

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PETER M. GUYNN,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-02177-SEB-TAB
)	
BLATT, HASENMILLER, LIEBSKER &)	
MOORE, LLC,)	
)	
Defendant.)	

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on cross motions for summary judgment filed by Defendant Blatt, Hasenmiller, Liebsker & Moore, LLC (“BHLM”), Dkt. No. 36, and Plaintiff Peter M. Guynn (“Guynn”). Dkt. No. 38. For the reasons detailed below, we GRANT BHLM’s Motion for Summary Judgment and DENY Guynn’s Cross Motion for Summary Judgment.

Factual Background

Guynn opened a personal credit card account through Bank of America, N.A. (“Bank of America”) in 2006 while living in Ypsilanti, Michigan. Dkt. No. 38, Ex. 1 (“P. Guynn Aff.”) at ¶ 3. In 2009, Guynn purchased a home located at 6352 Stonecreek Drive, Indianapolis, Marion County, Indiana 46268 (the “Stonecreek Property”). P. Guynn Aff. at ¶ 5. Although Guynn had previously been in good standing with his credit card account with Bank of America since the account’s inception, in 2013, Guynn defaulted on his Bank of America credit card account. P. Guynn Aff. at ¶ 4.

In February 2014, Guynn was transferred by his employer to a job in Edwardsville, Illinois for an indefinite period of time. P. Guynn Aff. at ¶¶ 7-8. In light of this transfer, Guynn moved out of the Stonecreek Property on February 17, 2014. P. Guynn Aff. at ¶ 10. Guynn also forwarded his mail to P.O. Box 68613 Indianapolis, Marion County, Indiana 46268 (the “P.O. Box Address”) and arranged for his bills to be delivered to him electronically. P. Guynn Aff. at ¶¶ 8-9. Guynn maintained ownership of the Stonecreek Property after moving out, and the Stonecreek Property sat vacant until Guynn’s sister moved into the Stonecreek Property some 22 months later, on November 1, 2015. P. Guynn Aff. at ¶¶ 20-21; Dkt. No. 38, Ex. 2 (M. Guynn Aff.) at ¶¶ 4-5.

After transferring to Edwardsville, Illinois, Guynn signed a lease to rent an apartment in Edwardsville for six months (the “Edwardsville Apartment”). P. Guynn Aff. at ¶ 12. After the initial six-month period, Guynn extended his lease on the Edwardsville Apartment on a month-to-month basis until his work in Edwardsville was concluded. P. Guynn Aff. at ¶¶ 12-14. Guynn lived in the Edwardsville Apartment until October 2016, when his employer transferred him back to Indianapolis, Indiana. P. Guynn Aff. at ¶¶ 14-15. Upon his return to Indianapolis, Indiana on October 1, 2016, Guynn moved back into the Stonecreek Property, where he continues to live with his sister. P. Guynn Aff. at ¶¶ 16, 22; M. Guynn Aff. at ¶ 7.

On March 8, 2016, the law firm of Bowman, Heintz, Boscia, & Vician, P.C. (“Bowman”) received a New Business Download from Bank of America, through which Bank of America requested that Bowman file a collection lawsuit against Guynn to recover the outstanding balance on his Bank of America credit card account. Dkt. No. 37, Ex. A

(“Burris Aff.”) at ¶¶ 3-4; Dkt. No. 37, Ex. B (“Bowman Aff.”) at ¶¶ 3-4. The New Business Download included Guynn’s name, his Social Security number, his phone number, the P.O. Box Address, the credit card account’s charge off date, the date of last pay, and other information specific to Guynn’s Bank of America credit card account. Burris Aff. at ¶ 5, Ex. 1; Bowman Aff. at ¶ 5, Ex. 1.

When Bowman received such new business regarding collections for consumer debt accounts, it undertook a multi-step process to ensure compliance with the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* Burris Aff. at ¶¶ 6-7; Bowman Aff. at ¶¶ 6-7. First, Bowman utilized an electronic interface to receive new case information and to store it directly onto its database, eliminating the possibility of clerical mistakes when transferring information to the database. Burris Aff. at ¶ 8; Bowman Aff. at ¶ 8. The new case information was then sent to Bowman’s Data Operations Department, which was responsible for drafting initial written notice letters to consumer debtors in compliance with the FDCPA. Burris Aff. at ¶¶ 9-10; Bowman Aff. at ¶¶ 9-10. After the initial form letters were drafted, the letters were reviewed and approved by attorneys to ensure their accuracy and compliance with the FDCPA, and were sent to a third-party vendor, RevSpring, to be mailed. Burris Aff. at ¶¶ 11-13; Bowman Aff. at ¶¶ 11-13.

