Third Circuit Finds that Determining Accuracy Under the FCRA Should be Based on a "Reasonable Reader" Standard

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The Safe Harbor: Debt Collection Law Update by Aylix Jensen (August 2022)
08.30.2022

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 August 2022 edition.

In a recently decided precedential decision, *Marissa Bibbs v. Trans Union LLC*, the Third Circuit Court of Appeals considered the accuracy of Trans Union's credit reporting under a "reasonable reader" standard rather than the often-applied "reasonable creditor" standard. This consolidated appeal originated from three district court cases involving alleged violations of the Fair Credit Reporting Act ("FCRA") in which the district courts all granted Trans Union's motions for judgment on the pleadings based on a "reasonable creditor" standard.

In each of the three cases, the appellants borrowed student loans from various lenders and eventually defaulted on their loans. All three lenders closed the accounts and transferred the loans, including all payment obligations. Following the transfers, the appellants reviewed their credit reports published by Trans Union and noticed that their accounts were reporting with a negative "Pay Status" notation stating, "Account 120 Days Past Due." The tradelines also stated that the loans were closed, transferred, and had zero balances. Each appellant disputed the accuracy of the reporting of the late status and requested that the information be corrected or removed. Trans Union investigated the disputes, concluded that the reports were accurate, and advised the appellants that the pay status represents the last known status of the accounts.

The appellants filed suit under the FCRA claiming that the pay status notations were inaccurate because the appellants did not have any financial obligation to their previous lenders. In addition, the appellants argued that the reporting could mislead prospective creditors into incorrectly assuming that they were currently more than 120 days late on loans that had been closed.

One of the issues considered by the Third Circuit was whether the district courts erred in applying the "reasonable creditor" standard to determine whether the credit reports were inaccurate or misleading. The Third Circuit affirmed the district courts' orders but adopted a "reasonable reader"

standard under which FCRA claims should be evaluated. The Third Circuit reasoned that the term "reasonable creditor" does not accurately reflect the intent of the FCRA because the "statute does not limit the permissible use of consumer reports to creditors; rather, the provision contemplates a range of permissible users, including, but not limited to, potential and actual employers, investors, and insurers." The Third Circuit made clear that it is adopting a "reasonable reader" standard to account for those possibilities.

Moreover, the Third Circuit clarified that under the "reasonable reader" standard, a court must make a determination by reading the credit reporting entry in its entirety and not in isolation. The Third Circuit noted that "if an entry is inaccurate or ambiguous when read both in isolation and in the entirety of the report, that entry is not accurate" under the FCRA.

Even under the Third Circuit's broader standard for determining accuracy, the appellants were unable to prevail on their FCRA claims based on their idiosyncratic reading of Trans Union's credit reporting. It will be interesting to see whether other federal circuit courts of appeal adopt the new "reasonable reader" standard announced by the Third Circuit.

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Financial Services