaintiffs' cases for lack of standing confirming that "it's not enough for an FDCPA plaintiff to simply allege a statutory violation; he must allege

(and later establish) that the statutory violation harmed him or presented an appreciable risk of harm to the underlying concrete interest that Congress sought to protect." Specifically, a plaintiff cannot simply allege that a communication was "false, deceptive, or misleading, or unfair and unconscionable". Rather, a plaintiff must establish an injury-in-fact by proving that he or she took some action to their detriment in response to the communication such as paying a debt they did not owe, or pursuing a different course of action had they not received the communication.

Brunett v. Convergent Outsourcing, Inc., 2020 WL 7350277 (7th Cir. Dec. 15, 2020)

The court dismissed plaintiff's putative class action because plaintiff did not establish an injury-in-fact as a result of defendant's collection letter. The court explained that plaintiff was not injured because "she did not pay something she does not owe (or, indeed, anything at all).... Although [plaintiff] asserted that she was confused by the letter's language, she did not tie that confusion to an injury." That is, "[a] debtor confused by a dunning letter may be injured if she acts, to her detriment, on that confusion—if, for example, the confusion leads her to pay something she does not owe, or to pay a debt with interest running at a low rate when the money could have been used to pay a debt with interest running at a higher rate. But the state of confusion is not itself an injury."

Spuhler v. State Collection Serv., Inc., 2020 WL 7351098 (7th Cir. Dec. 15, 2020)

The court dismissed plaintiffs' complaint and explained that:

The FDCPA envisions that debtors will use accurate, non-misleading information in choosing how to respond to collection attempts and how to manage and repay their debts. *See generally* 15 U.S.C. §§ 1692(a), (e), 1692e. This means that for a concrete injury to result from a dunning letter's exclusion of a statement about accruing interest, that exclusion must have detrimentally affected the debtors' handling of their debts. The record contains no evidence that the absence of a statement about interest had any effect on how the [plaintiffs] responded to the letters or managed their debts. The [plaintiffs] presented no evidence, for example,

that they paid a different, lower-interest-rate debt thinking that the debts mentioned in the letter would not accrue interest at all. Nor did they present evidence that they took action to clarify any confusion over whether the debts were accruing interest.

Bazile v. Fin. Sys. of Green Bay, Inc., 2020 WL 7351092 (7th Cir. Dec. 15, 2020)

In this case, the court directly addressed a consumer's burden of proof to establish standing when standing is questioned at the motion to dismiss stage. The court explained that "[o]nce the allegations supporting standing are questioned as a factual matter—either by a party or by the court—the plaintiff must support each controverted element of standing with 'competent proof,' which we've understood as 'a showing by a preponderance of the evidence, or proof to a reasonable probability, that standing exists.'"

Practitioners and clients alike should carefully analyze these five post-*Spokeo* opinions to better understand the latest developments in Article III standing issues surrounding FDCPA claims. Taken together, these five cases call into doubt plaintiffs' ability to achieve Article III standing based on bare allegations of technical FDCPA violations alone. Instead, plaintiffs will need to allege and ultimately prove that they took some action to their detriment by putting forth "competent proof" of such an injury in fact.

This blog post was drafted by Jamie Cotter and Jacob Hollars, attorneys in the Spencer Fane Denver, CO office. For more information, visit www.spencerfane.com.