



**In the Missouri Court of Appeals**  
**Eastern District**  
DIVISION FIVE

ROYAL FINANCIAL GROUP, LLC.,	)	No. ED92972
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
MARGARET A. GEORGE,	)	Hon. Sandra A. Ferragut-Hemphill
	)	
Appellant.	)	FILED: March 30, 2010

Margaret George ("Ms. George") appeals the trial court's judgment denying her damages and attorney's fees under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 et seq., against Royal Financial Group, LLC ("Royal Financial"). We reverse and remand.

**I. BACKGROUND**

Royal Financial sued Ms. George to collect a credit card debt that she allegedly owed to the original lender, Chase Manhattan Bank<sup>1</sup>. Royal Financial sought to recover \$3,268.39 from Ms. George, the amount she allegedly owed, including the principal, interest, and attorney's fees. In support of its petition, Royal Financial submitted only a "card member" agreement form, which contained nothing identifying either the borrower or the lender, the amount of any charges, and no names or signatures. In her answer, Ms. George denied owing Royal Financial any sum, and further claimed as an affirmative

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<sup>1</sup> Royal Financial was purportedly acting as the assignee of Chase Manhattan Bank U.S.A.

defense that the suit was barred by the statute of limitations. After failing to respond to Ms. George's two discovery requests, Royal Financial dismissed the suit against her without prejudice two days before trial.

Along with her answer, Ms. George also filed a counterclaim against Royal Financial and alleged that it had violated the FDCPA in its efforts to collect the debt. According to Ms. George, Royal violated the Act by: (1) making false representations of the character, amount, or legal status of a debt in violation of section 1692e(2)(A); (2) using false representations or deceptive means to collect or attempt to collect a debt in violation of section 1692e(10); (3) attempting to collect amounts of money not expressly authorized by agreement or law, both in violation of section 1692f(1); and (4) continuing to prosecute the lawsuit against her maliciously and without reasonable grounds. Ms. George alleged that Royal Financial's actions caused her mental and emotional distress. She prayed for actual damages, statutory damages, and attorney's fees.

Ms. George tried her counterclaim to the court on April 29, 2009. At trial, she testified that she did not currently use a credit card, and had only owned one card in the past - approximately nine years before. Ms. George could not recall what type of card it was, but stated that she had not used the card or made any payments on it in the nine years prior to trial. She further testified that she had never had any business dealings with Royal Financial, and did not know why she would owe them money. Ms. George also stated that she had received harassing phone calls approximately twice per week at her home, whereby people demanded that she pay a credit card bill. Ms. George could not remember the names of the persons or firm who had called her.

At the close of the evidence, Ms. George presented a motion for attorney's fees. In the motion, her attorney, Martin Perron ("Mr. Perron"), asked for a total of \$5,581.50 in attorney's fees: 17.1 hours of his time, at a rate of \$265 per hour, and 7.5 of his associate's time, billed at \$140 per hour. In support of his motion, Mr. Perron offered five exhibits, only two of which were admitted into evidence. The two admitted exhibits constituted a table summarizing the hours his firm expended on the case, and Mr. Perron's attestation as to the reasonableness of his fees. In addition, Mr. Perron offered three exhibits that the trial court refused to admit: (1) a previous judgment from St. Louis County that awarded him similar attorney's fees in a different FDCPA case; and (2) two affidavits from other lawyers, submitted in conjunction with the aforementioned case, wherein they attested that Mr. Perron's rates were customary and reasonable.

At the close of the evidence, the trial court concluded that Ms. George had presented insufficient evidence to support her claim that Royal Financial's suit against her violated the FDCPA. The court found that Ms. George could not connect the harassing phone calls to Royal Financial, nor could she show that they acted maliciously or without reasonable grounds in prosecuting the claim against her. The court assessed the costs against Ms. George, and entered judgment for Royal Financial. Ms. George appeals.

