In recent litigation and appeal involving claims under the Fair Credit Reporting Act ("FCRA"), the Ninth Circuit affirmed the district court’s grant of summary judgment to the defendant, in a win for CRAs named in similar litigation. *Leoni v. Experian Info. Solutions*, 2021 U.S. App. LEXIS 17687 (9th Cir. June 14. 2021). Read on for details about the case and its implications.

First, some background. Plaintiff filed suit against Experian regarding a purported error in her consumer report. Plaintiff alleged that the report erroneously stated that Plaintiff owed a debt had been previously discharged by a bankruptcy court. Plaintiff requested that Experian investigate this issue. The investigation report subsequently sent to Plaintiff stated that the debt was discharged, but incorrectly noted that the debt was “included in Chapter 13 Bankruptcy on November 08, 2016”
(when in actuality, the debt had been discharged several months earlier). Plaintiff then filed suit for negligent and willful violations of the FCRA—based solely on this misdating issue.

Assessing the case de novo on appeal, the Ninth Circuit first analyzed whether Experian committed a willful violation of the FCRA. To prevail on this claim, Plaintiff was required to demonstrate that Experian “knowingly violated the statute or recklessly disregarded its requirements.” Ramirez v. TransUnion LLC, 951 F.3d 1008, 1031 (9th Cir. 2020). The Court found that the record did not raise a material issue of fact that Experian knowingly or recklessly changed the “included in bankruptcy” date. Rather, Experian’s error was, at most, negligent.

The Court then turned to the standard for negligent violation of the FCRA, which requires Plaintiff to suffer “actual damages.” See 15 U.S.C. § 1681o(a)(1); see also Dennis v. BEH-1, LLC, 520 F.3d 1066, 1069 (9th Cir. 2008), as amended. In support of this requirement, Plaintiff asserted his damages were (1) he “avoided applying for credit for fear of being denied,” (2) “the inaccurate information could serve as a factor in Experian credit scores,” (3) he suffered from emotional distress, (4) he incurred transportation costs traveling to his attorney's office, and (5) he “lost time considering issues related to the inaccurate credit reporting.”

The Ninth Circuit rejected all of these attenuated theories of injury, finding they were non-cognizable for purposes of supporting his claim. For instance, Plaintiff did not point to any evidence that the “included in bankruptcy” date lowered his credit score apart from his actual bankruptcy. Additionally, the Court found that the cost of traveling to his attorneys’ office or the time Plaintiff spent reviewing the credit reports were likewise not compensable because Plaintiff incurred these expenses for the sole purpose of correcting inaccurate reporting. Based on these findings, the Ninth Circuit held that the district court properly awarded summary judgment to Experian on Plaintiff’s claims that Experian willfully and negligently violated the FCRA.

This case is a reminder of the requirement of actual damages to support claims under the statute, and how emotional distress and costs incurred to correct inaccurate reporting are inadequate.

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