On March 11, 2016, Thomas Burris (“Burris”), an attorney with Bowman, approved an initial written notice letter directed to Guynn regarding his Bank of America credit card debt (the “First Letter”) and sent it to RevSpring for delivery. Burris Aff. at ¶ 17, Ex. 2. During the approval process, Burris reviewed and compared the information in the First Letter to the information in the New Business Download, checked the account’s scrub

history, looked for disputes, confirmed Guynn was not represented by counsel, and verified that Guynn's listed address was in Indiana. Burris Aff. at ¶ 19(c). Based on information obtained by RevSpring through the National Change of Address database (the "NCOA"), the P.O. Box Address was listed as Guynn's address on the First Letter. Burris Aff. at ¶ 18, Ex. 2; Bowman Aff. at ¶ 16. RevSpring mailed the First Letter to Guynn at the P.O. Box Address on March 14, 2016, and the First Letter was not returned as undeliverable. Dkt. No. 37, Ex. C ("Wilk Aff.") at ¶ 15, Ex. 1; Burris Aff. at ¶ 21; Bowman Aff. at ¶ 18.

BHLM acquired Bowman and purchased all of Bowman's assets and policies on April 16, 2016. Dkt. No. 38, Ex. D ("Burris Dep."), 4:18-8:16. On April 20, 2016, BHLM requested that RevSpring send a second initial written notice letter (the "Second Letter") to Guynn to notify him that it was representing Bank of America with regard to his credit card debt. Burris Aff. at ¶ 23; Bowman Aff. at ¶ 20. Before sending the Second Letter to RevSpring for mailing, BHLM utilized the same review and approval process that Bowman had used prior to sending the First Letter. Burris Aff. at ¶ 25. Based on the NCOA, RevSpring sent the Second Letter to Guynn at the P.O. Box Address on April 21, 2016. Wilk Aff. at ¶ 17, Ex. 2; Burris Aff. at ¶ 24; Bowman Aff. at ¶ 21. The Second Letter was sent successfully and was not returned as undeliverable. Burris Aff. at ¶ 27; Bowman Aff. at ¶ 23.

After the expiration of the 30-day written notice period required by the FDCPA, BHLM decided to file a lawsuit on behalf of Bank of America to recover on Guynn's credit card debt. Bowman Aff. at ¶ 24. Before filing their lawsuit, BHLM's Suit Dictation Specialist, Noel McPhee ("McPhee"), employed a Lawsuit Dictation/Approval checklist

to ensure the lawsuit met all of the FDCPA's requirements. Dkt. No. 40, Ex. 1 ("McPhee Aff.") at ¶ 5. MCPhee found that the P.O. Box Address was Guynn's address of record. MCPhee Aff. at ¶ 6. MCPhee further reviewed the Marion County Assessor's website and Indiana Property Record Cards to confirm that Guynn owned the Stonecreek Property. MCPhee Aff. at ¶ 9, Ex. 1. The Stonecreek Property was also listed as Guynn's address on his Bank of America billing statements and his most recent Notice of Change in Account Terms document from 2013. Bowman Aff. at ¶ 27(f)-(g), Exs. 7-8. Moreover, the United States Postal Service confirmed that the P.O. Box Address belonged to Guynn on March 11, 2016. Bowman Aff. at ¶ 27.

Based on this information, BHLM filed a lawsuit against Guynn in Marion County, Indiana state court on June 29, 2016 (the "Debt Action"). *Bank of America, N.A. v. Guynn*, No. 49D03-1606-CC-23219 (Ind. Sup. June 29, 2016). In its Complaint, BHLM asserted that Marion County, Indiana is the proper venue for the Debt Action because Guynn "is a resident" of Marion County, Indiana. Bowman Aff., Ex. 5. The Debt Action Summons was addressed to Guynn at the Stonecreek Property, and Guynn answered the Debt Action Complaint on July 18, 2016. Bowman Aff., ¶ 29, Exs. 5, 10.

