UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

Carlyne Desir v. Andreu, Palma, Lavin & Solis, PLLC, et al.

No. 8:24-cv-02651-SDM-NHA, United States District Court for the Middle District of Florida, Tampa Division (November 26, 2025)

SUMMARY

The United States District Court for the Middle District of Florida grants the defendants' motion for summary judgment in Carlyne Desir's action alleging Fair Debt Collection Practices Act violations and fraudulent misrepresentation. The court concludes that the defendants' conduct complied with the FDCPA and that Desir presented no competent evidence supporting her fraud claims. The court denies Desir's motion for summary judgment but permits her to amend the complaint to assert a new statutory or common-law claim, excluding the dismissed claims.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Tampa Division
WRITING FOR THE COURT	Steven D. Merryday
JURISDICTION	United States District Court for the Middle District of Florida, Tampa Division
DECIDED	November 26, 2025
DOCKET	8:24-cv-02651-SDM-NHA
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for summary judgment on the plaintiff's Fair Debt Collection Practices Act and fraudulent misrepresentation claims. The court granted defendants' motion, denied plaintiff's motion for summary judgment, and allowed plaintiff limited leave to amend to assert a new statutory or common-law claim.
STANDARD OF REVIEW	Summary judgment is appropriate when the undisputed record establishes that the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Nonprecedential district court order

TOPICS

fair debt collection | summary judgment | fraud | motion to amend | civil procedure

PRACTICE AREAS

consumer protection | fair debt collection | fraud | civil procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment on Desir's FDCPA claims because the record did not establish that the firm or its attorneys were debt collectors or engaged in conduct prohibited by the statute.
2. Whether defendants were entitled to summary judgment on Desir's fraudulent misrepresentation claims because she presented no competent evidence of a false statement of material fact.
3. Whether Desir could assert new statutory or common-law claims for the first time in response to defendants' summary-judgment motion.

HOLDINGS

1. Defendants were entitled to summary judgment on the FDCPA claims because Desir presented no evidence that the law firm or its attorneys qualified as debt collectors under 15 U.S.C. § 1692a(6), and the undisputed evidence showed conduct complying with the FDCPA's validation and cease-communication requirements.
2. Defendants were entitled to summary judgment on Desir's fraudulent misrepresentation claims because she submitted no competent evidence that any defendant falsely stated a material fact.
3. Desir could not properly assert a new statutory or common-law claim in her response to defendants' summary-judgment motion.

KEY QUOTATIONS

> *"The defendants' motion for summary judgment is GRANTED and Desir's motion for summary judgment is DENIED."* (Conclusion)

FACTUAL BACKGROUND

Desir defaulted on two Bank of America credit card accounts with a combined unpaid balance of $103,789.67. Bank of America retained Andreu, Palma, Lavin & Solis, PLLC, which sent validation notices and later written verification for one account. After Desir disputed the accounts and requested that communications cease, the firm stopped communicating with her; the bank then filed separate collection actions represented by the firm, with complaints signed by attorneys Alan Jeffrey Miller and Jeremiah Esquig. Desir offered no competent evidence that defendants falsely stated a material fact or that the debts had been satisfied or assigned away.

PROCEDURAL HISTORY

Carlyne Desir filed suit against Andreu, Palma, Lavin & Solis, PLLC, and two attorneys, alleging violations of the Fair Debt Collection Practices Act and fraudulent misrepresentation arising from collection efforts on two

Bank of America credit card accounts. After discovery, defendants moved for summary judgment and Desir responded. The district court granted defendants' motion, denied Desir's motion, and permitted a limited amendment while barring reassertion of the FDCPA and fraudulent misrepresentation claims.

