



Goodman v. Mercantile Adjustment Bureau, LLC

2019 | Cited 0 times | E.D. New York | February 19, 2019

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK Mindy Goodman, Plaintiff, against Mercantile Adjustment Bureau, LLC Defendant.

18-cv-04488 (ARR) (SJB)

Opinion and Order

ROSS, United States District Judge: Plaintiff, Mindy Goodman, brings this putative class action against defendant Mercantile Adjustment Bureau, LLC, a debt collector. She alleges that defendant violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., by mailing her a debt collection letter that misrepresented her ability to dispute the alleged s

pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that the complaint fails to state a

BACKGROUND In August 2017, Mercantile Adjustment Bureau agency that had previously acquired the rights to collect on defaulted consumer debt, sent Mindy

by mail. Compl. ¶¶ 9-12, ECF No. 1. The letter 1

1 McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007) (citing , 313 F.3d 768, 776 (2d Cir. 2002)). However, when a plaintiff attaches an exhibit to the complaint or refers repeatedly to an external document on a motion to dismiss. Id. Here, plaintiff attached the debt collection letter she received from defendant as an exhibit to her complaint, and she quotes extensively from it in the complaint; indicated that plaintiff owed \$1,936.27 to Bank of America. See Compl., Ex. A, ECF No. 1-2 t listed and disclosed the amount of interest, charges, fees, and credits associated with the debt. Id. In the top right-hand corner of the letter, defendant provided its contact information as follows: 165 Lawrence Bell Drive, Suite 100 Williamsville, NY 14421-7900 1-866-513-9461 Please send payment or correspondence to: Mercantile Adjustment Bureau, LLC PO Box 9055 Williamsville NY 14231-9055 Id. (emphasis in original); see also 2, ECF No. 17-1. A perforated line separates the Address Block from the beginning of the letter, instructing consumers Portion w August 2017 Letter. In the middle of the letter, defendant again listed its phone number (1-866-513-9461), followed by a notice that informs consumers of their right to dispute and seek verification of the debt they are alleged to owe. Id. The notice reads:

Unless you notify the office within 30 days after receiving this notice that you dispute the validity of



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this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor. Id. Finally, at the very bottom of the letter, defendant repeated its contact information, providing

accordingly, I consider the letter in deciding this motion. its street address (165 Lawrence Bell Drive) and its phone number (1-866-513-9461), and informing consumers of its office hours. Id. In total, the one-page letter lists number in three separate locations accepts and is ready to

answer phone calls from consumers. Id.

Approximately one year after receiving the letter, plaintiff filed suit against defendant on behalf of herself and a class of other similarly-situated consumers. See Compl. She alleges that the send payment and correspondence

Id. ¶¶ 13, 16, 19. Though plaintiff the phone number contained in the letter Id. ¶ 15. Further, she alleges that the bolded language directing consumers to send payments and correspondence to [s] and contradict[s] provided consumers with information about their rights, as it leaves them with a false notion that disputing an alleged debt requires a written communication to be sent to the above mentioned Id. ¶ 20 (emphasis in original). Plaintiff asserts that the debt collection letter violates three sections of the FDCPA: (1) section (2) section 1692e(10), epresentation or deceptive means to collect or (3) section 1692g(a)(4), which requires the debt collection agency to inform a consumer that she may seek verification of the debt by submitting a written dispute to the collector. Compl. ¶ 46. Section 1692g(a)(3) is not mentioned by name but her opposition brief argues that the letter violates that statutory section, which requires a debt collector to inform a consumer that See

2 Defendant and the motion was fully-briefed on December 31, 2018. See . In the meantime, on consent of both parties, Magistrate Judge Bulsara stayed discovery in the case ion to dismiss. See Order, Nov. 2, 2018.