In addition to its pre-litigation investigation regarding Guynn's address, BHLM employed internal skip tracing searches to acquire information about Guynn and his connections to Indianapolis, Indiana and Edwardsville, Illinois after filing the Debt Action. Dkt. No. 38, Ex. F ("Schaafsma Aff.") at ¶¶ 3-8. Specifically, BHLM searched for information on Guynn using LexisNexis Accurint Person Search Plus and TransUnion TLOxp on August 17, 2016. Schaafsma Aff. at ¶¶ 4-8, Exs. 1-3. When searching for

Guynn in connection with Edwardsville, Illinois, the only result that was found was related to an address in Burbank, Illinois between December 15, 1983 and December 1, 1993. Schaafsma Aff. ¶ 7, Ex. 3. On January 25, 2017, BHLM conducted voter registration and driver's license searches for Guynn. Schaafsma Aff., ¶¶ 9-11, Exs. 5-7. Although the searches did provide information regarding Guynn's Indiana driver's license, no results were found demonstrating any connection between Guynn and Edwardsville, Illinois. Schaafsma Aff., ¶¶ 9-11, Exs. 5-7.

In response to the Debt Action, Guynn initiated the instant litigation on August 16, 2016. Dkt. No. 1. In his Complaint, Guynn contends that BHLM violated § 1692i of the FDCPA because he was "residing" in Edwardsville, Illinois, rather than Marion County, Indiana, on June 29, 2016 when the Debt Action was filed. Dkt. No. 1. BHLM filed its Motion for Summary Judgment against Guynn on May 4, 2017. Dkt. No. 36. BHLM argues that it is entitled to summary judgment because Guynn did "reside" in Marion County, Indiana on June 29, 2016 when the Debt Action commenced, and even if he did not "reside" in Marion County, Indiana at that time, BHLM's failure to file the Debt Action in the proper venue was the result of a bona fide error. Dkt. No. 37. On June 5, 2017, Guynn opposed BHLM's Motion for Summary Judgment and filed a Cross Motion for Summary Judgment against BHLM. Dkt. No. 38. Guynn contends that he lived only in Edwardsville, Illinois at the time BHLM initiated the Debt Action, despite maintaining ownership of the Stonecreek Property. Dkt. No. 39 at 4-6. Guynn further claims that BHLM did not commit a bona fide error by filing the Debt Action in Marion County, Indiana because it knew Guynn had changed his address to the P.O. Box Address and failed

to take sufficient measures to confirm his residence before filing the Debt Action. Dkt. No. 39 at 6-12.

Legal Analysis

I. Standard of Review

Summary judgment is appropriate where there are no genuine disputes of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). A court must grant a motion for summary judgment if it appears that no reasonable trier of fact could find in favor of the non-movant on the basis of the designated, admissible evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). We neither weigh the evidence nor evaluate the credibility of witnesses, *id.* at 255, but view the facts and the reasonable inferences flowing from them in the light most favorable to the non-movant. *McConnell v. McKillip*, 573 F. Supp. 2d 1090, 1097 (S.D. Ind. 2008).

The moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477 U.S. at 323. The party seeking summary judgment on a claim on which the non-moving party bears the burden of proof at trial may discharge its burden by showing an absence of evidence to support the non-moving party's case. *Id.* at 325.

Summary judgment is not a substitute for a trial on the merits, nor is it a vehicle for resolving factual disputes. *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994). Thus, after drawing all reasonable inferences from the facts in favor of the non-

movant, if genuine doubts remain and a reasonable fact finder could find for the party opposing the motion, summary judgment is inappropriate. *See Shields Enter., Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992); *Wolf v. City of Fitchburg*, 870 F.2d 1327, 1330 (7th Cir. 1989). But if it is clear that a plaintiff will be unable to satisfy the legal requirements necessary to establish her case, summary judgment is not only appropriate, but mandated. *See Celotex*, 477 U.S. at 322; *Ziliak v. AstraZeneca LP*, 324 F.3d 518, 520 (7th Cir. 2003). Further, a failure to prove one essential element necessarily renders all other facts immaterial. *Celotex*, 477 U.S. at 323.

