

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50703

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2019

Lyle W. Cayce
Clerk

JEAN JONES,

Plaintiff–Appellant,

v.

PORTFOLIO RECOVERY ASSOCIATES, L.L.C.; WESTERN SURETY
COMPANY,

Defendants–Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:16-CV-572

Before ELROD, WILLETT, and OLDHAM, Circuit Judges.

PER CURIAM:*

Jean Jones sued Portfolio Recovery Associates LLC for violating the Fair Debt Collection Practices Act and the Texas Fair Debt Collection Practices Act. The jury found in Jones’s favor, awarding her \$61,000. But the district court disagreed, granting PRA’s motion for judgment as a matter of law and dismissing Jones’s case with prejudice. We believe the jury had sufficient evidence to support its verdict. We thus reverse.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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I. BACKGROUND

A. Jones's Allegations

Following her husband's death, Jean Jones tried to open a credit union account in her name, but, due to poor credit, her request was denied. Shocked by her low credit score and unable to identify some of the outstanding debts on her credit report, Jones sought the help of attorneys who prepared and sent dispute letters to the debt collectors Jones didn't recognize. Among those debtors was PRA.

Upon receiving the letter, PRA was required to mark the debt as "disputed" and report this new status to credit bureaus. *See* 15 U.S.C. § 1692e(8); TEX. FIN. CODE § 392.202. But it didn't. Instead, PRA marked the debt as having a "cease and desist" notation, meaning that PRA could no longer permissibly contact Jones about the debt but not reflecting that Jones believed the debt was improperly appearing on her credit report. Because the debt was not marked as "disputed," Jones's credit report continued to reflect the outstanding debt, without qualification, until she filed suit against PRA. After the complaint was filed, PRA did not revise its reporting to reflect the debt as disputed; it stopped reporting the debt altogether.

B. The Trial

Following the summary-judgment phase of Jones's suit against PRA, the parties agreed that the disputed debt related to a Synchrony Bank account but that a fact issue remained as to whether the debt was a "consumer debt," a required element for both FDCPA and TFDCA claims. *See* 15 U.S.C. § 1692e(8); TEX. FIN. CODE § 392.202. To make her case, Jones was required to show, by a preponderance of the evidence, that the disputed debt was "primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5); TEX. FIN. CODE § 392.001(2).

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The parties each offered one witness at trial: Jones on her own behalf and a records custodian from PRA on its behalf.

1. *Jones's Testimony*

After Jones explained the background of her dispute with PRA, her counsel elicited testimony about Jones's spending habits. She had never had a business or the type of job that required her to pay upfront for reimbursable business expenses. And she'd never paid traffic tickets, fines, or taxes with a credit card, or otherwise incurred credit card expenses that weren't related to her "own person" or household. That's not to say Jones didn't have credit cards—she had a QVC card and a Home Shopping Network card that she'd used to purchase personal items such as clothes and a computer. But when her husband passed, she "paid off all [her] credit cards," including the QVC card, and "put them away."

During cross examination, defense counsel asked whether the problems Jones saw on her credit report were related to a QVC account; she answered in the affirmative. Counsel sought to impeach Jones by pointing out that during her deposition testimony the previous year, she stated that she had not done anything to determine what the PRA account referred to and that she didn't know what the debt was for. But on redirect, Jones explained that she learned what the PRA debt referred to the day before trial—long after her deposition—when she was shown "some . . . bills." She told the jury that she recognized having an HSN card and a QVC card, which she only used for personal purchases.

At the close of Jones's case-in-chief, PRA moved for judgment as a matter of law, arguing, among other things, that Jones had failed to provide any evidence about the disputed debt at issue—a Synchrony Bank debt. The court took the parties' arguments under advisement but denied the motion without prejudice.

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2. Dreano's Testimony

The trial next proceeded to PRA's case-in-chief. PRA offered Meryl Dreano, a records custodian, as its witness. In relevant part for this appeal, Dreano testified that PRA had two open accounts for Jones—two debts that it sought to collect.¹ One was an account opened with Comenity Capital Bank, and the other was an account with Synchrony Bank. Dreano testified that the Comenity Capital Bank account referred to an HSN credit card, but that the Synchrony Bank account did not refer to a QVC credit card. Defense counsel then admitted a screenshot of Jones's accounts, pulled from PRA's host system, into evidence. The screenshot reflected a table, similar to the table below, of Jones's accounts with PRA:

Account	Status	Resp	Seller	Merchant	PIF
*****2174	PPRG	PORT	SYNCHRONY BANK		\$8,641.56
*****8962	PPRG	PORT	COMENITY CAPITAL BANK	HSN	\$3,737.24

As Dreano explained and the table reflects, HSN was specifically listed as the “merchant” for the account associated with Comenity Capital Bank, but there was no merchant associated with the Synchrony Bank debt. Neither party's counsel clarified whether accounts generally have a “merchant” or what it means if the “merchant” box is left blank.

