Articles + Publications | March 7, 2023

FDCPA Ruling Clarifies Bankruptcy-Related Case Precedent

WRITTEN BY

Jonathan P. Floyd | Stefanie H. Jackman | Ahmed H. Khattab

Published in Law360 on March 7, 2023.

The U.S. District Court for the District of Puerto Rico recently clarified and reinforced the precedent that debt collectors are not violating the Fair Debt Collection Practices Act when sending debt collection communications prior to having knowledge of a consumer's bankruptcy filing.

In Carrasquillo v. CICA Collection Agency Inc., decided on Nov. 16, 2022, the district court, although a part of the First Circuit, relied on a factually analogous U.S. Court of Appeals for the Third Circuit case when finding a debt collector lacked the requisite knowledge and intent to violate Section 1692e of the FDCPA.[1] Carrasquillo appealed the decision to the U.S. Court of Appeals for the First Circuit in February.

Consequently, the court dismissed the consumer's case with prejudice — barring the consumer from bringing this specific FDCPA claim against the debt collector again.

Background

The plaintiff received a debt collection letter from debt collector CICA Collection Agency Inc. on behalf of the creditor, Claro Puerto Rico. In the collection letter, CICA represented that it was attempting to collect a debt owed by the plaintiff. The collection letter was received after the plaintiff already filed for bankruptcy and had listed the Claro debt in his bankruptcy petition.

However, CICA never received notice from the bankruptcy court of the plaintiff's bankruptcy petition, which included the Claro debt at issue. The creditor and nonparty to the action, Claro, was listed on the bankruptcy petition, but failed to inform CICA of the plaintiff's bankruptcy filing. The plaintiff, likewise, did not inform CICA of his bankruptcy filing.

The Plaintiff's Argument

After receiving the debt collection communication, the plaintiff, through his bankruptcy attorney, filed suit against CICA for violation of Section 1692e.

The plaintiff alleged that at the time CICA mailed the debt collection letter to him, CICA knew or should have

known that he had filed for bankruptcy and was under the protection of the bankruptcy code.

Therefore, according to the plaintiff, CICA's collection letter violated Section 1692e as a false representation of the legal status of the debt.

CICA's Defense

CICA sought to rely on a procedural argument in which the Bankruptcy Act precludes FDCPA claims based on alleged violations of the automatic bankruptcy stay.

However, there is a split among the federal district and bankruptcy courts on whether preclusion applies. Rather than add to the tally on either side of the split, the court did not reach that issue and instead carved out a separate exception to Section 1692e.

The Court's Decision

Specifically, while relying on the 1991 U.S. District Court for the District of Delaware case of Hubbard v. National Bond and Collection Associates Inc., affirmed by the Third Circuit, the court held that:

"A debt collector's unknowing violation of an automatic stay does not transform an otherwise accurate collection letter into a 'false representation' within the meaning of § 1692e"; on the other hand, a "false representation" under § 1692e(2)(A) requires that the misrepresentation be intentional."[2]

In Hubbard, the consumer similarly received a collection letter from a debt collector after she already filed for bankruptcy and listed the debt in her bankruptcy petition. The debt collector did not have knowledge of the debt when mailing the collection letter.

Yet, in that instance, the consumer informed the debt collector of the bankruptcy filing and the debt collector ceased any debt collection communications. The consumer still sued the debt collector for that debt collection communication under Section 1692e.

There, the court found that:

The provision prohibiting debt collectors from using false or misleading representation in the collection of any debt was not intended to [punish] debt collectors for failing to discover a [consumer's] bankruptcy filing but was instead intended to prohibit only knowing or intentional conduct by debt collectors.

Similarly, in this case, the court determined that the debt collector should not be penalized for its lack of knowledge or even lack of diligence in determining whether the consumer was protected by the bankruptcy code before mailing the debt collection letter.

Instead, the court penalized the consumer for failing to notify his debt collector of the bankruptcy filing, resulting in dismissal of the claim with prejudice. Had the plaintiff informed CICA of his bankruptcy petition, as in Hubbard, and CICA nevertheless mailed out the collection letter following notice, the plaintiff's claim may have survived.

Key Takeaways

Knowledge and intent: The latter cannot be established without the former. The plaintiff was unable to establish the requisite intent on the part of the debt collector CICA, per Section 1692e, because he was unable to establish CICA's knowledge of his bankruptcy filing.

Prudence is seemingly the burden of the plaintiff rather than a debt collector in similar Section 1692e claims. The court gave short thrift to the issue raised by the plaintiff that the debt collector should have known of the bankruptcy filing.

Despite knowledge by the creditor, Claro, the court did not place the burden on CICA to exercise reasonable diligence in ascertaining whether the plaintiff was protected by the bankruptcy code from debt collection attempts.

Instead, the onus was placed on the plaintiff for not providing notice of his bankruptcy filing to CICA, prior to filing a claim against them for a false representation of a debt under Section 1692e.

Therefore, debt collectors do not violate the FDCPA when sending debt collection communications prior to having knowledge of a consumer's bankruptcy filing, even if that same debt is listed on the bankruptcy petition and the original creditor was notified.

Accordingly, consumers and debt collectors would be wise to take notice of this decision. For consumers and their counsel, ensuring the debt collector is notified of the bankruptcy filing should become second nature and good practice prior to filing a claim for violation of Section 1692e.

For debt collectors and their counsel, this decision serves as a shield to potential FDCPA claims under Section 1692e. However, once notified of the bankruptcy filing, debt collectors must cease all debt collection attempts, or they may not be as fortunate as CICA and instead may have to rely on the procedural Bankruptcy Act preclusion argument, which is not a guarantee and highly dependent on the jurisdiction they are in.

---

[1] https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/880/2023/01/Carrasquillo-v.-CICA.pdf.

[2] https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/880/2023/02/Hubbard-v.-National-Bond-Collection-Assoc._-Inc._-126.pdf.

RELATED INDUSTRIES + PRACTICES

- Consumer Financial Services