Courts often confront cross motions for summary judgment because Rules 56(a) and (b) of the Federal Rules of Civil Procedure allow both plaintiffs and defendants to move for such relief. In such situations, courts must consider each party's motion individually to determine if that party has satisfied the summary judgment standard. *Ind. Civil Liberties Union Found., Inc. v. Ind. Sec'y of State*, 229 F. Supp. 3d 817, 821 (S.D. Ind. 2017). Thus, in determining whether genuine and material factual disputes exist in this case, we have considered the parties' respective memoranda and the exhibits attached thereto, and have construed all facts and drawn all reasonable inferences therefrom in the light most favorable to the respective non-movant. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

II. Discussion

Under § 1692i of the FDCPA, a “debt collector who brings any legal action on a debt against any consumer” must “bring such action only in the judicial district or similar legal entity” in which (1) “such consumer signed the contract sued upon” or (2) “such

consumer resides at the commencement of the action.” 15 U.S.C. § 1692i(a)(2). The FDCPA does not define the term “reside”; therefore, we must “look to the meaning of the word at the time the statute was enacted” in 1977 to determine the term’s ““ordinary, contemporary, [and] common meaning.”” *Jackson v. Blitt & Gaines, P.C.*, 833 F.3d 860, 863 (7th Cir. 2016) (quoting *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014)) (utilizing dictionary definitions from 1977 to define the statutory term “legal action” as it was used in the FDCPA); 15 U.S.C. § 1692a. At the time § 1692i was enacted, Black’s Law Dictionary defined “reside” as “[to] live, dwell, abide, sojourn, stay, remain, lodge” and defined a “residence” as “[a] factual place of abode” or “[l]iving in a particular locality.” *Reside*, BLACK’S LAW DICTIONARY (4th ed. 1968); *Residence*, BLACK’S LAW DICTIONARY (4th ed. 1968). Black’s Law Dictionary further explains that a “residence” is not the same as a “domicile” because

a person may have two places of residence ... but only one domicile.... Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one’s domicile. ‘Residence’ demands less intimate local ties than ‘domicile,’ but ‘domicile’ allows absence for indefinite period if intent to return remains.

Id. (internal citations omitted).

Based on this definition, whether Guynn “resided” at the Stonecreek Property on June 29, 2016 depends on the extent to which he maintained a “bodily presence as an inhabitant” at the Stonecreek Property while temporarily living and working in Edwardsville, Illinois. Although Guynn continued to own the Stonecreek Property after moving to Edwardsville, Illinois in February 2014 and seemed always to plan to return to

the Stonecreek Property after his work in Edwardsville, Illinois was completed, this alone may not affirmatively demonstrate that he preserved a sufficient physical presence at the Stonecreek Property to consider it his “residence” at the time the Debt Action was filed. However, we need not determine whether Guynn maintained a sufficient bodily presence or resided at the Stonecreek Property on June 29, 2016 because even if Guynn did not “reside” at the Stonecreek Property, or any other location in Marion County, Indiana, when the Debt Action was filed, BHLM’s failure to file the Debt Action in the proper venue would have been the result of bona fide error.

Under § 1692k(c), a bona fide error can serve as an absolute defense to an alleged violation of the FDCPA. 15 U.S.C. § 1692k(c) (“A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error”). To establish a bona fide error defense, a defendant must demonstrate three elements by a preponderance of evidence: “(1) it must show that the presumed FDCPA violation was not intentional; (2) it must show that the presumed FDCPA violation resulted from a bona fide error ...; and (3) it must show that it maintained procedures reasonably adapted to avoid any such error.” *Kort v. Diversified Collection Serv., Inc.*, 394 F.3d 530, 537 (7th Cir. 2005). “[A] debt collector ‘need only show that its FDCPA violation was unintentional, not that its actions were unintentional’” in order to satisfy the first prong of the bona fide error defense. *VanHuss v. Rausch, Sturm, Israel, Enerson & Hornik*, No. 16-cv-372-slc, 2017 WL 1379402, at *5 (W.D. Wis. Apr. 14, 2017) (quoting *Nielsen v.*

Dickerson, 307 F.3d 623, 641 (7th Cir. 2002)). For an error to be considered “bona fide,” it must be “made in good faith; a genuine mistake, as opposed to a contrived mistake.” *Kort*, 394 F.3d at 538.

