THOMPSON HINE

Business Litigation Update

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Tenth Circuit Clarifies Actionable Inaccuracy Standard Under FCRA

The U.S. Court of Appeals for the Tenth Circuit recently joined the Second, Fourth, Fifth, and Eleventh Circuits in concluding that information furnished to a consumer reporting agency (CRA) is actionably inaccurate only if it is "objectively inaccurate" or, in other words, '"if the information is objectively and readily verifiable' by the furnisher as containing a mistake or error."

The plaintiff in *Ward v. Nat'l Credit Sys.*, Robbin Ward, claimed that his daughter used his personal information to obtain a residential lease for herself in Ward's name. In the rental application, the daughter submitted color copies of Ward's Social Security card and driver's license, an altered version of her pay stubs that listed Ward's name, and a fake Social Security income letter attributed to Ward. Following the daughter's eviction, the debt was assigned to National Credit Systems (NCS), which furnished adverse information about the lease to the CRAs. Ward submitted disputes to the CRAs and provided an FTC Identity Theft Report and ID Theft Affidavit. NCS investigated the dispute but ultimately concluded the information it furnished was accurate.

Ward sued and a jury awarded him $500,000 for emotional distress. NCS appealed and argued, in relevant part, that Ward's claim was not actionable because the information in dispute was not objectively and readily verifiable as inaccurate. The Tenth Circuit reversed the jury's award, holding that to bring an unreasonable investigation claim under the Fair Credit Reporting Act (FCRA), a plaintiff must establish that the disputed information was inaccurate or materially misleading. The court expressly refused to adopt a bright-line rule that only factual errors are actionable and instead clarified that to be actionably inaccurate such that a reasonable investigation is required, the inaccuracy must be one that can be confirmed via objectively and readily verifiable information. And because the alleged inaccuracy in *Ward* depended on Ward's veracity, which was not objectively verifiable, the Tenth Circuit held that there was no actionable inaccuracy on which Ward's FCRA claim could have been premised.

The Tenth Circuit cautioned that its decision does not mean that an identity theft dispute can never serve as a basis for an FCRA claim. "If a consumer's dispute of identity theft contains objective evidence showing the consumer was not tied to the debt[,] it might meet the inaccuracy standard." Likewise, someone in Ward's position "could have pursued his allegation of identity theft with law enforcement or a regulatory agency to gather more information that objectively proved he was the victim of fraud."

The Tenth Circuit's holding in *Ward* may serve as helpful authority for furnishers who have seen a noticeable increase in identity theft disputes. However, the Tenth Circuit reiterated that identity theft claims are not categorically incapable of supporting FCRA claims, and whether a consumer can make a threshold showing of inaccuracy may depend on mixed questions of law and fact.

FOR MORE INFORMATION

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