PRA rested and renewed its motion for judgment as a matter of law. Again, the court declined to grant the motion at that time, instead letting the case proceed to the jury, but the court noted that it wanted to continue looking into the issues PRA had raised.

¹ There is no dispute that the Synchrony Bank debt is the only debt at issue in this case. PRA did not hold the Comenity Capital Bank debt during the relevant time period, so it is not a subject of this particular dispute.

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3. *The Verdict*

The jury returned a unanimous verdict in favor of Jones.² The FDCPA only permits an award *up to* \$1,000. The jury awarded Jones \$1,000 for PRA's violation of the FDCPA. The TFDCPA prohibits an award *less than* \$100 per violation. The jury awarded Jones \$60,000 for PRA's violation of the TFDCPA.

The court permitted the parties to submit post-trial motions. PRA filed a Renewed Motion for Judgment as a Matter of Law, again arguing that Jones had not provided any evidence that the Synchrony Bank debt was a consumer debt. This time, the court granted JMOL, overturning the jury's verdict and ruling in favor of PRA. The court found that, because Jones did not offer any evidence regarding the Synchrony Bank account, she had failed to meet her burden of proof regarding the consumer nature of the subject debt. And though she had testified that she never used credit cards to make non-consumer purchases, that evidence was insufficient because it did not relate specifically to the debt at issue. So, the court reasoned, the jury could not reasonably conclude that the debt at issue was a consumer debt.

Jones now appeals.

II. STANDARD OF REVIEW

We review a district court's JMOL ruling *de novo*. *U.S. ex rel. Small Bus. Admin. v. Commercial Tech., Inc.*, 354 F.3d 378, 383 (5th Cir. 2003). But because this case was tried by a jury, a motion for JMOL is essentially a challenge to the legal sufficiency of the evidence presented, *id.*, and "we must draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that we might regard as more reasonable." *Eastman Chem. Co. v. Plastipure, Inc.*, 775 F.3d 230, 238 (5th Cir. 2014).

² In rendering its verdict, the jury was required to answer three special interrogatories, including whether the subject debt was a consumer debt. The jury unequivocally answered that the debt was a consumer debt.

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Jury verdicts are entitled to “great deference,” so JMOL should only be granted “if, when viewing the evidence in the light most favorable to the verdict, the evidence points so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at any contrary conclusion.” *Commercial Tech.*, 354 F.3d at 383 (quoting *Dahlen v. Gulf Crews, Inc.*, 281 F.3d 487, 497 (5th Cir. 2002)).

III. DISCUSSION

To make her case, Jones had to prove by a preponderance of the evidence—meaning it was more likely than not—that the debt PRA sought to recover was a consumer debt—meaning it arose from transactions made “primarily for personal, family, or household purposes.” 15 U.S.C. § 1692a(5); TEX. FIN. CODE § 392.001(2). Even though she did not expressly reference Synchrony Bank, which was undisputedly the debt at issue, Jones argues that the jury could reasonably infer that the Synchrony Bank debt at issue was the QVC credit card, which was used exclusively for personal purchases, and, therefore, a consumer debt.³

PRA disagrees. It argues that the jury could not reach such an inference because (1) Dreano testified that the Synchrony Bank debt did not relate to a QVC card; (2) Jones stated during her deposition that she didn’t know what the Synchrony Bank debt was for; (3) she claims to have paid off her QVC card, so there wouldn’t be a debt to collect for that card; and (4) Jones never even used the word “Synchrony” in her trial testimony. These arguments concern

³ Jones argues that defense counsel’s opening statement also identified the QVC account and HSN account as the two accounts that PRA sought to collect from Jones. But, opening statements are not evidence, *see* Pattern Jury Charge 1.2, and, even if they were, Jones’s argument mischaracterizes defense counsel’s statements, which actually reflect PRA’s argument that neither the HSN nor QVC account was relevant to this dispute.

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two jury functions: drawing inferences and making credibility determinations. We address each in turn.