STANDARD OF REVIEW To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint . County of Erie v. Colgan Air, Inc., 711 F.3d 147, 149 (2d Cir. 2013) (quoting Ashcroft v. Iqbal,

556 U.S. 662, 678 (2009)). Though a plaintiff need not n a cause of action, supported by mere Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In considering a motion to dismiss brought pursuant to Rule 12(b)(6),



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2 Though the bulk of alleged violation of section 1692g(a)(3), plaintiff switches course midway through her brief and section 1692g(a)(4). In this section of her argument, plaintiff alleges that the debt collection letter actually encourages consumers to dispute their debt by telephone, thus obscuring the fact that the manner in which a plaintiff disputes her debt triggers different rights under the statute. See 12; see also 10, ECF No. 19. As I explain below, *infra* Discussion pt. II, this line of argument is meritless. . . as true, and *Lundy v. Catholic Health Sys. of Long Island Inc.*, 711 F.3d 106, 113 (2d Cir. 2013) (quoting *Holmes v. Grubman*, 568 F.3d 329, 335 (2d Cir. 2013), 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). The factual

Twombly, 550 U.S. at 555.

DISCUSSION I. The Fair Debt Collection Practices Act

Kagan v. Selene Fin. L.P., 210 F. Supp. 3d 535, 541 (S.D.N.Y. 2016) (quoting *Kropelnicki v.*

Siegel, 290 F.3d 118, 127 (2d Cir. 2002)). Generally, the statute requires that debt collectors *Weber v. Comput. Credit, Inc.*, 259 F.R.D. 33, 37 (E.D.N.Y. 2009). As part of this requirement, section

pertaining to their rights under the statute. Section 1692g contains a more specific list of the rights afforded to consumers, and mandates that debt collectors send either at the same time or within five days of an initial communication regarding the alleged debt.

That notice must contain a number of important items information regarding the

s to dispute the validity of the debt and to make a written request to have the debt collector verify that the consumer actually owes the debt to the creditor. See *Lotito v. Recovery Assocs. Inc.*, No. 13-CV-5833 (SJF)(AKT), 2014 WL 4659464, at *3 (E.D.N.Y. Sept. 17, 2014).

Of particular relevance to the instant motion, section 1692g(a)(3) requires debt collectors to inform consumers consumer Section 1692g(a)(4) separately provides that the notice must inform the consumer that the debt

in writing relationship between these two subsections of the statute. Though section 1692g(a)(3) *Hooks v. Forman, Holt, Eliades & Ravin, LLC*,

717 F.3d 282, 284 (2d Cir. 2013), some courts have read such a requirement into the statute, , contemplates that any dispute, to *Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991). The Second Circuit disagrees; in a 2013 opinion, it *ce* and concluded that the statute, as written, allows a consumer to make an oral dispute after receiving the collection letter. *Hooks*, 717 F.3d at 286. However, consistent with section 1692g(a)(4), a consumer can obtain verification of the debt only if her dispute is communicated in writing. *Id.*; see also *In re Risk Mgmt. Alts., Inc.*, Fair Debt



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Collection Practices Litig. that the least sophisticated consumer would understand that (1) she could raise a dispute in many

ways, but (2) she could get verification of the debt and the name and address of the original creditor

It is well-established that a debt collector the information required by section 1692g ty. Vetrano v. CBE Grp, Inc., No. CV 15-3185 (JS) (AKT), 2016 WL 4083384, at *5 (E.D.N.Y. Aug. 1, 2016). Put differently, section language informing Russell v.

