Business Litigation Update

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Second Circuit Finds Alleged Legal Inaccuracy Based on Allegedly Discharged Student Loan Not Actionable Under the FCRA

Introduction and Background

On January 4, 2023, the U.S. Court of Appeals for the Second Circuit addressed a Fair Credit Reporting Act (FCRA) claim premised on an allegedly discharged private student loan, holding that because the alleged credit reporting error was based on a legal inaccuracy, it was not actionable under the FCRA. The decision in *Mader v. Experian Info. Sols., Inc.* could have a significant impact given the increase in individual and class-action litigation premised on purportedly discharged private student loans.

In *Mader*, the plaintiff obtained a private student loan and then subsequently filed for chapter 7 bankruptcy. The plaintiff obtained a generic chapter 7 discharge order that made no mention of the private student loan and, instead, simply said that it discharged 'all dischargeable debt.' The plaintiff and the student lender continued to treat the private student loan as if it had not been discharged, as did the Consumer Reporting Agencies (CRAs), which reported the private student loan on the plaintiff's consumer report as if it was still due and owing.

Six years after the discharge order, the plaintiff filed suit in the U.S. District Court for the Southern District of New York claiming that the consumer reporting agency, Experian, violated the FCRA by reporting inaccurate information because the student loan was discharged.

The district court granted summary judgment to Experian because the private student loan was non-dischargeable, and thus the information was not inaccurate. The Second Circuit disagreed with that conclusion (at least for the purposes of summary judgment), but still held that Experian could not be liable under the FCRA.

Ruling

The Second Circuit said that the district court should not have even reached the issue of whether the private student loan was discharged because such a determination in and of itself rendered the plaintiff's FCRA claim as one premised on a legal inaccuracy, which is generally not cognizable under the FCRA.

The court explained that generally, student loans are not dischargeable, and any exception to that rule requires a complicated legal analysis involving various factors outlined in the Bankruptcy Code. The court said that because the plaintiff had not filed an adversary proceeding to allow the bankruptcy court to determine whether the private student loan was dischargeable, there was no way for Experian to have objectively verified the plaintiff's assertion, and that resolving the issue turned on a legal dispute, requiring "bespoke attention and legal reasoning." Due to the complex nature of the applicability of the discharge order to private student loans, Experian was not required to resolve this unsettled legal question, and because the alleged inaccuracy in the plaintiff's consumer report was a legal, and not factual, inaccuracy, the plaintiff's FCRA claim failed as a matter of law.

Conclusion

The Second Circuit's decision in *Mader* may provide support to both CRAs and those entities that furnish information to CRAs when defending against claims brought by a consumer who obtained a generic chapter 7 discharge, did not ask the bankruptcy court to rule on whether the consumer's private student loans were dischargeable, and later alleges an FCRA violation related to the reporting of pre-petition private student loans. With these types of claims on the rise, furnishers and CRAs can argue that they are under no obligation to figuratively don judicial robes and resolve an unsettled legal question.

FOR MORE INFORMATION

For more information, please contact:

Jessica E. Salisbury-Copper
937.443.6854
Jessica.Salisbury-Copper@ThompsonHine.com

Brandon Stein
312.998.4253
Brandon.Stein@ThompsonHine.com