SUPREME COURT OF APPEALS OF WEST VIRGINIA

LTD Financial Services, L.P. v. Brian Collins

LTD Financial Services, L.P. v. Collins, No. 18-0008 (W. Va. Mar. 15, 2019) · No. 18-0008 · Decided March 15, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Raleigh County Circuit Court judgment awarding Brian Collins $18,406 for eleven violations of the West Virginia Consumer Credit and Protection Act. The court held that violations of West Virginia Code § 46A-2-128(e) do not require proof of intent and that the creditor failed to establish either an unintentional violation or a bona fide error of fact under § 46A-5-101(8). The court issued the decision as a memorandum decision under Rule 21 and found no substantial question of law or prejudicial error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	March 15, 2019
DOCKET	18-0008
DISPOSITION	affirmed
PROCEDURAL POSTURE	LTD Financial Services appealed from the Circuit Court of Raleigh County's order granting Brian Collins summary judgment as to liability for eleven violations of the West Virginia Consumer Credit and Protection Act, rejecting LTD's bona fide-error defenses, and awarding Collins $18,406 after a bench trial on damages and statutory penalties.
STANDARD OF REVIEW	The final order and ultimate disposition after a bench trial are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law.
PARTIES	LTD Financial Services, L.P. v. Brian Collins

TOPICS

fair debt collection · consumer protection · statutory interpretation · appellate procedure · remedies

PRACTICE AREAS

consumer protection · fair debt collection · appellate procedure · statutory interpretation · remedies

QUESTIONS PRESENTED

1. Whether Collins was required to prove that LTD intended to violate West Virginia Code § 46A-2-128(e).
2. Whether LTD established an affirmative defense under West Virginia Code § 46A-5-101(8) by proving that the violations were unintentional or resulted from a bona fide error of fact notwithstanding procedures reasonably adapted to avoid the violations.
3. Whether the circuit court erred in finding that LTD failed to prove its affirmative defenses and in awarding Collins $18,406.

HOLDINGS

1. A consumer asserting a violation of West Virginia Code § 46A-2-128(e) is not required to prove that the debt collector intended to violate the statute.
2. The intent requirement recognized for liability under West Virginia Code § 46A-2-125(d) does not apply to claims under § 46A-2-128(e), because the statutes contain materially different language.
3. West Virginia Code § 46A-5-101(8) provides two separate affirmative defenses: an unintentional violation and a violation resulting from a bona fide error of fact, each requiring the creditor to establish the defense by a preponderance of the evidence and, for the bona fide-error defense, to show maintenance of procedures reasonably adapted to avoid the violation.
4. Failure to follow a procedure that was not contained in the creditor's produced policies and procedures does not constitute a bona fide error of fact, particularly where the creditor also fails to prove that the relevant procedures were maintained or that the collector was trained or tested on them.

KEY QUOTATIONS

> *"It is not for this Court arbitrarily to read into [a statute] that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted."* (at 2)

> *"We find no merit to these arguments, given that the Legislature has clearly provided for two separate and distinct affirmative defenses for a violation that is either (1) unintentional or (2) the result of a bona fide error of fact."* (at 5)

FACTUAL BACKGROUND

On December 19, 2014, LTD placed a collection call to Collins concerning an outstanding debt. During the recorded call, Collins stated that he was represented by counsel and provided counsel's name and telephone number, although the collector interrupted him while he supplied the number. LTD thereafter contacted Collins at least eleven additional times. LTD asserted that its policies and procedures and the collector's inability to correctly record counsel's telephone number supported bona fide-error or unintentional-violation defenses, but the circuit court found no adequate procedure addressing the situation and no evidence that the relevant procedures were maintained or that the collector had been trained on them.

PROCEDURAL HISTORY

Collins filed suit in January 2015 alleging multiple WVCCPA violations arising from collection calls made after he informed LTD that he was represented by counsel. The circuit court denied LTD's motion for summary judgment, granted Collins summary judgment as to liability for eleven violations of West Virginia Code § 46A-2-128(e), and later rejected LTD's affirmative defenses at trial before awarding Collins $18,406. LTD appealed, and the Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Public Citizen, Inc. v. First National Bank in Fairmont, 198 W. Va. 329, 480 S.E.2d 538 (1996)
- Valentine & Kebartas, Inc. v. Lenahan, 239 W. Va. 416, 801 S.E.2d 431 (2017)
- Huffman v. Goals Coal Co., 223 W. Va. 724, 679 S.E.2d 323 (2009)
- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)