Equifax A.R.S., 74 F.3d 30, 34 (2d Cir. 1996). Post-Hooks, a debt collector violates the statute if it or indirectly, that consumers may only enforce their right to dispute Balke v. All. One Receivables Mgmt., Inc., No. 16-cv- 5624(ADS)(AKT), 2017 WL 2634653, at *7 (E.D.N.Y. June 19, 2017). When evaluating whether a letter violates sections 1692g or 1692e objec Russell, 74 F.3d at 34 (discussing standard in context of section

1692g claims); see also Bentley v. Great Lakes Collection Bureau, 6 F.3d 60, 62 (2d Cir. 1993) (discussing standard in context of section 1692e claims). For the purposes of a claim that the language of the letter overshadows or contradicts an otherwise compliant validation notice, the court must determine whether the letter Jacobson v. Healthcare Fin. Servs., Inc., 516 F.3d 85, 90 (2d Cir. 2008). Russell, 74 F.3d at 34, -average sophistication . perpetrated by debt collectors. Clomon v. Jackson t sophisticated consumer does Ellis v. Solomon and Solomon, P.C., 591 F.3d 130, 135 (2d Cir.

2010) (quoting Russell, 74 F.3d at 34 (internal quotation marks omitted)).

Though courts are required to consider a letter from the standpoint of a consumer without to be confla Kagan, 210 F. Supp. 3d at 542. Even the least Ellis, 591 F.3d at 135 (quoting Greco v. Trauner, Cohen & Thomas, L.L.P., 412 F.3d 360, 363 (2d

Jacobson, 516 F.3d at 90 (quoting Clomon,

988 F.2d at 1320)). Because the standard depends on a hyp motion to dismiss. See Vega v. Credit Bureau Enters., No. CIVAO2CV1550DGT KAM, 2005 WL

the least sophisticated consumer would interpret Abramov v. I.C. Sys., Inc. within th where the debt collection letter alleged to have run afoul of the statute does not, as a matter of law,

Lerner v. Foster, 240 F. Supp. 2d 233, 241 (E.D.N.Y. 2003))).

II. Plaintiff has failed to state a claim under 15 U.S.C. § 1692g.

In order for a plaintiff to prevail on a claim brought under section



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provided in Kagan, 210 F. Supp. 3d at

542. There is no dispute the only question is whether plaintiff has stated a claim for a violation of section 1692g. See 5.

Though both parties agree that the debt collection letter properly conveys the necessary disclosures in section 1692g, plaintiff argues that other language in the letter overshadows and contradicts the validation notice. Her principal argument is that the bolded language in the top right-hand corner of the debt collection letter sends payment or correspondence they can dispute their debt only by submitting written communications to that same address. See Plaintiff's argument to this interpretation, thus violating the holding in *Hooks* that consumers must be able to dispute their debt orally as well as in writing, see, e.g., Kagan, 210 F. Supp. 3d at 541. As a matter of law, I conclude that plaintiff has failed to meet her pleading obligation, as the debt collection letter sent by defendant contains a validation notice that accurately conveys the information required by the statute and provides an address for them to

position relies in part on her assertion that the phone number provided by defendant is not clearly intended to be used by consumers to communicate their disputes. Compl. ¶ 15. This argument is meritless. There is nothing on the face of the letter that limits the way in which a consumer is instructed to use the phone number provided by defendant. To the contrary, the letter provides, without limitation or commentary, in several prominent positions including in the middle of the letter, just above the section where defendant provides the proper validation notice. See August Number: 1-866-513- debt collector in *Balke v. Alliance One Receivables Management, Inc.* There, the letter instructed the consumer that, if she was language expressly limited the ways in which a consumer was instructed to make use of the phone

number, and the court found that it was that the letter presented misleading information about the manner in which the plaintiff should

dispute a debt. *Id.*

Moreover, the mere fact that a collection letter does not expressly indicate that a phone number may be used to communicate a dispute does not mean that the letter overshadows or contradicts a properly-conveyed validation notice. In *Vetrano v. CBE Group, Inc.*, for example, the court held that the absence of language explaining that a phone number could be used to dispute clearly advises Plaintiff of his right which relies on a quote from *Vetrano* in which Judge

argument in that case, without endorsing it is demonstrably 2; see also 12. Additionally, plaintiff convey disputes orally. street address. See 11. More importantly, however, the cases cited by plaintiff to support her argument demonstrate

by phone only where the validation notice is positioned near the potentially-confusing language, thus



