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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DANELLE MARIE CASE, on her own behalf and on behalf of all persons similarly situated,

Plaintiff,

v.

THE CREDIT BUREAU, INC. of GEORGIA, dba C.B.I. COLLECTIONS, a foreign corporation,

Defendant.

Civil No. 82-1107FR

OPINION AND ORDER

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FRYE, Judge:

This is an action under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, et seq. This court earlier denied defendant's motion to dismiss, holding that the defendant

may have violated § 1692e(11), and § 1692e(16) by using the phrase "credit bureau" in its name when it carries on no consumer reporting activities in Oregon and by failing to disclose in communications to the plaintiff that it was attempting to collect a debt and that any information received would be used for that purpose.[1]

Defendant has filed a motion to reconsider this ruling.

Defendant first asks the court to reconsider that part of its ruling holding that use of the phrase "credit bureau" in defendant's name may violate the Fair Debt Collection Practices Act (FDCPA) because defendant does not engage in consumer reporting activities in Oregon, even though it does engage in consumer reporting activities in other parts of the country. The basis for the motion to reconsider on this point is a Federal Trade Commission informal staff letter of March 27, 1978. This letter indicates that a collection agency may use the phrase "credit bureau" in its name if it "regularly engages" in consumer reporting activity, even if the consumer reporting activity is not a majority of the collection agency's business.

However, it appears from the letter and the request for the opinion that the collection agency was engaged in consumer reporting activities within the same location (New Jersey) as it was engaged in collection agency activities. It does not appear that the letter precisely addresses the issue that the court decided earlier: that it is a violation for a company that only operates a collection agency within a state to use the phrase

"credit bureau" in its name without some sort of disclaimer even though it may engage in consumer reporting activities in other states.

Even if this court were to accept defendant's argument that because it operates a consumer reporting service and a collection agency, it cannot violate § 1692e(16) because it cannot falsely imply that it is a consumer reporting agency when in fact it is one, this still would not mean that defendant has not violated the general prohibition of § 1692e against all "false, deceptive, or misleading representations." In Wright v. Credit Bureau of Georgia, Inc., 548 F. Supp. 591 (N.D. Ga. 1982), the court was presented with the precise situation as is before this court. Plaintiff was sent a form letter substantially identical to the one in the present case, with the phrase "CBI the credit bureau incorporated of georgia" in large print at the top of the page and the name "CBI COLLECTIONS -- ATLANTA" in smaller print at the bottom. The plaintiff in that case alleged a violation of § 1692e(16) and § 1692e. The court held that because defendant did operate a consumer reporting service, it could not violate § 1692e(16).[2] However, the court went on to say:

> Ms. Wright argues that it is deceptive for CBI to imply, however truthfully, that it is a consumer reporting agency and at the same time to not disclose that its business is composed of two separate and independent divisions, one a consumer reporting agency and the other a debt collection service. Ms. Wright thus contends that section 1692e requires CBI to make no disclosure, even by implication, of the consumer reporting aspect of its business unless it clearly explains the relationship that aspect bears to its collection efforts, or otherwise dispels any false

> threat that a failure to pay a debt will result in harm to the consumer's credit rating. The court agrees.

548 F. Supp. at 598. Hence, in the present case, by using the phrase "credit bureau" on the form letter with no further explanation, the defendant may have violated § 1692e even assuming that § 1692e(16) has not been violated.

The second issue the defendant wishes the court to reconsider is its ruling that defendant may have violated the FDCPA by failing to disclose in communications with plaintiff that defendant was attempting to collect a debt and that any information received would be used for that purpose. Defendant has submitted an informal Federal Trade Commission staff letter of March 7, 1978 that indicates that the words "we are attempting to collect a debt" or their equivalent need not be contained in communications to a debtor as long as the communication "clearly indicates" that the purpose of the communication is to collect a debt.

More importantly, the Federal Trade Commission letter seems to imply that the disclosure requirement regarding any information obtained applies only to collection agency communications with third parties, and not to communications with debtors.

Plaintiff counters this with several arguments. First, plaintiff argues that if Congress intended the disclosure requirement regarding information to operate only with respect to third parties, the requirement would have been placed in

15 U.S.C. § 1692c(b), which deals with third-party communications. Second, the plain language of the section [§ 1692e(11)] runs counter to the Federal Trade Commission's interpretation. Finally, plaintiff has submitted a copy of the decision in Beaulieu v. American National Education Corp., CV79-L-271 (D. Neb. January 22, 1981), in which the court ruled that a collection agency must clearly disclose that any information obtained will be used for the purposes of collecting the debt even when the communication is to the debtor himself. That court read 15 U.S.C. § 1692e(11) the same way this court read the section in the earlier order:

> [§ 1692e(11)] requires the clear disclosure of two facts in all communications made either to collect a debt or to obtain information about a consumer; such communications must disclose that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. None of the communications [at issue] clearly discloses that information obtained by the debt collector will be used for the purpose of collecting the debt. Summary judgment on this claim will be granted. . . .

Id. at 3. Plaintiff's arguments are persuasive with respect to the disclosure requirement regarding the use of information. The language of the section is clear, unambiguous, and direct.

IT IS ORDERED that defendant's motion to reconsider the court's previous rulings is DENIED.

DATED this 10 day of January, 1983.

Helen J. Frye
United States District Court

FOOTNOTES

1. Defendant is "troubled" by language in the court's earlier opinion that use of the phrase "credit bureau" in the defendant's name "is" a violation of the act, arguing that the issue is one of fact and hence not appropriately decided on a motion to dismiss. The court has not decided that defendant has violated the act. Had the court so decided, the court would have granted plaintiff summary judgment on its own motion, which was not done.

2. The court did not address the issue of whether or not a violation of § 1692e(11) occurs when a debt collector that does not operate a consumer reporting service in a particular state or area uses the phrase "credit bureau" in its name. It is not entirely clear from the opinion whether or not the defendant operates both its collection agency business and its consumer reporting business in Georgia.