

Eleventh Circuit Affirms Dismissal of FCRA Claims Since Alleged Inaccurate Information Was Not Objectively and Readily Verifiable

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In *Holden v. Holiday Inn Club Vacations Inc.*, No. 22-11014, No. 22-11734, 2024 WL 1759143 (11th Cir. 2024), which was a consolidated appeal, the United States Court of Appeals for the Eleventh Circuit (“Eleventh Circuit” or “Court”) held that the purchasers of a timeshare did not have actionable FCRA claims since the alleged inaccurate information reported to one of the consumer reporting agencies (“CRAs”) was not objectively and readily verifiable. In doing so, the Eleventh Circuit affirmed two decisions issued by United States District Court for the Middle District of Florida (“District Court”) granting of summary judgment in favor of the timeshare company in the respective cases.

Summary of Facts and Background

Two consumers, Mark Mayer (“Mayer”) and Tanethia Holden (“Holden”), entered into two separate purchase agreements with Holiday Inn Club Vacations Incorporated (“Holiday”) to acquire timeshare interests in Cape Canaveral and Las Vegas, respectively. Holiday is a timeshare company that allows customers to purchase one or more of its vacation properties in weekly increments that can be used annually during the designated period. As part of the transaction, Holiday’s customers typically elect to finance their timeshare purchases through Holiday, which results in the execution of a promissory note and mortgage.

1. Mayer’s Purchase, Default, and Dispute

On September 15, 2014, Mayer entered into his purchase agreement with Holiday, which contained a title and closing provision stating the transaction would not close until Mayer made the first three monthly payments, and Holiday recorded a deed in Mayer’s name. The purchase agreement also included a purchaser’s default provision stating that upon Mayer’s default or breach of any of the terms or conditions of the agreement, all sums paid by Mayer would be retained by Holiday as liquidated damages and the parties to the purchase agreement would be relieved from all obligations thereunder. Further, the purchase agreement provided that any payments made under a related promissory note prior to the closing would be subject to the purchaser’s default provision. On the

same day, Mayer executed a promissory note to finance his timeshare purchase, which was for a term of 120 months. On July 13, 2015, Holiday recorded a deed in Mayer's name, and he proceeded to tender timely monthly payments until May 2017. As a result of Mayer's failure to tender subsequent payments, Holiday reported Mayer's delinquency to the CRA.

Approximately two years later, Mayer obtained a copy of his credit report and discovered Holiday had reported a past-due balance. Thereafter, Mayer sent multiple letters to the CRA disputing the debt, as he believed the purchase agreement was terminated under the purchaser's default provision. Each dispute was communicated to Holiday, who in turn certified that the information was accurately reported. Mayer sued Holiday for an alleged violation of 15 U.S.C. § 1681s-2(b) of the FCRA based on the furnishing of inaccurate information and failure to "fully and properly re-investigate" the disputes. Holiday eventually moved for partial summary judgment, which the District Court granted. The District Court reasoned that the underlying issue of whether the default provision excused Mayer's obligation to keep paying was a legal dispute rather than a factual inaccuracy and, in turn, made Mayer's claim not actionable under the FCRA. Mayer timely appealed to the Eleventh Circuit.

2. Holden's Purchase, Default, and Dispute

On June 25, 2016, Holden entered into her purchase agreement with Holiday, which contained a nearly identical title and closing provision to that of Mayer's purchase agreement. Additionally, Holden's purchase agreement incorporated a similar purchaser's default provision. Similarly, Holden executed a promissory note to finance her timeshare purchase, which was for a term of 120 months, and entered into a mortgage to secure the payments under the note. After making her third payment, Holden defaulted and hired an attorney to cancel the purchase agreement pursuant to the closing and title provision and purchaser's default provision. However, Holiday disputed the purchase agreement was canceled and, on June 19, 2017, recorded a timeshare deed in Holden's name. More importantly, Holiday reported Holden's delinquent debt to the CRA.

