

# District Court Shows Timeshare “Exit” Attorney the Exit

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In May of 2022, a New Jersey District Court ruled in favor of Diamond Resorts, declining to find them liable under the Fair Credit Reporting Act. The case, *Esperance v. Diamond Resorts*, provides insight on how courts are interpreting the Fair Credit Reporting Act. Specifically, the court held that companies providing consumer information to credit bureaus, like Diamond Resorts, do not have to investigate the legal validity of debts. This reduces a company’s investigatory duty under the Act to only disputed factual inaccuracies. Moreover, the court found that the Fair Credit Reporting Act does not per se impose ramifications on companies who report inconsistent credit information.

## HIGHLIGHTS OF ESPERANCE V. DIAMOND RESORTS

- District Court grants Diamond Resorts’ motion for summary judgment on all claims
- Companies providing consumer information to credit bureaus do not have to investigate the legal validity of debts
- No ramifications for inconsistent credit reporting under the Fair Credit Reporting Act

## BACKGROUND

Sandy Esperance and Betsy Fumelus (the Plaintiffs) were sisters who purchased a Florida timeshare from Defendant Diamond Resorts’ predecessor, Tempus Palms International. After several years of paying their loans, Plaintiffs hired Mr. Mitchell Sussman (Sussman) in order to exit their timeshare obligations. Sussman is a California-based attorney specializing “in ridding timeshare owners of their timeshare obligations” and has been criticized by the courts for his questionable timeshare exit practices.

In this case, Sussman sent a letter to Diamond Resorts declaring that Plaintiffs would no longer be paying for their timeshare. Four months later, Sussman mailed Plaintiffs a congratulatory letter, advising Plaintiffs that they were no longer timeshare owners and were not responsible for any more payments. Attached to the congratulatory letter was a quitclaim deed-in-lieu of foreclosure, which

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supposedly transferred the timeshare's title to Diamond Resorts.

Following Sussman's advice, Plaintiffs stopped paying Diamond Resorts even though there was no evidence that Diamond Resorts ever communicated with Sussman or agreed to cancel the Plaintiffs' timeshare. Diamond Resorts—a "credit furnisher" under the Fair Credit Reporting Act (the Act) because it reports consumer credit information to credit reporting agencies such as Experian Information Solutions, LLC (Experian)—continued to comply with its duties by reporting Plaintiffs' delinquent accounts to the credit bureaus.

Unsatisfied that the timeshare obligations continued to be reported to Experian, among others, Plaintiffs made five credit disputes claiming inaccuracies on their reports. Relying on information and the quitclaim deed provided to them by Sussman, Plaintiffs alleged that their Diamond Resorts' accounts were in fact "closed." Diamond Resorts' credit-reporting team thoroughly investigated all five disputes. In response to each, Diamond Resorts verified the accounts as open and asked Experian to reduce Plaintiffs' accounts to reflect only the principal balances owed.

After having been unable to remove the timeshare obligations from their credit reports, Plaintiffs commenced an action against Diamond Resorts and Experian in the United States District Court for the District of New Jersey (the Court), alleging violations of the Act. Plaintiffs claimed that both defendants reported inaccurate information regarding the status and balance of Plaintiffs' accounts.

## THE DISTRICT COURT'S DECISION

In granting Diamond Resorts' motion for summary judgment, the Court held that companies who report consumer credit information to the credit bureaus (Credit Information Furnishers) are not obligated to investigate the legal validity of disputed debts. This ruling follows several other federal circuit and district court cases.<sup>1</sup>

The Court explained that when a consumer disputes information on her credit report, a Credit Information Furnisher must reasonably investigate the accuracy of the information it reported. However, a Credit Information Furnisher will only be liable for failure to investigate or for conducting an inadequate investigation if the reported information is found inaccurate or materially misleading.

The Court rejected the claim that Diamond Resorts provided inaccurate information to Experian when, despite the quitclaim deed, it reported Plaintiffs' accounts as open. Agreeing with Diamond Resorts, the Court limited the company's duties under the Act by requiring it to investigate only disputed *factual* inaccuracies. Thus, a plaintiff relying on the Act cannot argue that its credit report is inaccurate because it does not legally owe the debts (a question of law rather than a question of fact). The Court found that Diamond Resorts was not liable under the Act because the basis of Plaintiffs' dispute, whether the quitclaim deed was valid and sufficient to terminate Plaintiffs' loan obligations, was a legal question. Therefore, Diamond Resorts was not required to investigate the legal validity of the quitclaim deed obtained by Sussman.

The Court additionally rejected Plaintiffs' claim that Diamond Resorts furnished inaccurate information by reporting fluctuating balances to Experian. While the Court found that Diamond Resorts did report inconsistent balances, the Court held that these discrepancies did not amount to liability under the Act. As long as the information was not misleading, the Court said, a Credit Information Furnisher is not required "to report one way or the other—including fees and interest to the principal balance or not."

Lastly, in rejecting Plaintiffs' argument that it was inaccurate to report Plaintiffs' account as open and not charged-off, the Court held that Diamond Resorts was not legally required to charge-off Plaintiffs' accounts. Although Diamond Resorts' SEC filings provided that it charges off accounts that are 180 days delinquent, no law binds Diamond Resorts to its charge-off procedures contained in its SEC filings.

Based on this, the Court held that as a matter of law, Diamond Resorts was entitled to summary judgment.

## **WHAT DOES THIS MEAN FOR CREDIT INFORMATION FURNISHERS?**

### **Duties Under the Act**

Under the Act, a Credit Information Furnisher must reasonably investigate the factual accuracy of disputed information. For example, whether a plaintiff was billed for the disputed services is a factual question. However, a Credit Information Furnisher is not required to resolve legal questions, such as the legal validity of the underlying debt. When determining whether the basis of a dispute falls outside of the Act's investigatory duties, Credit Information Furnishers should consider whether the underlying issue is a factual or legal question.

### **Liability Under the Act**

While Credit Information Furnishers should strive to report consistently, this case shows that inconsistently reporting consumer information, in a non-misleading way, will not likely result in liability under the Act.

When reporting consumer information to the credit bureaus, the Act does not impose liability on a Credit Information Furnisher that reports an account as open despite the account being *eligible* for a charge-off. Charging off an account is not legally required, even if the company's ancillary regulatory filings allow for the account to be charged-off.

## **FOOTNOTES**

<sup>1</sup> Chiang v. Verizon New England, 595 F.3d 26, 35 (1st Cir. 2010); Hunt v. JPMorgan Chase Bank, Nat'l Ass'n, 770 F. App'x 452, 458 (11th Cir. 2019); Herrell v. Chase Bank USA, N.A., 218 F. Supp. 3d 788, 793 (E.D. Wis. 2016); Alston v. Wells Fargo Home Mortg., No. 13-3147, 2016 WL 816733, at \*10 (D. Md. Feb. 26, 2016).