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Third Circuit Adopts New “Reasonable Reader” Standard and Holds Reporting Consumers’ Pay Status as Past Due with \$0 Balance After Transfer Did Not Violate the Fair Credit Reporting Act

*By Diana M. Eng and Andrea M. Roberts**

In this article, the authors examine a recent decision by the U.S. Court of Appeals for the Third Circuit finding that reporting a delinquent pay status with a zeroed-out balance where a past due account has been transferred is neither inaccurate nor misleading under the Fair Credit Reporting Act.

In *Bibbs v. TransUnion LLC*,¹ the U.S. Court of Appeals for the Third Circuit (“Third Circuit”) affirmed the orders of the U.S. District Court for the District of Pennsylvania (“District Court”) granting TransUnion’s motions for judgment on the pleadings and dismissing the complaints in three separate actions by Marissa Bibbs, Michael Parke, and Fatoumata Samoura (collectively, “Appellants”) for violations of the Fair Credit Reporting Act (“FCRA”).

Specifically, the Third Circuit held that TransUnion’s credit reporting of Appellants’ accounts, which reflected a pay status of more than 120 days past due, a \$0 balance, and closing of their accounts due to transfer, when read in their entirety, were accurate and not misleading under the “reasonable reader” standard.

SUMMARY OF FACTS AND BACKGROUND

Appellants admittedly defaulted under their respective student loans.² After the defaults, Navient and Fedloan closed and transferred Appellants’ accounts.

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¹ *Bibbs v. TransUnion LLC*, 43 F. 4th 331 (3d Cir. 2022).

² Bibbs borrowed from the Department of Education/Navient (“Navient”) and Parke and Samoura borrowed from Fedloan Servicing (“Fedloan”).

As such, Navient and Fedloan reported to the credit reporting agencies, including appellee TransUnion, that the accounts were closed with a balance of zero and all of Appellants’ payment obligations were transferred. Further, the reporting reflected a pay status of more than 120 days past due.

After reviewing their credit reports, Appellants, through counsel, sent TransUnion a letter disputing the accuracy of the reports. Specifically, Appellants asserted that the reporting was erroneous because Appellants owed no money to Navient and Fedloan, the prior creditors, and thus, “it is impossible for their current status to be listed as late.”

TransUnion investigated Appellants’ claims and provided Appellants with a report of the results of the investigation, which included a “Note on Credit Report Updates,” explaining that “for accounts that have been closed and paid, Pay Status represents the last known status of the account.” The investigation report also provided definitions to help a consumer understand the investigation results and a “Rating Key,” which explained notations in the report and snapshots of information of the Appellants’ payment status on each of their accounts as it appears on their respective credit reports. For all three Appellants, TransUnion’s investigation concluded the credit reports were accurate.

Appellants commenced separate actions against TransUnion for violations of 15 U.S.C. § 1681i.

Specifically, Appellants alleged that TransUnion’s credit reports contained inaccurate or misleading information because, although Appellants’ accounts were transferred, the pay status on their credit reports showed they were currently 120 days past due. TransUnion filed motions for judgment on the pleadings.

The District Court in each of Appellants’ actions granted TransUnion’s motions. Appellants appealed to the Third Circuit, which consolidated the appeals and affirmed the District Court’s orders.

THIRD CIRCUIT’S DECISION

The issues on appeal were whether:

- The District Court erred in applying the “reasonable creditor” standard;
- The credit reports were accurate or misleading under the “maximum possible accuracy” requirement of 15 U.S.C. § 1681d(b); and
- The District Court erroneously dismissed Appellants’ cases without ordering discovery.

In affirming the District Court’s orders, the Third Circuit rejected Appellants’ argument that the “reasonable creditor” standard excludes unsophisticated

creditors who make determinations on individuals using credit reports. The Third Circuit explained that Section 1681b(a) of the FCRA does not limit the permissible use of consumer credit reports to creditors, but “contemplates a range of permissible users including, but not limited to, potential and actual employers, investors, and insurers.” Thus, the Third Circuit determined that the term “reasonable creditor” does not accurately reflect the intent of the FCRA and adopted a new “reasonable reader” standard to determine how a reasonable reader would have understood the credit report.

Specifically, the Third Circuit held that because the plain reading of the FCRA makes clear that any person who regularly extends, renews, or continues credit is a creditor, “the reasonable reader standard runs the gamut to include sophisticated entities like banks and less sophisticated individuals such as local landlords.”

Applying the “reasonable reader standard,” the Third Circuit then determined whether Appellants’ credit reports containing the pay status notations were misleading or inaccurate. The Third Circuit determined that “maximum possible accuracy” is required under Section 1681e(b) and held that Appellants’ credit reports were accurate under the statute because “a reasonable interpretation of the reports in their entirety is that the Pay Status of a closed account is historical information.” While the Third Circuit noted the credit reports could have been made clearer, “just because a report could potentially be a bit clearer does not mean that it is not very clear at present.”

In addition, the Third Circuit rejected Appellants’ argument that TransUnion violated Section 1681i(a) by failing to conduct a good faith investigation because, “without a showing that the reported information was in fact inaccurate, a claim brought under § 1681i must fail.”

Moreover, because the reporting was accurate, the Third Circuit held TransUnion was not liable for negligent noncompliance.

Finally, the Third Circuit affirmed the District Court’s orders finding discovery was not necessary because the credit reports were accurate under Section 1681e(b) as a matter of law.

CONCLUSION

The Third Circuit joins other courts of appeals in finding that reporting a delinquent pay status with a zeroed-out balance where a past due account has been transferred is neither inaccurate nor misleading under the FCRA. This decision is a significant blow to the plaintiffs’ bar, as it has advanced this pay status theory for years.

THIRD CIRCUIT ADOPTS “REASONABLE READER” STANDARD

Further, although Section 1681e of the FCRA governs consumer credit reporting agencies, “furnishers,” as defined under the FCRA, such as mortgage servicers and debt collectors, should also be able to rely on *Bibbs* to show that their reporting of an account’s pay status as past due with a \$0 balance at the time of transfer is accurate under the FCRA.

