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Client Advisory

On Costly Mistakes Made By Debt Collectors, or, An Ounce of Prevention Is Worth a Pound of Cure

"To err is human." Thus begins Alexander Pope's famous maxim. We can take comfort in our fallibility because many of our mistakes are fixable. But some are not. And unfortunately, some of the unfixable ones can have real consequences. A mistake made by a debt collector while attempting to collect a consumer debt can be one of those unfixable mistakes with real consequences.

Consider *Loewe v. Weltman, Weinberg & Reis Company*, 2020 WL 409655 (E.D. Mich. Jan. 24, 2020). In that case, the defendant was a law firm that had filed two complaints against a consumer to recover on defaulted loans. Each of the lawsuits purportedly sought to collect on distinct loans. However, the defendant attached as exhibits the same loan application to both the first and the second complaints.

The Federal Fair Debt Collection Practices Act ("FDCPA") prohibits debt collectors from "us[ing] unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. The plaintiff in *Loewe* alleged that the defendant violated this provision when it attached the wrong loan application to the second lawsuit because doing so amounted to an attempt to collect money that the defendant wasn't owed.

The defendant moved to dismiss or, in the alternative, for summary judgment. The defendant claimed that it had mistakenly attached the wrong loan application to the second lawsuit and attached the proper loan application to its motion. In other words, the defendant made a mistake and sought to correct it. No harm, no foul, right? Not so.

The Court denied the defendant's motion. At this stage of the proceedings, the Court could not determine with certainty whether the defendant's second lawsuit was based on a valid loan. For that reason, it would be premature to throw out the lawsuit. Instead, the parties would have to engage in discovery to better flesh out the facts.

In the end, the defendant may be able to establish that it is entitled to summary judgment on the plaintiff's claims. If the facts establish that the defendant was entitled to the money it sought in the second complaint, or if it can prove that it made a "bona-fide error," it could ultimately prevail. However, it can only do so after engaging in discovery, which can be a costly, lengthy process. The defendant could "win" the case, and yet walk away feeling like anything but a "winner." Worse yet, the prospect of a large legal bill could incentivize the defendant to settle, even if the defendant did not actually violate the law. While anyone can make a mistake, there are some areas of the law (particularly consumer-protection statutes) where it is especially important to make sure all of the "I"s are dotted and "T"s crossed.

And that's where we can help you. Benjamin Franklin's proverb, quoted in the title, is as true today as it was when he originally wrote it almost 300 years ago. The point of all this is that it's better to be safe than sorry. If you're a debt collector, you should have counsel take a long, careful look at communications to debtors and court filings. A mistake could leave you on the hook for damages or, at the very least, force you to defend a lawsuit.

If you have any questions about the FDCPA in general or how it may affect you or your business, we are here to assist you. Feel free to call Anthony M. Fassano at 856-616-2618 or email at afassano@archerlaw.com, or any member of Archer's Commercial Collections & Consumer Litigation Practice in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, PA., at (215) 963-3300, or in Wilmington, DE., at (302) 777-4350.