## **II. DISCUSSION**

This Court reviews court-tried cases pursuant to the standard set forth in Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976). Thus, we will affirm the trial court's judgment unless it is not supported by the evidence, is against the weight of the evidence, or erroneously declares or applies the law. Id.

In her first point on appeal, Ms. George argues that the trial court erred when it concluded that she presented insufficient evidence to show that Royal Financial violated the FDCPA. We agree.

The purpose of the FDCPA is to "eliminate abusive debt collection practices by debt collectors." Richmond v. Higgins, 435 F.3d 825, 828 (8th Cir. 2006); section 1692(a). Debt collectors are liable for failure to comply with any provision of the Act. Section 1692k(a). The FDCPA grants concurrent jurisdiction in both federal and state courts for enforcement of its provisions. Rhodes v. Westoak Realty & Inv., Inc., 983 S.W.2d 565, 567 (Mo. App. E.D. 1998); section 1692k(d). What specific conduct is sufficient to violate the sections of the FDCPA that Ms. George cites is an issue of first impression in Missouri.

In order to establish a prima facie case for violation of the FDCPA, a plaintiff must plead and prove four elements:

(1) the plaintiff is any natural person who is harmed by violations of the FDCPA, or is a "consumer" within the meaning of 15 U.S.C.A. section 1692a(3) or section 1692c(d) for purposes of a cause of action under 15 U.S.C.A. section 1692c [. . .] or 15 U.S.C.A. section 1692e(11) [. . .];

(2) the "debt" arises out of a transaction entered primarily for personal, family, or household purposes; 15 U.S.C.A. section 1692a(5);

(3) the defendant collecting the debt is a "debt collector" within the meaning of 15 U.S.C.A. section 1692a(6); and

(4) the defendant has violated, by act or omission, a provision of the FDCPA, 15 U.S.C.A. section 1692a-1692o; 15 U.S.C.A. 1692a; 15 U.S.C.A. section 1962k.

29 Causes of Action section 49 (2005).

The only issue in this case concerns element four: whether Ms. George met her burden to prove that Royal Financial violated a provision of the FDCPA. Specifically, Ms. George argues that the trial court erred in finding insufficient evidence that Royal Financial: (1) made a false representation of the character, amount, or legal status of a debt; (2) used false representations or deceptive means to collect or attempt to collect a debt; (3) attempted to collect an amount not expressly authorized by an agreement, or by law; and (4) continued to prosecute a lawsuit against her maliciously or without reasonable grounds.

Ms. George asserts that she has only owned one credit card in her lifetime, and that she has not used the card or made any payments since she began living at a retirement home in Florissant nine years ago. She further contends that she has had no business dealings with Royal Financial. Her counterclaim alleges, in part, that "[t]here was no just cause or excuse to believe [Ms. George] owed any money as alleged in the lawsuit." In sum, Ms. George argues that she owes Royal Financial nothing, or if she does, its claims are barred by the five-year statute of limitations.

Royal Financial argues that Ms. George failed to present evidence, aside from her denials, that the credit card she owned was not the one at issue in its petition. It claims that, even accepting all of Ms. George's evidence as true, she did not prove by a preponderance of the evidence that Royal Financial's filing the petition violated the Act.

We believe that Ms. George presented sufficient evidence that Royal Financial filed a collection lawsuit against her in order to collect a debt for which it knew or should have known she was not liable. We further find that such conduct violates FDCPA

section 1692e(2)(A). Our research reveals that the case law in other jurisdictions supports this decision.

Section 1692e(2)(A) prohibits the "false representation" of the "character, amount, or legal status of any debt."<sup>2</sup> On very similar facts, a Delaware district court held that debt collectors may violate section 1692e(2)(A) when they attempt to collect a debt from the wrong party. It stated:

The court finds that debt collectors may be found in violation of subsection 1692e(2)(A) for mistakenly dunning<sup>3</sup> the wrong individuals when they fail to exercise reasonable care in ascertaining the facts, such as by relying upon information on which a reasonable person would not have relied.

