

Time Will Tell: FCRA Statute of Limitations Defense on a Motion to Dismiss

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FCRA's statute of limitations can sometimes provide defendants with a cut-and-dry grounds for dismissal early in case, but not always. The Eastern District of Michigan recently denied a motion to dismiss based on the statute of limitations because it was not clear from the face of the complaint when the plaintiff discovered the facts that would support her FCRA claims. In *Blake v. TransUnion LLC*, No. 18-10406, 2019 WL 211141 (E.D. Mich. Jan. 16, 2019), the plaintiff claimed that defendant Granite Bay Acceptance, Inc. ("Granite Bay") and Lease Maturity Services, LLC ("LMS") accessed her credit report from defendant Transunion for an impermissible purpose, including reselling her information, in violation of FCRA. All three defendants moved to dismiss on the basis of the statute of limitations.

FCRA provides for a two-year statute of limitation from the date of discovery of the FCRA violation. FCRA also contains a statute of repose, an outside restriction requiring that FCRA claims be brought within five years of the date of the FCRA violation. See 15 U.S.C. § 1681p. The court in *Blake* further explained that because a motion to dismiss only tests the sufficiency of a complaint, such motions are typically only "appropriate vehicles to resolve a statute of limitations defense" if the "complaint affirmatively shows" that the "claims are time-barred." *Blake*, 2019 WL 211141, at *3. Moreover, in the Sixth Circuit, a FCRA limitations period begins to run when the plaintiff discovers the facts that give rise to the claim, not when the plaintiff discovers that these facts constitute a legal violation. *Id.*

Applying these standards to the claims at issue, the court in *Blake* ruled that none of plaintiff's claims were subject to dismissal on statute-of-limitations grounds. In Count I, the plaintiff alleged that TransUnion failed to maintain reasonable procedures to avoid providing consumer reports for an impermissible purpose. Similarly in Count III, plaintiff alleged that Granite Bay purchased and resold plaintiff's information without taking reasonable efforts to ensure the purchaser had a permissible purpose. The plaintiff became aware that Granite Bay and LMS obtained her consumer information some time around July 24, 2014, outside the statute of limitations. However, the complaint did not allege when the plaintiff learned that her information was being resold. That is, it was unclear from the complaint when plaintiff discovered the facts giving rise to these claims under FCRA. Because of this, the court denied the motion to dismiss with respect to Counts I and III.

In Counts II and IV, plaintiff alleged that Granite Bay and LMS unlawfully obtained her consumer report without a permissible purpose, and did so under false pretenses. Among other permissible

purposes, a consumer reporting agency may provide a consumer report in connection with any credit or insurance transaction if authorized by the consumer or the transaction consists of a “firm offer of credit or insurance[.]” 15 U.S.C. § 1681b(c)(1). Plaintiff claimed that this “firm offer” was the only potential permissible purpose to access her report, but that Granite Bay and LMS were not in the business of making such offers. Again, the complaint did not allege when the plaintiff discovered that the defendants were not in this line of business, and thus, the court declined to dismiss these counts.

Although the defendants were not successful at the preliminary motions stage, they may face better odds after conducting some discovery and moving for summary judgment. The court noted that it had “serious reservation about the timeliness of these claims.” *Blake*, 2019 WL 211141, at *6. Moreover, the court expected and encouraged “the parties to explore whether these claims are indeed timely earlier rather than later in discovery.” *Id.* Time will tell if defendants can successfully obtain summary judgment on statute of limitations grounds. Stay tuned.

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