
Seventh Circuit Dismisses Another FDCPA Case for Lack of Article III Standing

By Robert M. Horwitz

The United States Court of Appeals for the Seventh Circuit (governing appeals of lawsuits filed in federal court in Illinois, Indiana and Wisconsin) doubled down yesterday on its recent string of opinions finding no Article III standing to sue under the Fair Debt Collection Practices Act (FDCPA) in dismissing another FDCPA case. See *Smith v. GC Services Limited Partnership* (Opinion: <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D01-21/C:19-3494:J:Easterbrook:aut:T:fnOp:N:2648126:S:0>).

Smith's lawsuit concerned language in the debt collector's validation notice (first written communication) to her. The debt collector's validation notice did not track the precise language in Section 1692g(a)(1-5) of the FDCPA. It told Smith that:

"If you dispute this balance or the validity of this debt, please let us know in writing. If you do not dispute this debt in writing within 30 days after you receive this letter, we will assume this debt is valid."

Smith claimed the letter violated Section 1692g(a)(3) by making her believe that disputes had to be in writing when that section of the FDCPA does not require disputes to be in writing. Smith's confusion, however, did not result in her being worse off than if the letter had told her she could dispute the debt orally. For example, she did not allege that: (i) she paid money she did not owe; (ii) she would have disputed the debt if she would have known it could be done orally; or (iii) she doubted that she owed the money to the creditor.

Instead of deciding the merits of the legal claim for the first time, the 7th Circuit affirmed the lower court's dismissal for lack of standing to sue. As it did in *Casillas v. Madison Avenue Associates, Inc.*, 926 F.3d 329,331 (7th Cir. 2019), another lack of standing case under the same section of the FDCPA, the Seventh Circuit found "no harm, no foul." In other words, Smith had not alleged an injury because she had not shown "what good a dispute would have done her." Absent

from the complaint were allegations that the debt collector was collecting from the wrong person or collecting the wrong amount, and she acknowledged in her declaration in the district court that she had not decided whether she intended to dispute the debt. The lack of these allegations and her admission resulted in the 7th Circuit affirming the dismissal for lack of standing, but simultaneously warning litigants that it was not holding that a plaintiff claiming a violation of Section 1692g(a)(3) can never establish Article III standing.

Smith is instructive for two reasons. First, depending on a plaintiff's theory and the allegations in the complaint, it's another "tool" in the "toolbox" to dismiss FDCPA claims when your client's validation notice strays from the text required by the FDCPA. Second, it reinforces the relevance of the actual debtor's reaction or inaction to a collection notice when challenging whether there is a personal (subjective) injury sufficient for standing, as opposed to its lack of relevance when arguing whether a collection notice was misleading to the objective unsophisticated/least sophisticated consumer.

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