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Consumer Finance Litigation

Eleventh Circuit Holds That Voicemails Are “Communications” and Clarifies “Meaningful Disclosure” under the FDCPA

Action Item: The Eleventh Circuit held that a first voicemail from a debt collector constitutes a “communication” based on a plain reading of the Fair Debt Collection Practices Act (“FDCPA”). In addition, in a case of first impression, the Eleventh Circuit held that a “meaningful disclosure” is provided under the FDCPA so long as the caller discloses that the call is being made on behalf of a debt collection company and the company’s name.

In *Stacey Hart v. Credit Control, LLC*, No. 16-17126 (11th Cir. Sept. 22, 2017), the United States Court of Appeals for the Eleventh Circuit clarified two significant definitions under the Fair Debt Collection Practices Act (“FDCPA”), one of which was a novel issue for the Court. First, the Eleventh Circuit ruled that the first voicemail that Credit Control, LLC (“Credit Control”) left for Stacey Hart (“Hart”) qualified as a “communication” within the meaning of 15 U.S.C. § 1692a(2). Because the voicemail was the initial communication between the parties, Credit Control had to provide the required disclosures under 15 U.S.C. § 1692e(11), commonly known as the “mini Miranda” warning.

Second, the Eleventh Circuit determined the novel issue of what constitutes a “meaningful disclosure” under the FDCPA by ruling that an individual caller is not required to disclose his/her identity as long the caller discloses that the call is being made on behalf of a debt collection company and the debtor collection company’s name.

Background

In March 2015, Credit Control made a phone call to Hart, which was Credit Control’s first contact with Hart. When Hart did not answer, Credit Control’s representative left a voicemail, which simply stated: “This is Credit Control calling with a message. This is from a debt collector. Please call us at 866.784.1160. Thank you.”

After receiving additional phone calls from Credit Control, which resulted in Credit Control leaving substantially similar voicemails, Hart filed a complaint in the Middle District of Florida alleging that Credit Control violated two sections of the FDCPA—15 U.S.C. § 1692e(11) and 15 U.S.C. § 1692d(6) for false or misleading representations and harassment and abuse, respectively.

Credit Control moved to dismiss the complaint, and the District Court granted Credit Control's motion. Specifically, the District Court found that Credit Control (i) did not violate section 1692e(11) because the first voicemail was not a "communication" within the meaning of the FDCPA; and (ii) did not violate section 1692d(6) because its caller provided Hart with "meaningful disclosure." The District Court reasoned that the voicemails provided "meaningful disclosure" because they provided enough information not to mislead the consumer as to the purpose of the call. Hart timely appealed to the Eleventh Circuit.

The Eleventh Circuit's Decision

On appeal, Hart argued that Credit Control violated section 1692e(11) when it failed to make the required disclosures for initial communications in its first voicemail to her. Credit Control countered that it was not required to make initial disclosures because the first voicemail "essentially reveals no more than a hang-up call," and thus was not a "communication" within the statute. In addition, Hart argued that Credit Control violated section 1692d(6) when Credit Control's individual callers did not identify themselves by name in any of the voicemails, and therefore Credit Control failed to provide Hart with "meaningful disclosure" under the statute. In response, Credit Control contended that the individual caller's name was not necessary for such disclosure.

The Eleventh Circuit conducted a *de novo* review of the District Court's decision and reversed and remanded in part and affirmed in part. First, the Eleventh Circuit evaluated the plain meaning of the definition of a "communication" under the FDCPA. The FDCPA defines a "communication" as "the conveying of information regarding a debt [either] directly or indirectly to any person through any medium." 15 U.S.C. § 1692a(2). Based on the express language of the statute, the Eleventh Circuit held that the first voicemail left by Credit Control fell squarely within the definition of a "communication." As such, the Eleventh Circuit found that Credit Control's agent was required to provide the "mini Miranda" warning, which discloses that he/she is "attempting to collect a debt and that any information obtained will be used for that purpose." 15 U.S.C. § 1692e(11).

Second, the Eleventh Circuit analyzed what constitutes a "meaningful disclosure" under 15 U.S.C. § 1692d(6), which prohibits debt collectors from placing "telephone calls without meaningful disclosure of the caller's identity." Since the phrase "meaningful disclosure" is not defined in the FDCPA, the Eleventh Circuit examined the intent of the statute, noting that

the FDCPA was designed to provide consumers with recourse following abusive behavior by debt collectors during the course of collecting a debt. Thus, the Eleventh Circuit reasoned that an individual caller's name is ancillary to the debt collection company's name and adds little value to a consumer who seeks to complain about the debt collection company's behavior. As a result, the Eleventh Circuit held that the disclosure of the debt collection company's name, rather than the name of the individual caller, is sufficient to provide "meaningful disclosure," so long as the caller also reveals the nature of the debt collection company's business. The case was remanded to the District Court for further proceedings.

Conclusion

This decision is significant, as the Eleventh Circuit has made clear that a voicemail left by a representative of a debt collector constitutes a "communication" under the FDCPA and will be governed by the same standards as a person-to-person phone call or other written communications. As such, debt collectors should revisit their policies and procedures to ensure that first voicemails left by their agents provide the required "mini Miranda" warning and that other voicemails also comply with the FDCPA.

In addition, the Eleventh Circuit's decision, which is the first at the circuit court level, clarified that the "meaningful disclosure" requirement under the FDCPA is satisfied if the caller discloses "that the call is on behalf of a debt collection company and the name of the debt collection company." Thus, debt collectors operating within the Eleventh Circuit can feel confident that their agents are not required to disclose their personal identities or even their "desk names," provided that the debt collection company's name and nature of the business is disclosed.

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