

FCRA Claim Survives Dismissal Where Plaintiff Alleges Defendant Did Not Have a Permissible Purpose to Access Plaintiff's Credit Report Based on Prior Discharge of Mortgage Debt in Bankruptcy

Article By:

Womble Bond Dickinson Communications, Technology and Media

The Northern District of Illinois recently denied a motion to dismiss a FCRA claim finding that the complaint sufficiently alleged that the defendant did not have a “permissible purpose” to access the plaintiff’s credit report for collection of a mortgage debt that the plaintiff alleged was previously discharged in bankruptcy. In *Andrea Billups v. PHH Mortgage Corporation*, No. 19 C 7873, 2021 WL 1648114 (N.D. Ill. Apr. 27, 2021), the plaintiff alleged that the Defendant mortgage server violated 15 U.S.C. § 1681(b) of the FCRA by obtaining her credit report on a debt that was discharged through her prior bankruptcy.

“To state a claim under section 1681b, a complaint must allege that (1) there was a consumer report; (2) the defendant used or obtained it; and (3) the defendant did so without a permissible statutory purpose.” *Billups*, 2021 WL 1648114, at *2. The court found that the plaintiff had sufficiently alleged the first two elements and the crux of the case turned on whether the mortgage servicer had a “permissible purpose” to access the plaintiff’s credit report. In denying the motion to dismiss, the Court concluded that “deciding the ‘permissible purpose’ question is dangerously close to a factual finding, which the Court cannot make on a motion to dismiss.” *Billups*, 2021 WL 1648114, at *3.

In rejecting preliminary dismissal of the FCRA claim, the Court held that the key allegation that allowed the Plaintiff to move past the pleadings stage was her assertion that the alleged mortgage debt had been discharged in bankruptcy in 2011. In so holding, the Court emphasized that, at the pleadings stage, it must take the allegations in the Complaint as true and “without knowing why [the Defendant] obtained the credit reports, the Court cannot declare as a matter of law that it was for a legitimate reason.” *Billups*, 2021 WL 1648114, at *4.

Practical Tip: This case is a good reminder that while the purpose for which a creditor pulls a consumer report may ultimately be deemed a legitimate and “permissible purpose,” courts are allowing more of these claims to proceed beyond the pleadings stage.

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