Business Litigation Update

July 2023

Seventh Circuit Addresses Standard for Inaccurate Information Under the FCRA

Introduction

On July 5, 2023, the U.S. Court of Appeals for the Seventh Circuit addressed "the frustration of the district courts within [its] circuit" and set forth the standard to determine whether information furnished to a consumer reporting agency (CRA) is incomplete or inaccurate. In *Frazier v. Dovenmuehle Mortg., Inc.*, the court held that to recover under the Fair Credit Reporting Act (FCRA), a plaintiff must show that the information furnished was either patently incorrect or materially misleading, and that to be materially misleading, the information must also be expected to adversely impact a credit decision.

Background

After falling behind on her monthly mortgage payments, the plaintiff negotiated and settled the debt through a short sale. Years later, the plaintiff learned that the defendant reported the loan as delinquent, so she submitted disputes to the CRAs.

In response to the disputes, the defendant submitted an Automated Consumer Dispute Verification (ACDV) stating that the loan was closed with a zero balance and settled for less than the amount owed but that the pay rate was 90-days delinquent and dashes for certain monthly payments following the short sale that were previously reported as being 90-days delinquent.

The plaintiff filed suit in the Northern District of Illinois under the FCRA, alleging the ACDV could lead someone to conclude that the plaintiff was still in default. The district court held that the plaintiff failed to show that the information furnished was inaccurate and granted the defendant's summary judgment motion.

Decision

Adopting the interpretations of several other circuits, the court first held that the threshold to assert a viable FCRA claim against a furnisher was that the data was incomplete or inaccurate and that the incompleteness or inaccuracy resulted from an unreasonable investigation. The court then recognized that it had not set a standard for incompleteness or inaccuracy for claims against a furnisher under 15 U.S.C. § 1681s-2(b) "to the frustration of district courts within [the Seventh] circuit." The court held that to assert a viable FCRA claim against a furnisher, the plaintiff must show that "the information the data furnisher provided was (1) patently incorrect, or (2) materially misleading, including by omission" and that to be materially misleading, the information must "be expected to adversely affect credit decisions."

The court then rejected the plaintiff's argument that inaccuracy should be based not on the ACDV but on the plaintiff's consumer report generated after the ACDV was submitted because "[j]ust as the reasonableness of a data furnisher's investigation is assessed objectively based on the content of the ACDV the furnisher received … the completeness or accuracy must be evaluated objectively based on the content of the furnisher's ACDV response."

Finally, the court affirmed the district court's decision and, in doing so, rejected the plaintiff's argument that reporting a pay rate of 90-days delinquent could only signify that the loan was still in default rather than historically delinquent at the time of the short sale. Based on the evidence submitted on summary judgment and statements made by the plaintiff's counsel at oral argument, the court held that it could not conclude that the furnished pay rate was patently inaccurate and, thus, the dispositive question was whether the pay rate would materially mislead a reasonable observer to conclude that the plaintiff is currently delinquent.

Reviewing the pay rate in the context of the other information furnished, which indicated that the loan was paid in full for less than the remaining balance, was closed, and had a zero balance, the court held that no reasonable jury could find that the pay rate of 90-days delinquent meant the plaintiff was currently delinquent on her debt.

Conclusion

The decision in *Frazier* provides long-awaited guidance to furnishers defending FCRA claims in the Seventh Circuit. The decision may also have the added benefit of providing support to furnishers defending against FCRA claims based on alleged inaccuracies that, when reviewed in the context of all of the information furnished, are not materially misleading.

FOR MORE INFORMATION

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