



Eighth Circuit Rejects Attorney's Attempt to Expand the Scope of Third-Party Disclosure Violations

Aylix K. Jensen

The Safe Harbor: Debt Collection Law Update by Aylix Jensen (September/October 2022)

10.17.2022

Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the September/October 2022 edition.

In *Magdy v. I.C. System, Inc.*, the Eighth Circuit affirmed the district court's dismissal of a plaintiff's complaint on the basis that the plaintiff, a non-consumer, lacked standing to bring his claim under section 1692c(b) of the FDCPA. In *Magdy*, the defendant debt collector sent a collection letter to the plaintiff, a bankruptcy attorney, identifying him as the attorney for a consumer named in the letter. As it turned out, the consumer identified in the letter was not the plaintiff's client nor had there been any indication that the plaintiff was the consumer's attorney. As a result, the plaintiff filed suit in Missouri state court asserting that the defendant violated section 1692c(b) by contacting the plaintiff regarding the debt of a consumer whom he did not represent, without the consumer's consent. The plaintiff claimed that he suffered an injury as a result of the defendant's actions because of the valuable time and resources he spent trying to determine if he had ever represented the consumer.

The defendant removed the action to federal court and moved for judgment on the pleadings, arguing that third-party attorneys lack standing to sue under section 1692c of the FDCPA. The district court concluded that the collection letter to the plaintiff did violate section 1692c(b) but agreed with the defendant that the plaintiff lacked standing to sue and entered judgment on the pleadings against the plaintiff. The plaintiff appealed to the Eighth Circuit.

In a matter of first impression for the Eighth Circuit, the court considered whether the plaintiff, a third-party attorney unaffiliated with the relevant consumer, falls within the class of plaintiffs that Congress authorized to sue under section 1692c(b). Finding that there was a clear violation of section 1692c(b), the Eighth Circuit noted that this does not guarantee the plaintiff statutory standing to bring a cause of action and that the issue of standing requires a separate inquiry.

As part of its inquiry, the Eighth Circuit noted that section 1692k does not allow "any person" to sue for a violation, but rather provides a cause of action against a debt collector who "fails to comply with any provision of this subchapter with respect to any person." Therefore, the Eighth

Circuit specifically analyzed the language in section 1692c and found that section 1692c(b)'s plain language – “without the prior consent of the consumer” – indicates that the plaintiff is outside the scope of its protection and that the provision's purpose is to protect consumers, not third parties. The Eighth Circuit joined the other circuits that have considered this issue in concluding that non-consumers cannot bring a claim under section 1692c(b).

In addition, the Eighth Circuit rejected the plaintiff's argument that, even if the district court correctly concluded that he lacked standing to sue under section 1692c(b), the proper action was to remand to state court. The Court points out that the plaintiff confuses Article III standing, which implicates subject matter jurisdiction and was not challenged in this matter, and statutory standing. The Court concluded that judgment as a matter of law was appropriate because the district court correctly determined that section 1692c(b) does not provide the plaintiff with statutory standing to sue.

This is yet another great decision in which a court rejects an attempt by a consumer attorney to broaden the scope of section 1692c(b) claims under the FDCPA.

Attorneys

Aylix K. Jensen

Practice Areas

Financial Services