UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Lawrence Kates v. Crocker National Bank

776 F.2d 1396 (9th Cir. 1985) · No. No. 85-6608 · Decided November 19, 1985

SUMMARY

The Ninth Circuit affirmed summary judgment for Crocker National Bank in claims arising from a notice that an investigative consumer report might be made under the Fair Credit Reporting Act. The court held that the Act was not triggered because no investigation or report occurred, rejected the unfair-business-practices damages claim under California law, and upheld denial of leave to amend to add intentional infliction of emotional distress.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Farris, Circuit Judge; J. Blaine Anderson, Circuit Judge; Nelson, Circuit Judge
JURISDICTION	Federal
DECIDED	November 19, 1985
DOCKET	No. 85-6608
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kates appealed from the district court's grant of summary judgment for Crocker National Bank and denial of Kates's motion to amend his complaint to add an intentional-infliction-of-emotional-distress claim.
STANDARD OF REVIEW	Summary judgment was reviewed de novo; denial of leave to amend was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Ninth Circuit opinion; precedential within the Ninth Circuit subject to subsequent authority.
PARTIES	Lawrence Kates v. Crocker National Bank

TOPICS

credit reporting · consumer protection · summary judgment · motion to amend · statutory interpretation

PRACTICE AREAS

consumer protection · consumer credit · civil procedure

QUESTIONS PRESENTED

1. Whether Crocker's notice that an investigative consumer report might be made, without any investigation or report actually occurring, triggered liability under the Fair Credit Reporting Act.
2. Whether California law permitted an individual to recover damages for alleged unfair business practices.
3. Whether the district court abused its discretion by denying Kates leave to amend his complaint to add an intentional-infliction-of-emotional-distress claim.

HOLDINGS

1. The Fair Credit Reporting Act was not activated because Crocker conducted no investigation and transmitted no consumer-report information. A notice stating that an investigative consumer report may be made did not, on these facts, constitute conduct proscribed by the Act.
2. California law did not recognize recovery of damages by individuals for unfair business practices.
3. The district court did not abuse its discretion in denying Kates leave to amend because Kates offered no reason for his delay in seeking amendment.

KEY QUOTATIONS

> *"The Act is not activated until some investigation is done or some information is transmitted."* (¶ 7)

> *"Crocker's conduct was not proscribed by the Act."* (¶ 7)

FACTUAL BACKGROUND

Kates, a former Master Charge customer of Crocker, exceeded his authorized credit limit in spring 1983. After unsuccessful efforts to locate him, Crocker cancelled his account and sent him a notice stating that an investigative consumer report might be made through personal interviews. Kates promptly brought his account current, no investigation was conducted, and no consumer report was made. Crocker did not respond to Kates's later written request for disclosure of the nature and scope of the investigation.

PROCEDURAL HISTORY

Kates sued Crocker for alleged violations of the Fair Credit Reporting Act, California unfair-business-practices law, and invasion of privacy based on a notice that an investigative consumer report might be made. The district court granted Crocker summary judgment on the complaint. The court later denied Kates leave to amend to add an intentional-infliction-of-emotional-distress claim. The Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Golden v. Faust, 766 F.2d 1339, 1340 (9th Cir. 1985)
- Jones v. Community Redevelopment Agency, 733 F.2d 646, 650 (9th Cir. 1984)

- Henry v. Forbes, 433 F. Supp. 5, 8-11 (D. Minn. 1976)
- In re Rubin, 693 F.2d 73, 76 (9th Cir. 1982)
- Mutschler v. Peoples National Bank, 607 F.2d 274, 276 (9th Cir. 1979)
- Chern v. Bank of America, 15 Cal. 3d 866, 875, 127 Cal. Rptr. 110, 115, 544 P.2d 1310, 1315 (1976)
- Committee on Children's Television, Inc. v. General Foods Corp., 35 Cal. 3d 197, 215 n. 16, 197 Cal. Rptr. 783, 794, 673 P.2d 660, 671 (1983)
- M/V American Queen v. San Diego Marine Construction Corp., 708 F.2d 1483, 1492 (9th Cir. 1983)
