



July 22, 2016

## 11TH CIRCUIT COURT FINDS THAT DEBT BUYER MAY BE REQUIRED TO SEEK ACCOUNT-LEVEL DOCUMENTATION TO VERIFY A DEBT UNDER THE FCRA

The case involved two debts purchased by a “down-the-line” debt buyer, Midland Funding, LLC. *Hinkle v. Midland Credit Management, Inc.*, No. 15-10398 (11th Cir. July 11, 2016). When the consumer saw the second debt on her credit report, she disputed the debt with the credit reporting agency (CRA). The CRA notified Midland that the debt was disputed by the consumer and requested that Midland verify the debt as required by the Fair Credit Reporting Act (FCRA). Upon receipt of this request, Midland verified the debt by double-checking the information that Midland had reported to the CRA against Midland’s own internal records. These records consisted of the electronically-stored information Midland received from the original debt buyer when Midland purchased the debt. Midland did not receive account-level information when it purchased the debt, but the purchase agreement required the prior debt buyer to assist Midland in acquiring such information from the original creditor if necessary to respond to a consumer dispute. When investigating the dispute, Midland did not request account-level documentation from the prior debt buyer or the original creditor. Midland reported the second debt as verified. The consumer had previously disputed the first debt, but Midland did not investigate the dispute regarding the first debt as the first debt was reported as paid in full.

The consumer brought suit contending that the FCRA requires down-the-line debt buyers to investigate mistaken-identity disputes by verifying the identity of the alleged debtor against account-level documentation and not just against electronic-data files.

Under the FCRA, when a consumer disputes information with a CRA, the CRA must “conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate.” 15 U.S.C. § 1681i(a)(1)(A). As part of this investigation, the CRA is required to notify the person or entity that furnished the information that the information has been disputed. *Id.* § 1681i(a)(2). Upon receipt of this notice, the furnisher of information must: (1) conduct an investigation with respect to the disputed information; (2) review all relevant information provided by the CRA in connection with the dispute; and (3) report the results of the investigation to the CRA. *Id.* § 1681i(b)(1).

In reaching the conclusion that the claim was not entitled to summary judgment, the court noted that the FCRA contemplates three potential outcomes from reinvestigation: verification of accuracy, a determination of inaccuracy or incompleteness, or a determination that the information “cannot be verified.” The court stated that a furnisher of information to a CRA can satisfy the FCRA by conducting an investigation, verifying the disputed information and reporting to the CRAs that the information has been verified. The court stated that the second way for a furnisher to satisfy the FCRA is to conduct an investigation and conclude, based on the investigation, that the disputed information is unverifiable. Furnishers can use this option if they determine that the evidence necessary to verify disputed information either does not exist or is too burdensome to acquire. The court explained that a furnisher making such a determination, must notify the CRAs that the information “cannot be verified.”

The court found that Midland investigated the mistaken-identity dispute by confirming that the identifying information possessed by the CRAs was the same as the identifying information contained in Midland’s internal data files. The court concluded that a reasonable jury could find that such a cursory investigation was unreasonable on the facts of the case. The court found that a jury could find that the documentation Midland reviewed was insufficient to prove that the accounts belonged to the consumer and that Midland therefore had a duty to report to the CRA that the accounts “cannot be verified.” The court stated that a jury could also find that because Midland retained the right to seek account-level documentation through its agreements with the prior debt buyers, Midland behaved unreasonably when it reported the accounts as “verified” without first exercising those rights.

Finding that factual issues normally determined at trial remained, the court remanded the case to the lower court.

The case illustrates the importance of having proper procedures in place to respond to notices of dispute from CRAs. □

✧ *Elizabeth Anstaett and Emily Barlage*

Darrell L. Dreher  
ddreher@dltlaw.com

Elizabeth L. Anstaett  
eanstaett@dltlaw.com

Margaret M. Stolar  
mstolar@dltlaw.com

Robin R. De Leo  
robin@dreher-la.com

Susan M. Seaman  
sseaman@dltlaw.com

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at [www.dtlaw.com](http://www.dtlaw.com)

To decline future ALERTS, please contact us at [ALERTS@DLTLAW.COM](mailto:ALERTS@DLTLAW.COM).  
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies  
mtomkies@dltlaw.com

Charles V. Gall  
cgall@dltlaw.com

Judith M. Scheiderer  
jscheiderer@dltlaw.com

Susan L. Ostrander  
sostrander@dltlaw.com

Emily C. Barlage  
ebarlage@dltlaw.com