UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Johnson v. AMO Recoveries a/k/a Asset Management Outsourcing, Inc.

427 F. Supp. 2d 953 (N.D. Cal. 2005) · No. No. C 05 00273 RMW · Decided October 19, 2005

SUMMARY

The United States District Court for the Northern District of California granted AMO Recoveries' motion for judgment on the pleadings in a Fair Debt Collection Practices Act case. The court held that AMO's settlement letters did not contain actionable false statements, create a false sense of urgency, or misrepresent the creditor's settlement authority under 15 U.S.C. § 1692e(10).

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Ronald M. Whyte
JURISDICTION	California
DECIDED	October 19, 2005
DOCKET	No. C 05 00273 RMW
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) in an action alleging violations of the Fair Debt Collection Practices Act.
STANDARD OF REVIEW	On a Rule 12(c) motion, allegations of the nonmoving party are accepted as true and denied allegations of the moving party are assumed false. Judgment is proper when the pleadings establish that no material issue of fact remains and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published federal district court opinion
PARTIES	Donald Johnson v. AMO Recoveries a/k/a Asset Management Outsourcing, Inc.

TOPICS

fair debt collection | consumer protection | motion for judgment on the pleadings | deceptive trade practices | civil procedure

PRACTICE AREAS

consumer protection | fair debt collection | civil procedure

QUESTIONS PRESENTED

1. Whether AMO's settlement letters falsely represented the period during which Johnson could accept a settlement offer in violation of 15 U.S.C. § 1692e(10).
2. Whether the sequence and content of AMO's letters created a false sense of urgency in violation of the FDCPA.
3. Whether AMO's statements that it was authorized by Discover misrepresented Discover's settlement authority.

HOLDINGS

1. The letters did not falsely represent the settlement opportunities merely because a later letter offered a different, more favorable settlement without an expiration date. A settlement offer that becomes void by its stated deadline does not necessarily represent that the parties may not later negotiate different terms.
2. The letters did not create a false sense of urgency in violation of the FDCPA.
3. AMO's statements that it was authorized by Discover to make the settlement offers did not misrepresent Discover's settlement authority, and Johnson could not state an FDCPA claim on that theory.

KEY QUOTATIONS

> *"Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law."* (955)

> *"A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt."* (955)

> *"Not only would "the least sophisticated debtor" understand that the expiration of a mere "offer" does not necessarily foreclose the possibility of the parties later agreeing to its terms, but "[t]he practical consequence of holding [offer] letters unlawful would be to prohibit settlement offers that are anything but the debt collector's best and final offer.""* (957)

FACTUAL BACKGROUND

AMO sent Johnson six letters concerning a Discover credit-card debt of $53,821.35. The letters included settlement offers requiring payment of 60 percent by a specified date, a later offer to accept 50 percent without an expiration date, a demand for full payment accompanied by a warning that account information could be forwarded to a credit bureau, and a later limited settlement authorization. Johnson alleged that the communications falsely represented the duration and urgency of the settlement offers and AMO's authority to settle on Discover's behalf.

PROCEDURAL HISTORY

Johnson sued AMO Recoveries under 15 U.S.C. § 1692e(10), alleging that six debt-collection letters contained false or misleading statements, created a false sense of urgency, and misrepresented AMO's settlement authority. After the pleadings were closed, AMO moved for judgment on the pleadings. The court granted the motion, and Johnson declined an opportunity to amend at oral argument.

DISPOSITION

other

CASES CITED

- New.Net, Inc. v. Lavasoft, 356 F. Supp. 2d 1090, 1115 (C.D. Cal. 2004)
- Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1990)
- Romine v. Diversified Collection Services, Inc., 155 F.3d 1142, 1149 (9th Cir. 1998)
- Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222, 1225 (9th Cir. 1988)
- Goswami v. American Collections Enterprise, Inc., 377 F.3d 488, 495 (5th Cir. 2004)
- Wade v. Regional Credit Ass'n, 87 F.3d 1098, 1100 (9th Cir. 1996)
- Headen v. Asset Acceptance, LLC, 383 F. Supp. 2d 1097 (S.D. Ind. 2005)
- Gully v. Van Ru Credit Corp., 381 F. Supp. 2d 766, 772 (N.D. Ill. 2005)
- Sarder v. Academy Collection Service, Inc., 2005 WL 615831, at *2-*3 (E.D.N.Y. 2005)
- Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507, 1516-17 (9th Cir. 1994)
- Uyeda v. J.A. Cambece Law Office, P.C., 2005 WL 1168421, at *4 (N.D. Cal. 2005)
- Gully v. Arrow Financial Services, LLC, 2005 U.S. Dist. LEXIS 16836
- Jackson v. National Action Financial Services, Inc., 227 F.R.D. 284 (N.D. Ill. 2005)