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increasing the chances that the least sophisticated consumer would be left Jacobson, 516 F.3d at 90. In Vetrano, for example, mers to F notice. 2016 WL 4083384, at *8 9. Given the proximity between the confusing language and the otherwise- ights, the court held that the language could be misleading. Id. at *9. The court repeatedly emphasized that these two sections of the letter specific address were conf [d]irectly

Id. y that, - when read in conjunction with the first sentence of the validation notice did not violate the FDCPA when viewed from the perspective o (emphasis added)); see also Am. Compl. Ex. 1, at 1, Vetrano v. CBE Grp., Inc., No. 15-cv-03185 (E.D.N.Y.), ECF No. 30-1. 3

Likewise, in Balke, the language instructing consumers to mail correspondence for this account the letter that contained the proper validation notice, thus increasing the chances that a consumer

3 e court in Vetrano complaint rather than a motion to dismiss. As a result, is not exactly the same, as the court reviewing

a motion to amend a complaint need not determine whether a complaint would ultimately survive frivolous on Vetrano, 2016 WL 4083384, at *3, *9 (quoting UMG Recordings, Inc. v. Lindor, No. CV-05-1095(DGT), 2006 WL 3335048, at *2 (E.D.N.Y. Nov. 9, 2006)). Moreover, other courts have declined to follow the reasoning of Vetrano because the court in that case did not refer explicitly Hooks. See Thomas v. Midland Credit Mgmt., Inc., No. 2:17-cv-00523 (ADS)(ARL), 2017 WL 5714722, at *6 (E.D.N.Y. Nov. 27, 2017). would read the two provisions together and be misled regarding her options to dispute the debt. 2017 WL 2634653, at *7; see also Am. Compl. at 16, Balke v. All. One Receivables Mgmt, Inc., No. 16-cv-05624 (E.D.N.Y.), ECF No. 20.

In contrast, in this case, regarding box address is in an entirely different section of the letter than the validation notice, and the two

provisions are separated by a perforated line. August 2017 Letter. The validation notice is also positioned next to the number itself, and the Id. Additionally, in connection with the post office box address, to , distinguishing the letter in this case from the cases where courts have See, e.g., Abramov, 54 Lotito, 2014 WL 4659464, at *8 (holding that the language in writing reasonably be interpreted by the least sophisticated consumer as representing, incorrectly, that a

see also Vetrano, 2016 WL 4083384, at *8 (noting that the holdings in Abramov and Lotito Finally, unlike the letter in Balke all correspondenc physical address, 2017 WL 2634653, at *8 (emphasis added), the letter in this case merely instructs consumers if it is sent by mail box address. August 2017 Letter.

To the extent that the cases relied upon by plaintiff are not distinguishable from the instant case, I am more persuaded by other cases that have concluded that a letter does not violate section 1692g



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when a directly below the statements regarding debt disputes. Thomas, 2017 WL 5714722, at *7; see also Kagan, 210 F. Supp. 3d at following the debt validation disclosures, which further evidences that oral disputes could be

I am also mindful of the principle that even the least sophisticated consumer Ellis, 591 F.3d at 135 (quoting Greco v. Trauner, Cohen & Thomas, L.L.P., 412 F.3d 360, 363 (2d Cir. 2005)),

upon idiosyncratic or bizarre interpretations of debt collection letters, Jacobson, 516 F.3d at 90; see also McStay v. I.C. Sys., Inc., 308 F.3d 188, 191 (2d Cir. 2002) (holding that even where a given instruction that courts should focusing on

potentially-confusing elements of particular phrases when read in isolation, Shapiro v. Dun & Bradstreet Receivable Mgmt. Servs., Inc. would not mislead the least

sophisticated consumer. Perhaps recognizing the weakness of her argument, plaintiff changes her position midway through her opposition brief, arguing instead that the letter actually overemphasizes right to dispute debts by telephone, and thus misleads a consumer into believing that she may

obtain other rights including the verification of debt simply by lodging an oral dispute. See 12. Even if it is proper for plaintiff to make this argument in the alternative, 4

