

[Banking and Finance Law Daily Wrap Up, DEBT COLLECTION—7th Cir.: Trial courts must first determine standing in FDCPA cases, \(Dec. 17, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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By Donielle Tigay Stutland, J.D.

The Seventh Circuit rendered a series of decisions dismissing claims under FDCPA suits because the plaintiffs did not suffer from "a concrete and particularized injury in fact," and lacked standing.

The United States Court of Appeals for the Seventh Circuit issued a series of decisions on Dec. 15, 2020, dismissing cases brought for alleged violations under the Fair Debt Collection Practices Act (FDCPA) because the plaintiffs lacked standing. The Seventh Circuit indicated that a violation of the act was not sufficient to establish a claim; rather, in order to have standing, the claimants must show "a concrete and particularized injury in fact," wrote Judge Kanne (in *Bazile v. Finance System of Green Bay, Inc.*). "So a plaintiff must do more than allege an FDCPA violation to establish standing; she must also show personal harm."

Following the *Larkin* decision, in which the Seventh Circuit found "[i]t'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," (see [Banking and Finance Law Daily](#), Dec. 15, 2020), the court issued a series of companion holdings. For example, in *Gunn*, the Seventh Circuit similarly did not follow the district court's reasoning in dismissal for failure to state a claim, but dismissed the case for lack of standing under the FDCPA (*Gunn v. Thrasher, Buschman & Voelkel, P.C.*, Dec. 15, 2020, Easterbrook, F.). Two additional opinions (*Brunett* and *Spuhler*) vacated a summary judgment order in favor of a defendant and remanded the cases with instructions to dismiss the case for lack of Article III standing. (*Brunett v. Convergent Outsourcing, Inc.*, Dec. 15, 2020, Easterbrook, F.; *Spuhler v. State Collection Service, Inc.*, Dec. 15, 2020, Kanne, M). The court also remanded a fourth case for further evidentiary proceedings as there was a factual challenge. The court in *Bazile* indicated that, subject matter "jurisdiction is a threshold matter that needs to be further assessed on remand" (*Bazile v. Finance System of Green Bay, Inc.*, Dec. 15, 2020, Kanne, M.).

Background. All of the cases involve attempts to collect debts, for which the plaintiffs brought suit under the FDCPA. In *Gunn*, a letter was sent to homeowners who had missed payments on HOA fees by a law firm seeking to collect the fees. The homeowners argued the letter from the law firm seeking to collect violated various subsections of FDCPA Section 1692e, as being false or misleading by threatening to bring a foreclosure action when in reality a breach-of-contract claim was brought.

Brunett also involved a claim that a debt collection letter violated FDCPA Section 1692e(5) & (10) by being misleading because it stated that the creditor might report a release of indebtedness to the Internal Revenue Service. The court indicated that because a report to the IRS might be required, the letter was not false. Additionally, the court noted that the plaintiff had not submitted any evidence showing she had been misled by the letter.

Spuhler and *Bazile* both involved medical debt collection letters that lacked adequate disclosures regarding interest accrual, in violation of FDCPA Sections 1692e(2), 1692f, and 1692g(a)(1). In these cases, the plaintiffs argued that the applicable dunning letter did not "disclose that the amount of the debt may increase due to the accrual of interest" and that it failed "to disclose the amount of the debt as required by the FDCPA."

Discussion. In both *Brunett* and *Spuhler*, the Seventh Circuit vacated the lower court's decision with instructions for the cases to be remanded, based on subject matter jurisdiction. Judges Kanne and Easterbrook are suggesting that federal trial courts in the Seventh Circuit should conduct a threshold Article III standing analysis

at the outset in addressing these type of FDCPA cases. The Seventh Circuit is looking for a concrete harm to the plaintiff, and a mere technical violation of the FDCPA by a debt collector is not sufficient.

In *Gunn*, Judge Easterbrook indicated that it is not enough to allege an "annoyance" as a harm. The court holds "a sense of indignation (aggravated annoyance) is not enough for standing." In *Gunn* the Plaintiff also argued that the claims were substantive violations of the Act, not procedural, and so they should be distinguished under Article III. The Seventh Circuit disagreed, noting that "Article III of the Constitution does not distinguish procedural from substantive claims; it makes injury essential to all litigation in federal court."

Additionally, the Seventh Circuit noted that even though a case survives an initial motion to dismiss, a district court must resolve factual disputes relating to jurisdiction. In *Bazille*, the court indicated that, in an evidentiary hearing, the district court can review evidence as to whether the plaintiff meets Article III standing requirements.

Companies: Convergent Outsourcing, Inc.; Finance System of Green Bay, Inc.; State Collection Service, Inc.; Thrasher, Buschmann & Voelkel, P.C

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