With respect to the third element of the bona fide error defense, the Supreme Court defined “procedures” as “processes that have mechanical or other such regular orderly steps to avoid mistakes.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 587 (2010) (internal quotation marks omitted); *see also*, *Leeb v. Nationwide Credit Corp.*, 806 F.3d 895, 899 (7th Cir. 2015). Because it requires reasonable procedures, the bona fide error defense is meant to apply only to clerical or factual mistakes and not to mistakes of law. *See Jerman*, 559 U.S. at 587. The bona fide error defense “does not require debt collectors to take every conceivable precaution to avoid errors; rather, it only requires reasonable precaution.” *Kort*, 394 F.3d at 539 (citing *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004)).

We conclude that BHLM cannot be liable under the FDCPA in this instance because any violation of § 1692i by BHLM would have been the result of a bona fide error. BHLM never received any information indicating that Guynn was living outside of Marion County, Indiana on June 29, 2016. Guynn argues that BHLM could not have committed a bona fide error because it knew Guynn had changed his address from the Stonecreek Property to the P.O. Box Address. Dkt. No. 39 at 6-11. However, both the Stonecreek Property and the P.O. Box Address are located within Marion County, Indiana, and there was no information associated with this change of address that suggested Guynn was living outside of Marion County, Indiana. Based on its pre-litigation investigation confirming that Guynn

maintained ownership of the Stonecreek Property (McPhee Aff. at ¶¶ 5-9, Ex. 1), the fact that neither the First Letter nor Second Letter was returned as undeliverable after being sent to the P.O. Box Address (Wilk Aff. at ¶¶ 15, 17), and the United States Postal Service's confirmation that the P.O. Box Address belonged to Guynn (Bowman Aff. at ¶ 27), BHLM had no reason to suspect that Guynn resided outside of Marion County, Indiana at the time the Debt Action was filed. Moreover, BHLM could not find any connection between Guynn and Edwardsville, Illinois during the relevant times even after filing the Debt Action. Schaafsma Aff. at ¶¶ 3-11, Exs. 1-3, 5-7. As such, any violation of § 1692i committed by BHLM must be considered a genuine, unintentional mistake.

Guynn also asserts that BHLM cannot avoid liability under § 1692i because it failed to employ sufficient procedures to ensure that the Debt Action was filed in the proper venue. Dkt. No. 39 at 9-12. Specifically, Guynn claims that BHLM could have taken several additional steps to confirm that he lived in Marion County, Indiana before filing the Debt Action by calling him or sending a letter to the P.O. Box Address to request information on his current address; sending a certified mailing to the Stonecreek Property; or hiring a private process service to confirm he was living at the Stonecreek Property. Dkt. No. 39 at 9-10. However, the FDCPA “does not require debt collectors to take every conceivable precaution to avoid errors” and instead only requires debt collectors to adopt reasonable procedures to avoid such errors. *Kort*, 394 F.3d at 539. In fact, given the current economic climate in which businesses often demand greater fluidity from their employees in terms of travel and temporary relocation, it would be impractical to require debt collectors to track each debtor's locations in order and to know where debtors, like Guynn,

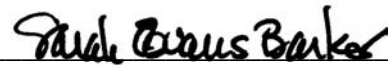
may be temporarily living at any given time. BHLM took reasonable steps to ensure compliance with § 1692i before filing the Debt Action by: (1) reviewing all of the information it received from Bank of America regarding Guynn's credit card account, including Guynn's address of record, billing statements, and most recent Notice of Change in Account Terms documentation; (2) utilizing RevSpring and the NCOA database to determine Guynn's proper address; and (3) researching Guynn's current property ownership information through the Marion County Assessor's website and the Indiana Property Record Cards. McPhee Aff. at ¶¶ 5-9, Ex. 1; Bowman Aff. at ¶ 27(g), Ex. 8. Therefore, any violation of § 1692i that BHLM may have committed by filing the Debt Action in Marion County, Indiana was excusable as a bona fide error, entitling BHLM to summary judgment.

Conclusion

For the reasons detailed above, we GRANT BHLM's Motion for Summary Judgment, Dkt. No. 36, and DENY Guynn's Cross Motion for Summary Judgment. Dkt. No. 38. Judgment will be entered accordingly.

IT IS SO ORDERED.

Date: 3/14/2018



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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