Juries, not courts, must weigh the evidence presented and determine whether a witness is credible. *Dalton v. Toyota Motor Sales, Inc.*, 703 F.2d 137, 140 (5th Cir. 1983). And courts “must disregard all evidence favorable to the moving party that the jury is not required to believe.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151 (2000). So, even though Dreano testified that the Synchrony Bank debt did not relate to a QVC card, it was within the jury’s discretion to either accept or reject that testimony, and we may not now credit Dreano’s testimony over the jury’s apparent decision not to.

Likewise, the jury had the discretion to credit Jones’s testimony that the debt at issue was a QVC card, even though she previously stated she did not know what debt PRA was trying to collect. A court may only disrupt a jury’s credibility determination if the testimony was incredible as a matter of law—meaning that the testimony could not possibly be true. *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1052 (5th Cir. 1998). Here, Jones clarified that she learned where the PRA debt came from after she gave her deposition testimony. So her trial testimony cannot be said to be legally incredible, and the jury was permitted to believe Jones over Dreano to conclude that the debt at issue *did* relate to the QVC card.

Which leads to PRA’s next argument: the debt couldn’t be the QVC card because Jones claims to have paid off its balance. But these two things are not mutually exclusive. In fact, Jones disputed the Synchrony Bank debt, claiming that she did not have an outstanding balance, which accords with her statement that she paid off her QVC card and the conclusion that the QVC card and Synchrony Bank debt are one in the same. Again, it is for the jury to determine whether Jones’s testimony should be believed.

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The final argument—that Jones never used the word Synchrony—does not go to credibility but speaks to what type of inferences a jury is permitted to make. Jones argues that she was not required to use the word Synchrony; she was only required to show that the debt at issue was a consumer debt, regardless of how the debt was labeled—*a rose by any other name*, so to speak. And, she syllogizes, the jury received (A) evidence that the QVC card was a consumer debt and (B) sufficient information to infer that the QVC card was the Synchrony Bank debt, so (C) the jury could reasonably conclude that the Synchrony Bank debt was a consumer debt.

An inference is permissible as long as it is reasonable in light of the evidence presented. *See Huffman v. Union Pac. R.R.*, 675 F.3d 412, 425 (5th Cir. 2012) (“The jury ‘may draw reasonable inferences from the evidence,’ and we may not substitute other inferences for the ‘jury’s reasonable factual inferences.’” (quoting *Brown v. Parker Drilling Offshore Corp.*, 410 F.3d 166, 182–83 (5th Cir. 2005))); *Industrias Magromer Cueros y Pieles S.A. v. La Bayou Furs Inc.*, 293 F.3d 912, 918 (5th Cir. 2002). To support its inference that the Synchrony Bank debt was the QVC card, the jury received the following evidence:

1. Dreano’s testimony that PRA had two outstanding debts for Jones: a Comenity Capital Bank account and a Synchrony Bank account;
2. A screenshot of Jones’s account with PRA, which reflected HSN in the “merchant” column next to the Comenity Bank debt, but which left the “merchant” column next to the Synchrony Bank debt blank;
3. Jones’s testimony that she had two credit cards—HSN and QVC—which she used exclusively for consumer purchases; and
4. Jones’s testimony that the QVC card was the debt at issue.

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From this evidence, a reasonable jury could infer that, if the Comenity debt was associated with a distinct merchant, the Synchrony Bank debt likely was as well. And observing that the HSN card related to the Comenity debt, the jury could reasonably conclude that the QVC card related to the other debt that PRA sought to collect—the Synchrony Bank debt—filling “QVC” into the blank merchant column.

Because the jury reasonably inferred that the Synchrony Bank debt refers to Jones’s QVC card, which Jones testified she used exclusively for personal purchases, it reasonably concluded that the debt at issue is a consumer debt and awarded a verdict in Jones’s favor.

Though it may have been simpler for Jones to explicitly connect these dots for the jury, her failure to do so is not enough to overturn the jury’s verdict. We permit—and in fact implore—juries to process contradictory information and make inferences to reach a verdict. And that is what this jury did. It was not the *clearest* path to victory for Jones, but it was a *reasonable* path, which is all we require.

IV. CONCLUSION

Based on the evidence presented, a reasonable jury could and did conclude that the Synchrony Bank debt referred to a QVC-branded credit card, which Jones used exclusively for consumer purchases. And that conclusion should stand. We thus **REVERSE** the district court’s entry of judgment as a matter of law and **REMAND** for further proceedings related to costs and fees.