

BANKING ALERT

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Third Circuit Applies “Reasonable Reader” Standard in Dismissing Fair Credit Reporting Act Claims

In *Bibbs v. Trans Union LLC*, 2022 WL 3149216 (3rd Cir. Aug. 8, 2022), the United States Court of Appeals for the Third Circuit outlined a new standard by which courts in the Third Circuit should analyze whether a credit report is “false” or “misleading” under the Fair Credit Reporting Act (“FCRA”).

The appeal, which consolidated three cases involving similar facts and the same credit reporting agency, Trans Union LLC (“TransUnion”), involved borrowers who were in default of their student loan obligations. In each instance, the lender had transferred the loan to a collection agency and, accordingly, had reported a “zero balance.” Notwithstanding the indication that each lender was owed a “zero balance,” the credit reporting line still indicated a “pay status” of “120 days past due.” Each of the borrowers sent a dispute letter to TransUnion claiming that the “pay status” was inaccurate and misleading because no payment was due and owing to the transferring creditors. After TransUnion investigated the dispute and advised the borrowers that the reporting was accurate, each borrower filed suit under the FCRA.

The district court ultimately dismissed the borrowers’ FCRA claims, finding that the “pay status” reporting, when viewed from the perspective of a “reasonable lender” (which required the district court to view the tradeline as a whole), was not inaccurate.

On appeal, the borrowers challenged the district court’s application of the “reasonable reader” standard and its determination that the tradeline was not inaccurate given the “maximum possible accuracy” standard that the FCRA applies to credit reporting agencies. In affirming the district court’s decision, the Third Circuit noted that the borrowers’ arguments would require the court to view the purported inaccuracy “myopically” and without context. In reviewing whether the tradeline was accurate, the Third Circuit, like the district court, noted that the entirety of the tradeline plainly indicated that no amount was due and owing to the transferring creditor, that the accounts had been closed and transferred, and there was no verbiage in the “pay status” that indicated any amount was currently due and owing to the transferring creditors. While the

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Third Circuit stated that the reports could have been “clearer,” the reports were “clear,” which is all that is required under the FCRA.

New Jersey Federal Court Grants Application for Turnover Order of Funds From Joint Account

In *Argenbright Holdings IV, LLC v. Gateway Security, Inc. and Kurus J. Elavia*, 2022 WL 2833959 (D.N.J. Jul. 20, 2022), the United States District Court for the District of New Jersey granted plaintiff’s motions for a turnover of funds from a defendant’s joint account.

By way of background, Argenbright Holdings IV, LLC (“Argenbright”), Gateway Security, Inc. and Kurus J. Elavia (together, with Gateway Security, Inc., “Defendants”) entered into an Asset Purchase Agreement (“APA”) on October 31, 2019 for the purchase of a business that was party to a customer care representative contract (“CCR”) with the Port Authority of New York and New Jersey. As part of the APA, Defendants agreed to a revenue adjustment of the purchase price if revenue decreased “for any reason other than sub-par performance directly caused by Argenbright.” Such adjustment would be offset against any other obligations owed to Defendants, specifically a \$1,000,000 Note and payments to Mr. Elavia under a consulting agreement.

As a result of the COVID-19 pandemic, the revenue of the business fell dramatically. In addition, Argenbright discovered that Defendants had breached their warranties by failing to disclose fraudulent overcharges to the Port Authority of New York and New Jersey, and that the status of Defendants’ vehicle fleet was not in compliance with the terms and conditions of the CCR. Based on the default, Argenbright sent Defendants a notice of purchase price adjustment and indemnity claims on January 22, 2021 (the “Notice”) and withheld any additional compensation for deferred payments due and owing under the APA.

On March 9, 2021, Defendants filed an arbitration demand with JAMS seeking an award of the Deferred Payments and challenging Argenbright’s claims contained in the Notice. After several weeks of arbitration, on January 7, 2022, the Arbitrator issued an award in favor of Argenbright entitling Argenbright to recover \$2,748,070.12 from Defendants. Shortly thereafter, Argenbright filed a petition in the district court to confirm the arbitration award. On February 14, 2022, the court granted Argenbright’s petition to confirm the arbitration award in the amount of \$2,748,070.12 (the “Judgment”).

As part of its efforts to recover payment of the Judgment, Argenbright prepared and served information subpoenas, but Defendants failed to respond. Given Defendants’ failure to respond, Argenbright filed a motion to compel responses to the information subpoenas on March 28, 2022. On April 19, 2022, the court granted Argenbright’s motion to compel responses to the information subpoenas.

On April 22, 2022, Argenbright then filed a motion for a turnover of funds from Mr. Elavia’s bank accounts, on which Argenbright had levied, in the sum of \$981,373.87. In response, on May 2, 2022, Defendants filed a cross-motion to vacate the levy and opposition to Argenbright’s motion. Specifically, Defendants argued that the motion should be denied and the levy vacated with respect to the joint account that Mr. Elavia had with his wife.

On June 10, 2022, Argenbright filed a second motion to turn over funds seeking direct payment of third-party debts owed to Gateway Security, Inc. from its contracts with Newark Housing Authority, City of Jersey City, and Charles Schwab & Co., Inc. Defendants responded by claiming that Argenbright did not serve the

necessary writs required under New Jersey law, that they did not receive notice of the writs in any event, and that Argenbright was impermissibly seeking future funds.

As to Argenbright's first motion to turn over funds from Mr. Elavia's accounts, the court found that: (1) Argenbright followed the proper procedures to compel the turnover of funds; and (2) Mr. Elavia had failed to carry his burden in establishing that the funds in the joint account were wholly owned by his wife.

As to Argenbright's second motion to turn over funds associated with Gateway Security, Inc.'s contracts, the court again found: (1) Argenbright followed the proper procedures; (2) the Defendants received proper notice of the writs; and (3) Argenbright was not seeking future funds, but rather was seeking funds that Gateway Security, Inc. had already invoiced. Accordingly, the court granted the motion and entered the turnover order with respect to the third-party debts.

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