DISPOSITION

other

CASES CITED

- Helman v. Bank of Am., 685 F. App'x 723, 726 (11th Cir. 2017)
- Heintz v. Jenkins, 514 U.S. 291, 296 (1995)
- Vega v. McKay, 351 F.3d 1334, 1336 (11th Cir. 2003)
- Butler v. Yusem, 44 So. 3d 102, 105 (Fla. 2010)
- Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004)

OPINION

Desir
PER CURIAM.
UMNIIDTEDDL ES TDAISTTERS IDCITS TORFI FCLTO CROIDUART
TAMPA DIVISION
CARLYNE DESIR,
Plaintiff, v. CASE NO. 8:24-cv-02651-SDM-NHA
ANDREU, PALMA, LAVIN & SOLIS, PLLC, et al,
Defendants. ______________________________________/
ORDER
Alleging fraudulent misrepresentation and violations of the Fair Debt Collec- tions Practices Act, Carlyne Desir sues (Doc. 19) Andreu, Palma, Lavin & Solis, PLLC, (APLS) Alan Jeffrey Miller, and Jeremiah Esquig. The defendants move (Doc. 37) for summary judgment. Desir responds (Doc. 38) and the defendants reply. (Doc. 39)
BACKGROUND
On September 26, 2023, Desir defaulted on two credit card accounts with Bank of America and with a combined unpaid balance of $103,789.67. (Docs. 33-1 and 33-2) The bank retained the law firm APLS. (Doc. 33-3 at ¶ 4) On September 17, 2023, and October 17, 2023, APLS sent Desir a “validation notice” for each account. (Doc. 33-3 at ¶¶ 5-6). On November 7, 2023, Desir sent “written correspondence” to APLS disputing the accounts and requesting APLS to cease communication with her. (Doc. 33-3 at ¶ 7) Before APLS received Desir’s “written correspondence,” APLS sent Desir “written verification” of one of Desir’s defaulted accounts. (Doc. 33-3 at ¶ 8) After receiving Desir’s request, APLS ceased communication with Desir. (Doc. 33-3 at ¶ 9) On March 20, the bank, represented by APLS, sued Desir to collect one of the

accounts. Bank of America, N.A. v. Carlyne Desire (Case No. 2024-CC-015302) (Doc. 33-3 at ¶ 12) The complaint was signed by Esquig, a lawyer employed by APLS. (Doc. 33-3 at ¶ 13) On March 21, the bank sued Desir to collect the other account. Bank of Amer- ica, N.A. v. Carlyne Desire (Case No. 2024-CC-002395) (Doc. 33-3 at ¶ 14) The com- plaint was signed by Miller, another lawyer employed by APLS. (Doc. 33-3 at ¶ 15)

DISCUSSION

Desir's FDCPA claims fail as a matter of law. Under the statute, a plaintiff must establish (1) that she was the object of collection activity arising from a con- sumer debt, (2) that the defendant is a debt collector as defined by the statute, and (3) that the defendant engaged in a statutorily prohibited act or omission. Helman v. Bank of Am., 685 F. App'x 723, 726 (11th Cir. 2017). Desir offers no evidence that APLS or an APLS lawyer qualifies as a "debt collector" under section 1692a(6). The firm acted solely as counsel for the bank in the collection action. Heintz v. Jenkins, 514 U.S. 291, 296 (1995); Vega v. McKay, 351 F.3d 1334, 1336 (11th Cir. 2003). The un- disputed affidavits show that the defendants sent the validation notices required by Section 1692g and ceased communication upon Desir's request — conduct that fully complies with the FDCPA. Desir's fraudulent misrepresentation claims are likewise unsupported. She sub- mits no affidavits, exhibits, or other competent evidence showing that any defendant falsely stated a material fact. Butler v. Yusem, 44 So. 3d 102, 105 (Fla. 2010). In her re- sponse, Desir asserts that the debts "were not owed to BOA at the time — they had been satisfied or assigned away," but the record contains nothing to substantiate that claim. (Doc. 38 ¶ 40). To the extent Desir's response to the defendants' motion for summary judg- ment attempts to assert a new claim for violation of another statute or a common-law tort claim, those claims are not properly raised in a motion for summary judgment. Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004).

CONCLUSION

The defendants' motion for summary judgment is GRANTED and Desir's motion for summary judgment is DENIED. No later than DECEMBER 8, 2025, Desir may amend her complaint to raise a new statutory or common law claim. Desir may not reassert her claim under the FDCPA or her fraudulent misrepresenta- tion claim. ORDERED in Tampa, Florida, on ______________________________, 2025. ____________________________________

STEVEN D. MERRYDAY

UNITED STATES DISTRICT JUDGE