Banking and Finance Law Daily Wrap Up, DEBT COLLECTION—9th Cir.: Unwanted collection letter posed actual harm for Article III standing under FDCPA, (Feb. 25, 2025)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

The court discerned the traditional tort of "intrusion on seclusion" as keyed to a subsection of the FDCPA about communications with parties represented by counsel.

Congressional judgment in enacting the Fair Debt Collection Practices Act (FDCPA) and a comparison with traditionally recognized harms established that a consumer plaintiff suffered a concrete injury when a debt collector mailed him an unwanted letter, held the U.S. Court of Appeals for the Ninth Circuit in reversing a district court's dismissal for lack of Article III standing. The factual fulcrum that perfected the facial injury in fact was the consumer's explicit instruction that the debt collector correspond only with his attorney, per a subsection of the FDCPA about communications with represented parties. *See* 15 U.S.C. § 1692c(a)(2). Receipt of the letter in alleged violation of § 1692c(a)(2) "inherently violated" the consumer's privacy such that the consumer sufficiently alleged actual harm that was neither conjectural nor a bare statutory violation of procedure. The court reasoned that both Congressional judgment in enacting the FDCPA and a comparison with the traditional tort of "intrusion on seclusion" supported its ruling that the letter caused an injury in fact. The court declined to consider the parties' arguments for summary judgment below, reversed the lower court's dismissal, and remanded for further proceedings (*Six v. IQ Data International, Inc.*, No. 2:22-cv-00203-MTL (9th Cir. Feb. 24, 2025)).

Background. Plaintiff Ryan Six, a consumer, sued IQ Data International, Inc. (IQ), a debt collector, under a subsection of the Fair Debt Collection Practices Act pertinent to communications with represented parties. *See* 15 U.S.C. 1692c(a)(2). Six alleged that IQ sent him a debt verification letter after he had instructed IQ to send all communications to his attorney.

Six and IQ filed cross-motions for summary judgment, but the district court dismissed the action for lack of Article III standing. The district court found Six could not show that he suffered injury in fact. The district court reasoned that the receipt of one unwanted letter was unlike any traditional type of harm for a lawsuit, nor was it an abusive debt collection practice under the Fair Debt Collection Practices Act (FDCPA). The district court did not reach any of the parties' other arguments and denied the remainder of their cross-motions for summary judgment as moot.

Six appealed the dismissal, the district court's denial of his motion to strike affirmative defenses, its resolution of the parties' joint discovery dispute based on attorney-client privilege, and its modified grant of attorney's fees. In applying de novo review to the question of standing, the court reversed and remanded on the question of standing, only.

Injury in fact. The Ninth Circuit began its analysis by invoking *TransUnion* and recounting how a determination of injury turns on two factors: 1) the judgment of Congress; and, 2) a comparison of alleged harms with traditionally recognized harms. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425–26 (2021).

Starting with the judgment of Congress, the court noted that Congress may elevate previously inadequate injuries at law to the status of legally cognizable concrete injuries. Receipt of a letter from a debt collection agency fell within what Congress contemplated as harm when it enacted the FDCPA insofar as abusive debt practices contribute to invasions of individual privacy.

Next, as to whether Six identified a close and traditionally recognized common law analogue for his alleged injury, the court identified intrusion on seclusion as an example. The court explained that whether something

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is a close analogue is a question of kind, not degree, and that courts have consistently found that unwanted communications cause harm akin to that of intrusion on seclusion. The court cited to several cases, including one that held that one unwanted phone call and voicemail in violation of the FDCPA qualified for a finding of concrete injury. *See, e.g., Lupia v. Medicredit, Inc.*, 8 F.4th 1184, 1191–93 (10th Cir. 2021). The court said it did not see a meaningful difference in this context between making a phone call and sending a letter.

The court continued that Six's request that IQ communicate with his attorney was a clear expression of his desire to be "undisturbed by IQ's communications." IQ's letter was the same kind of "irritating intrusion[]" as the tort of intrusion on seclusion. The fact that IQ mailed only one letter did not change the kind of harm caused. *See Lupia,* 8 F.4th at 1192. It was the same kind of harm.

The court distinguished that a case IQ relied on explicitly turned on the degree of harm, not the kind of harm. *See Pucillo v. National Credit Systems, Inc.*, 66 F.4th 634 (7th Cir. 2023). The court cited that the Supreme Court has discouraged that approach. *See Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020). Moreover, the court strongly disagreed with the *Pucillo* reasoning that unwanted letters are not analogous to intrusion on seclusion simply because they can be picked up at the recipient's choosing, unlike text messages.

The Ninth Circuit also found Six met the remaining elements of standing where IQ did not dispute causation. Moreover, the relief Six sought under the FDCPA, including declaratory relief, statutory damages, and actual damages, would redress the intrusion.

Remand. The court held the district court was in the best position to rule on the parties' alternative arguments for summary judgment in the first instance. The court agreed with IQ's suggestion to remand for further proceedings.

The case is No. 2:22-cv-00203-MTL.

Judge: Desai, R.

Attorneys: Russell S. Thompson, IV (Thompson Consumer Law Group, PC) for Ryan Six. Joshua Michael Bolen (CHDB Law, LLP) for IQ Data International, Inc.

Companies: IQ Data International, Inc.

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