

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Dewees v. Legal Servicing, LLC

506 F. Supp. 2d 128 (E.D.N.Y. 2007) · No. 05-CV-3974 (NGG) · Decided June 29, 2007

SUMMARY

In this putative class action, the plaintiff alleged that a debt collection letter violated the Fair Debt Collection Practices Act by failing to identify the creditor and falsely implying that legal action was imminent. The United States District Court for the Eastern District of New York denied the defendant's Rule 12(c) motion, concluding that both theories were plausible under the least sophisticated consumer standard.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Nicholas G. Garaufis
JURISDICTION	New York
DECIDED	June 29, 2007
DOCKET	05-CV-3974 (NGG)
DISPOSITION	other
PROCEDURAL POSTURE	Putative class action under the Fair Debt Collection Practices Act in which the defendant moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c).
STANDARD OF REVIEW	A Rule 12(c) motion is evaluated under the same standard as a Rule 12(b)(6) motion. The court accepts well-pleaded factual allegations as true, draws reasonable inferences in the plaintiff's favor, construes the complaint liberally, and determines whether the allegations state a plausible claim for relief.
PRECEDENTIAL VALUE	Published federal district court opinion

TOPICS

- fair debt collection
- motion for judgment on the pleadings
- consumer protection
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the collection letter plausibly failed to identify the creditor to whom the debt was owed, in violation of 15 U.S.C. § 1692g(a)(2).
2. Whether the collection letter plausibly threatened immediate, imminent, or otherwise urgent litigation in violation of 15 U.S.C. §§ 1692e(5) and 1692e(10).
3. Whether Defendant was entitled to judgment on the pleadings under Federal Rule of Civil Procedure 12(c).

HOLDINGS

1. The complaint plausibly alleged that the letter failed to identify the creditor because a least sophisticated consumer could understand the references to Chase's sale of the debt and Legal Servicing's assignment of the account in more than one way.
2. The complaint plausibly alleged that the letter falsely implied imminent or immediate litigation because it stated that the debt was "currently being reviewed for potential litigation" and that Legal Servicing might commence a legal action.
3. Defendant was not entitled to judgment on the pleadings because Plaintiff's FDCPA claims were plausible and material factual questions remained concerning how the letter would be understood by the least sophisticated consumer.

KEY QUOTATIONS

"The standard for granting a Rule 12(c) motion for judgment on the pleadings is identical to that of a Rule 12(b)(6) motion to dismiss the complaint for failure to state a claim upon which relief can be granted." (131)

"This standard requires the court to determine how the "least sophisticated consumer" would interpret the notice received from the debt collector." (132)

"As a result, Plaintiff states plausible claims under Sections 1692e(5) and 1692e(10) that the letter falsely threatens immediate or imminent legal action." (136)

FACTUAL BACKGROUND

Legal Servicing, LLC sent Rosalyn Dewees a debt-collection letter dated August 20, 2004, concerning an \$8,547.25 debt identified with Chase as the original creditor. The letter stated that Chase had sold the debt, that Dewees's rights and obligations had been assigned to Legal Servicing, and that the debt was being reviewed for potential litigation. The letter also stated that Legal Servicing might commence an action and that a resulting judgment could lead to wage garnishment or a lien. Within ten months, Legal Servicing filed a civil action and obtained a judgment against Dewees.

PROCEDURAL HISTORY

Plaintiff alleged that a debt-collection letter violated 15 U.S.C. §§ 1692e(5), 1692e(10), and 1692g(a)(2). After the pleadings closed, Defendant moved under Rule 12(c) to dismiss the claims. The court denied the motion, concluding that Plaintiff had plausibly alleged both that the letter failed to identify the current creditor and that it falsely implied imminent legal action.

DISPOSITION

other

CASES CITED

- Sellers v. M.C. Floor Crafters, Inc., 842 F.2d 639, 642 (2d Cir. 1988)
- Ziemba v. Wezner, 366 F.3d 161, 163 (2d Cir. 2004)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Goldstein v. Pataki, 488 F. Supp. 2d 254, 286-287 (E.D.N.Y. 2007)
- Iqbal v. Hasty, 490 F.3d 143, 159 (2d Cir. 2007)
- Roth v. Jennings, 489 F.3d 499, 509-510 (2d Cir. 2007)
- Republic of Ecuador v. ChevronTexaco Corp., 376 F. Supp. 2d 334, 375 (S.D.N.Y. 2005)
- Brass v. American Film Technologies, Inc., 987 F.2d 142, 150 (2d Cir. 1993)
- Cortec Industries, Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991)
- DIRECTV Group, Inc. v. Darlene Investments, LLC, 2006 WL 2773024, at *3 (S.D.N.Y. Sept. 27, 2006)
- Clomon v. Jackson, 988 F.2d 1314, 1318 (2d Cir. 1993)
- Sparkman v. Zwicker & Assocs., P.C., 374 F. Supp. 2d 293, 300-301 (E.D.N.Y. 2005)
- Turner v. Asset Acceptance, LLC, 302 F. Supp. 2d 56, 58 (E.D.N.Y. 2004)
- Spira v. Ashwood Financial, Inc., 358 F. Supp. 2d 150, 156, 160 (E.D.N.Y. 2005)
- McStay v. I.C. Systems, Inc., 308 F.3d 188, 191 (2d Cir. 2002)
- Schweizer v. Trans Union Corp., 136 F.3d 233, 238 (2d Cir. 1998)
- Vega v. Credit Bureau Enterprises, 2005 WL 711657, at *9-*10 (E.D.N.Y. Mar. 29, 2005)
- Bentley v. Great Lakes Collection Bureau, 6 F.3d 60, 62 (2d Cir. 1993)
- Lewis v. ACB Business Services, Inc., 911 F. Supp. 290, 293-294 (S.D. Ohio 1996)
- Russey v. Rankin, 911 F. Supp. 1449, 1454 (D.N.M. 1995)
- Rosa v. Gaynor, 784 F. Supp. 1, 2, 4-5 (D. Conn. 1989)
- Gostony v. Diem Corp., 320 F. Supp. 2d 932, 941 (D. Ariz. 2003)
- Lee v. CBC Co., 1996 U.S. Dist. LEXIS 21993, at *18-*19 (S.D. Ohio Sept. 26, 1996)
- Schneider v. TSYS Total Debt Management, Inc., 2006 WL 1982499, at *3 (E.D. Wis. July 13, 2006)
- Hernandez v. Affiliated Group, Inc., 2006 WL 83474, at *2 (E.D.N.Y. Jan. 12, 2006)