NOT A PREFERRED COURSE: 11TH CIRCUIT DECIDES FDCPA QUESTION IN HUNSTEIN V. PREFERRED COLLECTION AND MANAGEMENT SERVICES

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Litigation and Dispute Resolution Alert

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On 21 April 2021, the 11th Circuit held that a debt collector's transmittal of a customer's debt-related data to a third-party letter preparation vendor without authorization stated a Fair Debt Collection Practices Act (FDCPA) claim under 15 U.S.C. § 1692c(b). The 11th Circuit's decision may have implications for the debt-collection businesses that outsource customer-related tasks to vendors.

In *Hunstein v. Preferred Collection and Management Services, Inc.*, the plaintiff incurred debt to a hospital for medical treatment.[1] The hospital transferred the debt to the defendant to collect.[2] The defendant sent an electronic communication to a third-party mail vendor to prepare and mail a collection letter on the defendant's behalf.[3] In the process, the defendant allegedly transmitted information about the plaintiff, including (1) the plaintiff's status as a debtor, (2) the exact balance of his debt, (3) the entity to which he owed the debt, (4) that the debt concerned his son's medical treatment, and (5) his son's name.[4] Using the information, the vendor generated and sent a collection letter to the plaintiff.[5]

The plaintiff filed suit alleging violations of the FDCPA and the Florida Consumer Collections Practices Act.[6] Specifically, the plaintiff alleged that, in sending his personal information without authorization to a third-party mail vendor, the defendant violated FDCPA "§ 1692c(b), which, with certain exceptions, prohibits debt collectors from communicating consumers' personal information to third parties 'in connection with the collection of any debt.'"[7] The district court dismissed the action after concluding the communication from the defendant to the third-party vendor mailer was not done "in connection with the collection of a debt."[8] The plaintiff appealed.

The 11th Circuit reversed the district court's decision.[9] The 11th Circuit first held that the plaintiff had alleged a concrete statutory injury under § 1692c(b) for Article III purposes even where he had not alleged a "risk of real harm" or a "tangible harm," such as a financial loss or emotional distress.[10] The 11th Circuit then held that the defendant's transmittal of the plaintiff's personal information to a third-party vendor constituted a communication "in connection with the collection of any debt" within the meaning of § 1692c(b).[11] The court reasoned that the broad dictionary definition of the word "connection" means "relationship or association"[12] and the phrase "in connection with" means "with reference to [or] concerning."[13] Given the phrase's expansive common interpretation, the court concluded it was "inescapable" that the defendant's communication of specific details to its vendor "at least 'concerned,' was 'with reference to,' and bore a 'relationship [or] association' to its collection of [plaintiff's] debt."[14] Thus, the court held that the plaintiff had alleged a FDCPA violation.[15] In rendering its decision, the court rejected the notion that the phrase "in connection with the collection of any debt" required a demand for

payment from a consumer.[16] The 11th Circuit also declined to adopt a multifactor balancing test set out by the 6th Circuit in *Goodson v. Bank of America, N.A.*, to determine if a letter sought to inform consumers or induce payment under FDCPA § 1692e.[17] The 6th Circuit factors include:

(1) the nature of the relationship of the parties; (2) whether the communication expressly demanded payment or stated a balance due; (3) whether it was sent in response to an inquiry or request by the debtor; (4) whether the statements were part of a strategy to make payment more likely; (5) whether the communication was from a debt collector; (6) whether it stated that it was an attempt to collect a debt; and (7) whether it threatened consequences should the debtor fail to pay.[18]

Finally, the 11th Circuit did not discuss whether the vendor could have been acting as the defendant's agent and thus was not doing anything more than the defendant itself could have done. Nonetheless, businesses, creditors, and servicers may want to take note of the *Hunstein* decision.

Our lawyers will continue to monitor this matter for future updates, including whether the defendant moves the 11th Circuit for rehearing.

FOOTNOTES

[1] Hunstein v. Preferred Collection & Mgmt. Servs., Inc., No. 19-14434, 2021 WL 1556069, at *2 (11th Cir. Apr. 21, 2021).

[2] *Id*.

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] *Id*.

[7] *Id*. at *1.

[8] Hunstein v. Preferred Collection & Mgmt. Servs., Inc., No. 19-CV-983-T-60SPF, 2019WL5578878, at *3 (M.D. Fla. Oct. 29, 2019).

[9] *Hunstein*, 2021 WL 1556069, at *8.

[10] *Id*. at *2–8.

[11] *Id*. at *5.

[12] *Id*.

[13] *Id.*

[14] *Id.*

[15] *Id*. at *8.

[16] *Id*. at 6–7.

[17] *Id*. at *7–8; Goodson v. Bank of Am., N.A., 600 F. App'x 422 (6th Cir. 2015).

[18] *Goodson*, 600 F. App'x at 431.

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