

Third Circuit Adopts “Reasonable Reader” Standard for Credit Report Accuracy

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The Fair Credit Reporting Act (FCRA) 15 USC 1681 et. seq. requires furnishers of information to report the information accurately. Recently, several payment rating/account status cases have been filed and litigated where the Plaintiff’s bar contends the industry’s reporting of account information is misleading and violates the FCRA. However, on August 8, 2022, the U.S. Court of Appeals for the Third Circuit outlined how district courts within the Circuit must analyze credit reports when determining whether an individual tradeline is inaccurate or misleading under the FCRA. This analysis may prove to be the first nail in the coffin of the so-called “payment rating” cases which began in 2015.

In *Bibbs v. Trans Union LLC*, the Court of Appeals consolidated three cases and affirmed the district court’s orders granting judgment on the pleadings in favor of Trans Union. Each Plaintiff defaulted on student loans by failing to make monthly payments. Each student loan servicer transferred the borrowers’ accounts and, after the accounts were transferred, reported the accounts to the credit reporting agencies with a zero balance, noting that the payment obligations were transferred. They also indicated that the “Pay Status” field showed “120 Days Past Due” but also noted a \$0 balance. It was undisputed that each borrower failed to make timely payments and that the accounts were correctly reported as delinquent until they were closed and transferred. It was also undisputed that none of the borrowers owed any balance to the transferring creditor after the transfer occurred, and at the time the transfers occurred, each account was past due. Each borrower argued that reporting a “Pay Status” of “120 Days Past Due” and a balance due of \$0 was inaccurate and could mislead prospective creditors into incorrectly assuming each borrower was currently more than 120 days late on loans that have been closed.

Each borrower sent a dispute letter to TransUnion, arguing that it is impossible to be late on an account with a \$0 balance, and requested that their respective tradelines be corrected or removed. TransUnion timely investigated the accounts and sent each borrower a letter stating each credit report was accurate.

The borrowers argued that the court should adopt a standard instructing District Courts to read “Pay Status” fields independently from the rest of the credit report when assessing the accuracy of the field. The borrowers argued that the standard applied by the District Court (the “reasonable creditor” standard) was not appropriate because unsophisticated employers, landlords, insurers, and other non-creditors may be misled by reports. The Court of Appeals agreed that the “reasonable creditor” standard was inappropriate, but it declined to adopt a standard that would look at credit reporting fields myopically. Instead, to determine whether the tradelines

were inaccurate or misleading under the FCRA, the court adopted a “reasonable reader” standard. District Courts are therefore instructed to view a credit report from the perspective of a typical, reasonable reader viewing the tradeline in its entirety, not by reading a portion of the credit report in isolation.

In applying this reasonable reader standard, the court analyzed whether the “Pay Status” field showing “120 Days Past Due” was inaccurate or misleading given the “maximum possible accuracy” standard that the FCRA applies to the credit reporting agencies. The court held that a reasonable reader viewing each borrower’s credit report would see the multiple conspicuous statements noting that the accounts were closed and conclude no amounts were due to the creditors that transferred the accounts. The Court affirmed the judgment on the pleadings and held the credit reports were accurate under 15 U.S.C.S. § 1681e(b).

The court also resolved the two remaining issues in TransUnion’s favor. In assessing the reasonableness of TransUnion’s reinvestigation of the credit report, the court noted that a finding of inaccuracy was a prerequisite to recovery for a claim based on an unreasonable reinvestigation under 15 U.S.C.S. § 1681i(a). Because the court concluded the tradeline was accurate, it again affirmed the judgment entered by the District Court. As to the borrowers’ final claim that discovery was necessary to determine whether creditors would be misled or would make adverse credit decisions based on the reporting, the court held that because the reasonable reader standard is objective, discovery would not be necessary.

This holding should provide guidance to furnishers of credit information regarding how to accurately report closed or transferred accounts, as well as provide a strong defense to claims predicated upon idiosyncratic interpretations of credit reporting.

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