



Hesford v. Jefferson Capital System

2018 | Cited 0 times | N.D. Iowa | November 14, 2018

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

CEDAR RAPIDS DIVISION JOSHUA HESFORD,

Plaintiff, No. 18-cv-100-CJW vs.

ORDER

JEFFERSON CAPITAL SYSTEM, Defendant.

_____ Pleadings, filed on October 18, 2018. (Doc 6). Plaintiff had fourteen days from the date

. LR 7(e). Plaintiff has not filed a resistance or a motion to extend the time to file a resistance. For the reasons set forth herein, n the Pleadings is denied with leave to refile.

I. BACKGROUND Plaintiff filed a small- District Court for Linn County, Iowa. (Doc. 2). The petition is set forth in a small-

claims form that directs the plaintiff to fill in the amount

Violating FCRA. 1

They did not inform me that they had an account in my name or that they would report negative information to my credit report. I did not have a chance to dispute before this was added to my credit report. They are falsely reporting that I owe them money when it is another agency.

1 FCRA refers to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x. (Id.). Defendant answered the petition in state court, and timely removed this case, asserting that the Court has federal question jurisdiction. (Docs. 1; 1-2 at 5-6). 28 U.S.C. §§ 1331, 1446(b)(1). Defendant subsequently filed the instant motion for judgment on the pleadings, asserting that plaintiff has failed to state a claim upon which relief can be granted under the FCRA. (Doc. 6).

II. APPLICABLE LAW Defendant filed its motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). (Doc. 6). A defen failure to state a claim in a Rule 12(c) motion,



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and the Court will analyze the motion under the same standard as a Rule 12(b)(6) motion to dismiss. *St. Paul Ramsey Cty. Med. Ctr. v. Pennington Cty.*, S.D., 857 F.2d 1185, 1187 (8th Cir. 1988). A grant of judgment on the pleadings is appropriate where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law. *Poehl v. Countrywide Home Loans, Inc.*, 528 F.3d 1093, 1096 (8th Cir. 2008) (quoting *Faibisch v. Univ. of Minn.*, nonmoving party as true and grant[s] all reasonable inferences in fav Id. The Court will grant a it appears

beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. *Dammann v. Progressive Direct Ins. Co.*, 856 F.3d 580, 584 (8th Cir. 2017) (internal quotations and citations omitted). Defendant bears the burden to show it is entitled to judgment on the pleadings. See *Rossley v. Drake Univ.*, No. 4:17-cv-00058-RGE-SBJ, 2017 WL 7693389, at *2 (S.D. Iowa Dec. 20, 2017); see also *Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE* federal courts are in agreement that the burden is on the moving party to prove that no

III. DISCUSSION Defendant characterizes the petition as alleging that defendant violated the FCRA in two ways: report negative (Doc. 6-1, at 2). Defendant asserts that plaintiff claims allege violations of Sections 1681s- 2(a)(7)(A) and 1681s-2(a)(1)(A) of the FCRA. (Id. at 2-3). Defendant argues that Section 1681s-2(a) does not create a private right of action, and accor claims fail as a matter of law. (Doc. 6-1, at 3-4). Defendant also claim under Section 1681s-2(a)(7)(A) fails because that section only applies to financial

institutions that extend credit, and plaintiff did not allege that defendant extends credit. (Doc. 6-1, at 4 n.1).

Defendant fails to meet its burden to show that there is no set of facts under which the petition alleges that defendant violated the FCRA in four ways:

- 1) Defendant failed to inform plaintiff that defendant had an account in
- 2) Defendant failed to notify plaintiff that it would report negative
- 3) Defendant did not provide claimant an opportunity to dispute the

negative information; and 4) Defendant reported fals argument that the FCRA does not provide plaintiff a private right of action only addresses iled to allege that defendant extends credit, as required by Section 1681s- fails to remaining claims regarding the placement of his account with defendant or the lack of opportunity to dispute the negative information. (See Docs. 6, 6-1). address threadbare arguments for dismissal unsupported by sufficiently reasoned analysis. *Fort Des Moines Church of Christ v. Jackson*, 215 F. Supp.3d 776, 792 (S.D. Iowa 2016). By failing to address two of plaintiffs four claims, defendant failed to meet its burden to show that there is no set



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on the Pleadings is denied. The Court hereby grants defendant leave to refile its Rule 12(c) motion within twenty- in their entirety.

IV. CONCLUSION or Judgment on the Pleadings (Doc. 6) is denied. Plaintiff may refile its Rule 12(c) motion for judgment on the pleadings within twenty-one days of the date of this order.

IT IS SO ORDERED this 14th day of November, 2018.

_____ C.J. Williams United States District Judge Northern District
of Iowa