Beattie v. D.M. Collections, Inc., 754 F.Supp. 383, 392 (D. Del. 1991). See also Dutton v. Wolhar, 809 F.Supp. 1130, 1136 (D. Del. 1992) (holding that debt collectors violated section 1692e(2)(A) when they represented that plaintiff was legally obligated to pay a debt incurred by her mother).

We acknowledge that there exists case law to the contrary, albeit on distinguishable facts. In Harvey v. Great Seneca Fin. Corp., 453 F.3d 324 (6th Cir. 2006), for example, the Court held that the plaintiff had not sufficiently pled a violation of the FDCPA. Id. at 333. The Harvey plaintiff alleged that the debt collector violated the Act by filing "a lawsuit to collect a purported debt without the means of proving the existence of the debt, the amount of the debt, or that Seneca owned the debt." Id. at 325. The Court held that such allegations were insufficient to state a violation of 1692e

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<sup>2</sup> We find that a debt collector's attempts to collect from the wrong individual are better characterized as misrepresenting the character or status of a debt rather than the amount owing. See Beattie v. D.M. Collections, Inc., 754 F.Supp. 383, 392 (D. Del. 1991).

<sup>3</sup> "To dun" means "to demand payment from a delinquent debtor." Black's Law Dictionary 518 (7th ed. 2000).

because the plaintiff "never denied in her complaint that she owed Seneca a debt, nor did she claim that [the debt collectors] misstated or misrepresented the amount that she owed." Id. at 332. Unlike Ms. George, the Harvey plaintiff did not deny that she owed the debt. She thus had not alleged any false representations or deceptive means, as required for violations of 1692e. Id.

Also informing our decision are those cases that address whether a debt collector violates the Act when it attempts to collect on a time-barred debt. Kimber v. Fed. Fin. Corp., 668 F.Supp. 1480 (M.D. Ala. 1987) responded in the affirmative and stated: "[b]y threatening to sue Kimber on her alleged debt, [the debt collector] violated section 1692e(2)(A) & (10); by threatening to sue her, [the debt collector] implicitly represented that it could recover in a lawsuit, when in fact it cannot properly do so." Id. at 1488. Kimber faulted the debt collector for failing to make a reasonable inquiry into whether the limitations period had been tolled. Id. at 1487.

In Freyermuth v. Credit Bureau Servs., Inc., 248 F.3d 767 (8th Cir. 2001), the Court addressed for the first time whether a debt collector violates section 1692f(1)<sup>4</sup> when it attempts to collect on a potentially time-barred debt. Id. at 771. While the Freyermuth Court held that no violation had occurred, the decision hinged on the fact that "no legal action was taken or even threatened." Id. The Court recognized that whether or not a violation has occurred often "turn[s] on the threat, or actual filing, of litigation." Id. (citing a collection of cases).

The aforementioned cases support the proposition that a debt collector violates the FDCPA when it actually files suit to collect a debt for which it knows, or reasonably should know, the defendant is not liable. We believe the situation in this case is more

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<sup>4</sup> Section 1692f(1) prohibits attempting to collect amounts not authorized by agreement or by law.

egregious than that in Harvey, where the collector merely "does not yet possess adequate proof of its claim." Harvey, 453 F.3d at 333. We also believe it more flagrant than a debt collector's suing, or threatening to sue, on a potentially time-barred debt, because in that case, a valid debt presumably existed at some point.

Ms. George presented sufficient evidence at trial that Royal Financial sued her for a debt for which it knew, or reasonably should have known, she was not liable. As Ms. George points out in her brief, Royal Financial's petition is entirely void of facts that might connect her to the purported debt. First, the petition is defective in that it contains no allegation of an assignment between Chase Manhattan Bank, the original lender, and Royal Financial. Thus, Royal Financial did not allege that it had a legitimate right to collect the alleged debt.