In response, Holden's attorney sent three dispute letters to Holiday, which resulted in Holiday investigating the dispute and determining the reporting was accurate since Holden was still obligated under the note. Eventually, Holden sued Holiday for various violations of Florida State law and the FCRA. Holden claimed Holiday reported inaccurate information to the CRA, failed to conduct an appropriate investigation, and failed to correct the inaccuracies. The parties filed competing motions for partial summary judgment, which ended with the District Court granting Holiday's motion and denying Holden's motion. Specifically, the District Court held that Holden's FCRA claim failed because contract disputes regarding whether Holden still owed the underlying debt are legal disputes and not factual inaccuracies. Holden timely appealed to the Eleventh Circuit.

The Fair Credit Reporting Act

As the Eleventh Circuit reiterated in *Holden*, when a furnisher is notified of a consumer's dispute, the furnisher must undertake the following three actions: (1) conduct an investigation surrounding the disputed information; (2) review all relevant information provided by the CRA; and (3) report the results of the investigation to the CRA. When a furnisher determines an item of information disputed by a consumer is incomplete, inaccurate, or cannot be verified, the furnisher is required to modify, delete, or permanently block reporting of the disputed information. See 15 U.S.C. § 1681s-2(b)(1)(E). Additionally, any disputed information that a furnisher determines is inaccurate or incomplete must be reported to all other CRAs. See 15 U.S.C. § 1681s-2(b)(1)(D). Despite the foregoing, consumers have no private right of action against furnishers merely for reporting inaccurate information to the CRAs. The only private right of action a consumer may assert against a furnisher is for a violation of

15 U.S.C. § 1681s-2(b) for failure to conduct a reasonable investigation upon receiving notice of a dispute from a CRA. See 15 U.S.C. § 1681s-2(c)(1)).

To successfully prove an FCRA claim, the consumer must demonstrate the following: (1) the consumer identified inaccurate or incomplete information that the furnisher provided to the CRA; and (2) the ensuing investigation was unreasonable based on some facts the furnisher could have uncovered that establish the reported information was inaccurate or incomplete.

The Eleventh Circuit's Decision

In affirming the District Court's decisions granting summary judgment and dismissing the FCRA claims, the Eleventh Circuit clarified that whether the alleged inaccuracy was factual or legal was "beside the point. Instead, what matters is whether the alleged inaccuracy was objectively and readily verifiable." Specifically, the Eleventh Circuit cited to *Erickson v. First Advantage Background Servs. Corp.*, 981 F. 3d 1246, 1251-52 (11th Cir. 2020), which defined "accuracy" as "freedom from mistake or error." The Eleventh Circuit continued by reiterating that "when evaluating whether a report is accurate under the [FCRA], we look to the objectively reasonable interpretations of the report." As such, "a report must be factually incorrect, objectively likely to mislead its intended user, or both to violate the maximal accuracy standards of the [FCRA]."

Based on this standard, the Eleventh Circuit held that the alleged inaccurate information on which Mayer and Holden based their FCRA claims was **not** objectively and readily verifiable since the information stemmed from contractual disputes without simple answers. As such, the Eleventh Circuit found that Holiday took appropriate action upon receiving Mayer and Holden's disputes by assessing the issues and determining whether the respective debts were due and/or collectible, which thereby satisfied its obligation under the FCRA. While Mayer and Holden argued to the contrary, the Eleventh Circuit held that the resolutions of these contract disputes were not straightforward applications of the law to facts. In support of its decision, the Eleventh Circuit cited to the fact that Florida State courts have reviewed similar timeshare purchase agreements and reached conflicting conclusions about whether the default provisions excused a consumer's obligation to pay the underlying debt.

Conclusion

Holden is a limited victory for furnishers, as the Eleventh Circuit declined to impose a bright-line rule that only purely factual or transcription errors are actionable under the FCRA and held a court must determine whether the alleged inaccurate information is "objectively and readily verifiable." Accordingly, there are situations when furnishers are required by the FCRA to accurately report information derived from the readily verifiable and straightforward application of the law to facts. One example of such a situation is misreporting the clear effect of a bankruptcy discharge order on certain types of debt. Thus, furnishers should revisit their investigation and verification procedures so they do not run afoul of the FCRA. Furnishers should also continue to monitor for developing case law as other circuit courts confront these issues.

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