UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Jeffrey Lox v. CDA, Limited

689 F.3d 818 (7th Cir. 2012) · No. No. 11-2729 · Decided August 2, 2012

SUMMARY

The Seventh Circuit held that debt-collection letters falsely and materially suggested that attorney fees could be awarded against the debtor, even though no contractual or statutory basis for such fees existed. The court concluded that the language was misleading on its face under the Fair Debt Collection Practices Act and did not require extrinsic evidence. It reversed the grant of summary judgment to CDA and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Flaum, Circuit Judge; Posner; Flaum; Wood
JURISDICTION	Federal
DECIDED	August 2, 2012
DOCKET	No. 11-2729
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lox appealed the grant of summary judgment to CDA and the denial of his own summary judgment motion in an action alleging that CDA's debt-collection letters violated the Fair Debt Collection Practices Act.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; facts are construed favorably to the nonmoving party, which receives all reasonable inferences in its favor.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jeffrey Lox v. CDA, Limited, doing business as Creditors Discount & Audit Company

TOPICS

fair debt collection · consumer protection · summary judgment · standard of review · appellate procedure

PRACTICE AREAS

consumer protection · fair debt collection · appellate procedure

QUESTIONS PRESENTED

1. Whether CDA's statement that a court could allow attorney fees if it obtained a judgment against Lox was false under 15 U.S.C. § 1692e.
2. Whether the statement was misleading to the unsophisticated consumer on its face, such that extrinsic evidence was unnecessary.
3. Whether the false and misleading statement was material under the FDCPA.
4. Whether Lox waived the attorney-fees theory by not specifically quoting the challenged language in his amended complaint.

HOLDINGS

1. The statement that, after CDA obtained a judgment, a court could allow attorney fees was false because attorney fees could not have been awarded against Lox under the applicable contractual and legal circumstances.
2. The attorney-fees statement was misleading on its face to the unsophisticated consumer, and Lox therefore did not need extrinsic evidence to establish its deceptive nature.
3. The false and misleading attorney-fees statement was material because it had the ability to influence a consumer's decision whether to pay or contest the debt.
4. Lox did not waive his claim concerning the attorney-fees language because his amended complaint attached the challenged letter and generally alleged violations of § 1692e(10), his interrogatory responses identified the relevant language, and CDA questioned him about it at deposition.

KEY QUOTATIONS

> *"The clear meaning of this statement is that if CDA decided to bring legal action against Lox and was victorious, the award of attorney fees to CDA was one possible outcome."* (689 F.3d at 822)

> *"Ruth and Gonzales establish that it is improper under the FDCPA to imply that certain outcomes might befall a delinquent debtor when, legally, those outcomes cannot come to pass."* (689 F.3d at 823)

> *"The false statement was therefore material."* (689 F.3d at 826)

FACTUAL BACKGROUND

Jeffrey Lox incurred a $235.07 medical debt after receiving treatment from Dr. Mark Baylor and later failed to pay it. Baylor referred the debt to CDA, which sent Lox collection letters stating that legal action could result in court costs and attorney fees. Under the parties' accepted assumptions, neither a contract nor applicable law authorized an award of attorney fees against Lox. Lox asserted that the statement was materially false and misleading under the FDCPA.

PROCEDURAL HISTORY

Lox sued CDA in the United States District Court for the Central District of Illinois over allegedly false and misleading statements in debt-collection letters. After discovery, both parties moved for summary judgment. The magistrate judge denied Lox's motion and granted CDA's motion on all FDCPA claims. Lox appealed only the claim concerning the letters' statement that a court could award attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse both the grant of CDA's summary judgment motion and the denial of Lox's summary judgment motion, and remand for proceedings consistent with the opinion.

CASES CITED

- Mercatus Group, LLC v. Lake Forest Hospital, 641 F.3d 834, 839 (7th Cir. 2011)
- Bagley v. Blagojevich, 646 F.3d 378, 388 (7th Cir. 2011)
- Ogden v. Atterholt, 606 F.3d 355, 358 (7th Cir. 2010)
- Nielsen v. Dickerson, 307 F.3d 623, 634 (7th Cir. 2002)
- Ruth v. Triumph Partnerships, 577 F.3d 790, 794 n.2, 800-01 (7th Cir. 2009)
- Wahl v. Midland Credit Management, Inc., 556 F.3d 643, 645-46 (7th Cir. 2009)
- Veach v. Sheeks, 316 F.3d 690, 693 (7th Cir. 2003)
- Pettit v. Retrieval Masters Creditors Bureau, Inc., 211 F.3d 1057, 1060 (7th Cir. 2000)
- Taylor v. Cavalry Investment, L.L.C., 365 F.3d 572, 574 (7th Cir. 2004)
- Walker v. National Recovery, Inc., 200 F.3d 500, 503 (7th Cir. 1999)
- Gonzales v. Arrow Financial Services, LLC, 660 F.3d 1055, 1059, 1061 n.3, 1062-63 (9th Cir. 2011)
- Hahn v. Triumph Partnerships, 557 F.3d 755, 756-58 (7th Cir. 2009)
- Peters v. General Service Bureau, Inc., 277 F.3d 1051, 1056 (8th Cir. 2002)
- Williams v. OSI Education Services, Inc., 505 F.3d 675, 677-78 (7th Cir. 2007)
- Captain v. ARS National Services, Inc., 636 F. Supp. 2d 791, 796-97 (N.D. Ill. 2009)
- Donahue v. Quick Collect, Inc., 592 F.3d 1027, 1034 (9th Cir. 2010)
- Kistner v. Law Offices of Michael P. Margelefsky, LLC, 518 F.3d 433, 438 (6th Cir. 2008)
- Federal Home Loan Mortgage Corp. v. Lamar, 503 F.3d 504, 509 (6th Cir. 2007)
- Hardt v. Reliance Standard Life Insurance Co., 560 U.S. 242, 254-55 (2010)
- Krantz v. Chessick, 668 N.E.2d 77, 81 (Ill. App. Ct. 1996)
- O'Rourke v. Palisades Acquisition XVI, LLC, 635 F.3d 938, 942 (7th Cir. 2011)

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