The stark allegations in the petition state only that Royal Financial advanced Ms. George money that she refused to pay back. Other than the alleged amount, it does not cite any other information about the charges, including the date(s) she incurred them. Attached to the petition is a "cardholder agreement" that nowhere evinces a name or signature, much less Ms. George's. "Chase Manhattan Bank" is written in pen at the top of the "agreement." The rest of the agreement is standard form and uses boilerplate language. Finally, in an attempt to obtain answers to her interrogatories, Ms. George twice served motions to compel on Royal Financial. The company dismissed the case against her without prejudice after it failed to respond to the second motion.

We believe the FDCPA was intended to protect consumers such as Ms. George. In canvassing the legislative history of the Act, Dutton v. Wolhar, 809 F.Supp. 1130 (D. Del. 1992) noted:

The bill also protects people who do not owe money at all. In the collector's zeal, collection efforts are often aimed at the wrong person either because of mistaken identity or mistaken facts. This bill will make collectors behave responsibly towards people with whom they deal.

Id. at 1134-35 (citing H.R.Rep. No. 131, 95th Cong. 1st Sess. 8).

Royal Financial presented no evidence at the hearing that it exercised reasonable care in assessing the facts that led it to connect Ms. George with the alleged debt. As such, we find that Ms. George presented sufficient evidence that Royal Financial falsely represented the character or legal status of a debt, in violation of section 1692e(2)(A). Point one is granted.

In her second point on appeal, Ms. George argues that the trial court erred in refusing exhibits A1, A2, and A3, because she was entitled to reasonable attorney's fees as actual and statutory damages in her FDCPA case, and such exhibits were proper indicators of amounts reasonably recovered in similar cases. We agree with Ms. George that she was entitled to reasonable attorney's fees.<sup>5</sup>

The FDCPA allows a plaintiff to recover actual damages, statutory damages up to \$1,000, and reasonable attorney's fees and costs. Section 1692k(a) of the Act reads as follows:

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of:

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<sup>5</sup> Though Ms. George's counterclaim sought \$25,000 for mental and emotional distress, her point on appeal addresses attorney's fees and costs only. Ms. George's point two states, in pertinent part: "The Trial Court erred when it refused Exhibits A1, A2, and A3 . . . because [Ms.] George was entitled to reasonable attorney's fees as actual damages in her FDCPA case and under the statute itself . . ." In her brief's conclusion, however, she prays for actual damages, statutory damages in the amount of \$1,000, and reasonable attorney's fees. We find Ms. George entitled to attorney's fees only.

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000 . . .

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

Section 1692k(a)(3) clearly provides attorney's fees and costs for a successful litigant. See also Jenkins v. E. Asset Mgmt., LLC, No. 4:08-CV-1032 CAS, slip copy at 3 (E.D. Mo. Aug. 12, 2009). According to the exhibits admitted in the trial court and contained in the record on appeal, Ms. George incurred \$5,986.50 in attorney's fees.<sup>6</sup> We find those fees reasonable and necessary, and thus award Ms. George \$5,986.50. Id. In this case, we note that no damages were proved.

Having already determined that Ms. George is entitled to her attorney's fees, we need not address whether the trial court erred in refusing to admit Exhibits A1, A2, and A3. Point two is granted.

### III. CONCLUSION

The judgment of the trial court is reversed and remanded. The trial court is directed to enter judgment in favor of Ms. George on her counterclaim, and to award her \$5,986.50 for her attorney's fees.

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Roy L. Richter, Judge

Kenneth M. Romines, C.J., concurs  
Robert G. Dowd, Jr., J., concurs

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<sup>6</sup> According to the trial transcript and Ms. George's admitted exhibits, Mr. Perron spent 18.1 hours on her case, at a rate of \$265 per hour, and his associate, David Perron, spent 8.5 hours on the case at a rate of \$140 per hour. Per Mr. Perron's request, we added one hour to each attorney's total hours in order to compensate for their time spent at the hearing on Ms. George's counterclaim.