I conclude that it is meritless. rests upon a fundamental disagreement with Hooks. Yet the Hooks decision is binding law; there, the court explicitly acknowledged that its

decision established a two-level dispute process, in which consumers obtain certain rights by making oral disputes but are only able to obtain other rights, pursuant to section 1692g(a)(4), when their disputes are made in writing. 717 F.3d at 286; see also Thomas, 2017 WL 5714722, at *6 Circuit held that the language of the FDCPA does not mislead consumers despite Plaintiff cites to numerous cases decided by courts within the Third Circuit, but those cases are entirely irrelevant, as the Third Circuit disagrees with the Hooks all dispute-related provisions of section 1692g. See Graziano, 950 F.2d at 112. 5 address and phone numb 4

to submit disputes dispute the debt[] could only . Cf. Thomas v. Kamtek, Inc., 143 F. Supp.

contradictions that conflict with legal conclusions on essential Timm, Inc. v. Bank One Corp., N.A., No. 04 C 3541, 2005 WL 2347231, at *2 (N.D. Ill. Sept. 22, 2005) forth in the complain

5 To the extent that the other cases cited by plaintiff are not foreclosed by the holding in Hooks, they involve distinguishable factual situations where the debt collectors sent subsequent letters that encouraged consumers to call the debt collectors rather than submit disputes in writing. See, e.g.,



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Beaufrand v. Portfolio Recovery Assocs., LLC, No. 18-CV-214, 2018 WL 6065355, at *5 (holding that a second letter sent by the defendant violated the FDCPA because at the time it was sent the unsophisticated consumer would be unlikely to remember the details of the validation notice contained in the first letter). Here, plaintiff received just one letter from defendant, and it is undisputed that the letter contained the proper validation notice. rights regarding disputes and her ability to obtain verification of the debt; there is nothing in the letter that encourages the consumer to make disputes using one form over the other, or that misconstrues the rights that attach to each form of dispute-making. Cf. Vu v. Diversified Collection Servs, Inc. a request that the consumer contact the debt collector . . . does not necessarily overshadow the

section 1692g.

III. Plaintiff has failed to state a claim under 15 U.S.C. § 1692e.

section 1692e of the FDCPA because

circuit courts, as well as a number of district courts in this Circuit, read a materiality requirement

Vetrano, 2016 WL 4083384, at *9 (citing Gabriele v. Am. Home Mortg. Servicing, Inc.,

; see also Abramov, 54 into § 1692e, it has cited with approval a Fourth Circuit case doing just that The operative

inquiry the challenged statement . . . to represent, incorrectly, that a debt di Lotito, 2014 WL 4659464, at *8 (citing Easterling v. Collecto, Inc., 692 F.3d 229, 234 (2d Cir. 2012)).

For largely the same reasons that plaintiff fails to state a claim under section 1692g, she also fails to demonstrate that she is entitled to relief under section section 1692e claim rests on language in the debt collection letter that I have already determined is not misleading and would not lead an unsophisticated consumer to be uncertain as to her rights. instruction to consumers to send physical mail to a specific address paired with

-conveyed validation notice is not susceptible to misinterpretation by the least sophisticated consumer, and therefore it does not violate section 1692e. See, e.g., Vetrano, 2016 WL 4083384, at *10 (concluding that plaintiff could not state a claim under section mislead the least sophisticated consumer when read within the context of the entire collection

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CONCLUSION



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in its entirety. The Clerk of Court is directed to enter judgment accordingly and close the case.

SO ORDERED.

Date: February 19, 2019 _____/s/_____ Brooklyn, New York Allyne R. Ross

