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FDCPA

Midland Funding, LLC v. Colvin, No. 5-21-04, 2022 WL 589911 (Slip Copy 2022-Ohio-572, App. Ct., 3d Dist. Hancock Co., Feb. 28, 2022) (Shaw, J.)

Midland appealed a judgment of the Hancock County Common Pleas Court granting a motion for class certification. Midland was a “debt collector” as defined under 15 U.S.C. § 1692a(6) of the Federal Debt Collection Practices Act (“FDCPA”). Midland purchased consumer debt from other entities and attempted to collect it.

Midland filed a complaint against defendant Colvin in Hardin County Municipal Court alleging that she had defaulted on a credit card account Midland had purchased. Defendant filed a motion to dismiss alleging that she lived in Hancock County, not Hardin County and thus the court did not have subject matter jurisdiction. After the case was transferred to the proper jurisdiction, defendant alleged that Midland violated FDCPA provision 15 U.S.C §1692i(a) by suing her in Hardin County where she did not reside, and she had not signed a contract underlying her alleged debt in Hardin County. She also asserted claims on behalf of a class, asserting that Midland regularly filed collection actions against Ohio residents in counties where they do not reside or in which they signed the contract. She sought actual and statutory damages as well as costs and attorneys’ fees. Defendant moved for class certification and the court denied the motion. The trial court found that the proposed class definition was unambiguous, the class representative was a member of the class, and the class was so numerous that joinder was impracticable. However, the court determined there were significantly different questions of law and fact between the named plaintiff and the class.

Defendant appealed. The appellate court rejected the trial court’s decision, stating that all of the requirements for class certification were met except for the question whether defendant’s claims were common or typical as her damages were only statutory not actual.

After an unsuccessful appeal by Midland, the case was remanded to the trial court. At that time, defendant withdrew her claim that the class was seeking actual damages and was only seeking statutory damages. In its decision certifying the class, the trial court emphasized while the differing damages could have been particularly relevant to the predominance issue, defendant had not removed the issue of damages from the analysis.

Midland appealed again, arguing that the predominance and superiority requirements had not been met. With the differing damages issue removed from the equation, the court found that the trial court did not abuse its discretion by determining that the remaining questions common to the class predominated.

§1983

Fox v. County of Saginaw, By its Board of Commissioners, No. 1:19-cv-11887, 2022 WL 597244 (E.D. Mich. 2/28/2022) (Ludington, J.)

In a class action brought under 42 U.S.C. § 1983, plaintiff alleged that Saginaw County, and 27 other Michigan counties, violated state and federal law by retaining surplus proceeds of tax-foreclosure sales. After class certification was granted, non-parties solicited class members individually and offered to help them collect their surplus proceeds claiming the proceeds were “unclaimed funds.” Some class members entered into agreements allowing the non-parties to pursue their claims for a contingency fee. The non-parties, rather than remaining in the class action, pursued those claims through a statutory remedy under Michigan’s General Property Tax Act (“GPTA”).

After lengthy show-cause hearings, the court found that the non-parties had communicated with the class in an

abusive manner and enjoined them from additional communications. The court also directed the parties to submit proposed curative notices that would describe the nature and history of the case with the remedy sought, in contrast to the GPTA remedy, and inform the class members that they had a right to rescind any agreement with the non-parties.

The parties submitted competing curative notices. After reviewing the proposals, the court drafted its own version of the notice and directed the parties to submit any objections to its form of notice. The court rejected the majority of the parties' objections to the proposed form of notice, summarizing that the purpose of the Proposed Notice was to apprise affected class members of their rights following an abusive solicitation campaign, not to address every potential problem with Plaintiff's legal theory, with the exception that the Notice would be amended to clarify that class members who decide not to cancel their agreement with a non-party may communicate with that entity. The court also agreed to amend the proposed notice by replacing the term "improper" with "abusive and misleading," and to increase the cancellation period from 30 to 60 days.

The court exercised its broad discretion under Federal Rule of Civil Procedure 23 to protect the class and fairly conduct the class action and give appropriate notice to class members and ordered Plaintiff to serve amended curative notices (attached to the opinion and order).

PFAS/PFOA

Hardwick v. 3M Company, et al., No. 2:18-cv-1185, 2022 WL 668339 (S.D. Ohio 3/7/2022) (Sargus, Jr., J.)

Plaintiff sought to have a class certified of individuals residing within the United States at the time of class certification for one year or more since 1977 with 0.05 parts per trillion (ppt) or more of PFOA and at least 0.05 ppt or more of any other PFAS in their blood serum.

Defendants argued class certification should be denied because plaintiff lacked standing, and certification would violate defendants' and absent class members' Seventh Amendment and due process rights. They also argued commonality was not met because many states do not recognize an increased risk of disease as a compensable injury, and the states that do recognize such a claim vary greatly on other relevant inquiries.

The court found plaintiff established standing by showing (1) an injury in fact; (2) it was traceable to the challenged conduct of the defendants; and (3) was likely to be redressed by medical monitoring damages. However, the court had concerns regarding commonality finding that even though the harm alleged was nationwide, commonality was not met with regard to individuals subject to the law of those states. The Court certified a class consisting of individuals subject to the laws of Ohio only.

CONSUMER FRAUD

Castillo, et al. v. Unilever United States, Inc., et al., No. 20-C-6786, 2022 WL 704809 (N.D. Ill. 3/9/2022) (Feinerman, J.)

This putative consumer class action alleged that defendants manufactured TRESemme hair products containing an unsafe chemical with undisclosed risks. Plaintiffs sought monetary damages and an injunction forbidding defendants from deceiving consumers about the risks, requiring it to disclose the risks and mandating that it recall the products.

Defendants moved to dismiss the complaint under Civil Rules of Procedure 12(b)(1) and 12(b)(6) for lack of standing and failure to state a claim.

The court found Plaintiffs had standing for monetary relief because although they did not allege physical injuries, they alleged financial injuries, but they did not have standing for injunctive relief because the named plaintiffs were aware of the presence and dangers of the products and could not face future risks.

With respect to the merits of the fraud, unjust enrichment and breach of warranty claims, the court found that they failed for lack of actual injury because the named plaintiffs did not allege that the products they purchased failed to work for them and disclaimed any intent to purchase the products in the future. Plaintiffs therefore alleged no real and immediate threat of future injury.

The court granted the motion with leave to amend insofar as plaintiffs sought monetary relief.

ARBITRATION

Anderson, et al. v. Starbucks Corp., No. 20-cv-01178, 2022 WL 797014 (N.D. Calif. 3/16/2022) (Donato, J.)

Defendant moved to compel arbitration for 10 out of 21 named plaintiffs in a California wage and hour class action. Starbucks Corp. ("Starbucks") had not sought arbitration until it filed its motion to compel approximately 26 months after plaintiffs first sued in Alameda Superior Court. Six out of the 10 plaintiffs did not oppose arbitration. The remaining four plaintiffs argued that Starbucks had waived arbitration. The court held that Starbucks had indeed waived its right to seek arbitration against those named plaintiffs because the record showed Starbucks had actively conducted significant discovery and filed a notice of removal to federal court under CAFA. Therefore, the record demonstrated that Defendant acted in a manner inconsistent with arbitration and waived any right to demand it at such an advanced stage of litigation.

The court found relevant that Starbucks waited for almost two years before moving to compel, despite knowing of the arbitration clauses in its own contracts with certain named plaintiffs. Starbucks never said why the delay should be excused, and the record gave no indication that a good reason existed for overlooking it.

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