IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PAUL QUAGLIA, on behalf of Plaintiff and the class members described herein, and PEOPLE OF THE STATE OF ILLINOIS ex rel. PAUL QUAGLIA,	)	Case No.: 2021 CH 02395
Plaintiffs,	)	Calendar 14
v.	)	Judge Clare J. Quish
NS193, LLC; SN SERVICING CORPORATION; and McCALLA RAYMER LEIBERT PIERCE, LLC;	)	
Defendants.	)	

ORDER

This case comes before the Court for ruling on Defendant McCalla Raymer Leibert Pierce, LLC's Motion for Judgment on the Pleadings on Count IV of Plaintiff's Class Action and Private Attorney General Complaint and Defendant SN Servicing Corporation's Motion for Judgment on the Pleadings as to Count IV of Plaintiff's Complaint. The Court considered Defendants' Motions, Plaintiff's Response and Defendants' Replies as well as Plaintiff's complaint, applicable case law, Defendants' newly cited authority of Judge Eve Reilly's decision in *Stallworth v. Terrill Outsourcing Grp.*, No. 21 CH 02936 (Cir. Ct. Cook Co. Mar. 15, 2023), Plaintiff's Response to Defendant McCalla's Newly Cited Authority and the parties' oral arguments of March 8, 2023.

For the following reasons, this Court grants Defendants Motions for Judgment on the Pleadings as to Count IV and enters judgment on the pleadings on Count IV in favor of Defendants McCalla Raymer Leibert Pierce, LLC and SN Servicing Corporation and against Plaintiff.

BACKGROUND

In his complaint, Plaintiff Paul Quaglia ("Plaintiff"), on behalf of himself and class members and as private attorney general, alleges that Defendant NS193, LLC ("NS193") is in the business of liquidating mortgage debts, Defendant SN Servicing Corporation ("SN") is a "special servicer" of mortgage loans and regularly services loans owned by others which are in default when SN first becomes involved with them, and Defendant McCalla Raymer Leibert Pierce, LLC ("McCalla") is a law firm and attorney for NS193 and SN. Plaintiff alleges that both SN and McCalla are debt collectors as defined under the Fair Debt Collection Practices Act ("FDCPA").

Plaintiff alleges that Defendants, acting together, have attempted to collect from him a debt consisting of a residential second mortgage loan, with NS193 claiming to own the loan, SN claiming to be the servicer of the loan and agent of NS193, and McCalla claiming to have been retained by SN. Plaintiff alleges that from May 8, 2020 through September 22, 2020, SN sent Plaintiff a series of notices claiming it was acting for "BCMB1 Trust" and was attempting to collect on Plaintiff's loan.

In Count I, Plaintiff alleges a claim against NS193 as private attorney general seeking injunctive relief under the Illinois Collection Agency Act. In Counts II and III, Plaintiff alleges that SN violated various sections of the FDCPA.

Only Count IV is implicated in these motions. In Count IV, Plaintiff, on behalf of a class, alleges that on "information and belief," SN and McCalla caused letters to be sent to Plaintiff by a letter vendor. He alleges that SN and McCalla violated Section 1692 of the FDCPA because they gave Plaintiff's personal information without his consent, including his name, address, status of Plaintiff as a debtor, details of Plaintiff's alleged debt and other personal information, to the letter vendor which then "populated some or all of this information into a prewritten template, [and] printed, and mailed the letter to Plaintiff." Plaintiff alleges that SN and McCalla's sending of an electronic file containing Plaintiff's purported debt to a letter vendor is a communication in connection with the collection of a debt under Section 1692a(3) "since it involved disclosure of the debt to a third-party with the objective being communication with and motivation of the consumer to pay the alleged debt."

Defendants removed this case to federal court. On October 21, 2021, Judge Charles Kocoras remanded the case to this Court, finding no Article III standing. Both SN and McCalla answered the complaint, asserted affirmative defenses and then moved for judgment on the pleadings as to Count IV only.

ANALYSIS

A motion for judgment on the pleadings under Section 2-615(e) tests the sufficiency of the pleadings by determining whether the plaintiff is entitled to the relief sought by his or her complaint. *Pekin Insurance Co. v. Allstate Insurance Co.*, 329 Ill.App.3d 46, 49 (1st Dist. 2002). The trial court examines the pleadings to determine whether there is an issue of fact or whether the controversy can be resolved as a matter of law. *Ill. Union Ins. v. Medline Indus.*, 2022 IL App (2d) 210175, ¶28. A court may properly enter judgment on the pleadings only where no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *Id.*

A party moving for judgment on the pleadings concedes the truth of the well-pled facts in the nonmovant's pleadings. *Allstate Prop. & Casualty Ins. Co. v. Trujillo*, 2014 IL App (1st) 123419, ¶16. The court takes all reasonable inferences from those facts as true, but construes the evidence strictly against the movant and disregards any conclusory allegations and surplusage. *Id.* It is similar to a motion for summary judgment, but is limited to the pleadings. *Ill. Tool Works, Inc. v. Commerce & Indus. Ins. Co.*, 2011 IL App (1st) 093084, ¶15.

The FDCPA seeks to prevent "invasions of individual privacy." 15 U.S.C. §1692(a). In limiting disclosures to third parties, the FDCPA states in relevant part:

> "Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a

consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector." 15 U.S.C. §1692c(b).

SN and McCalla argue that giving information to a mail vendor is not a communication made "in connection with the collection of a debt." See 15 U.S.C. §1692c. The clear wording of the statute does not apply to every communication made to a third party. *Stallworth v. Terrill Outsourcing Grp.*, 2023 Ill. Cir. LEXIS 3, *8 (Cir. Ct. Cook Co. Mar. 15, 2023). "The operative phrase is not in connection with a debt. It is 'in connection with the *collection* of any debt.'" *Ostojich v. Specialized Loan Servicing, LLC*, 618 F.Supp.3d 778, 784 (N.D. Ill. Aug. 1, 2022) (emphasis in original). For "a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor." *McIvor v. Credit Control Servs.*, 773 F.3d 909, 914 (8th Cir. 2014). The "communication at issue must be an effort to collect something from the debtor." *Ostojich*, 618 F.Supp.3d at 784.

"The Seventh Circuit has offered a non-exhaustive list of factors that come into play when deciding whether a communication is in connection with the collection of a debt." *Ostojich*, 618 F.Supp.3d at 788, citing *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 384-85 (7th Cir. 2010). These factors include whether the debt collector explicitly demanded payment, the nature of the parties' relationship, and the purpose and context of the communications viewed objectively. *Id.* While these factors provide a framework and guide the analysis, they do not set categorical boundaries and courts can employ common sense. *Id.*

Here, the communication at issue is the communication from SN and McCalla to the letter vendor. Plaintiff does not allege that McCalla and SN made a demand for payment when they conveyed Plaintiff's personal information to the letter vendor, nor would it make sense for SN and McCalla's communication to make a demand for payment to a third party who has no relationship to Plaintiff. *See Stallworth*, 2023 Ill. Cir. LEXIS at *9. Plaintiff also does not allege that the communication between SN and McCalla and the letter vendor was an effort to collect something *from the debtor.* Rather, the complaint alleges that SN and McCalla sent an electronic file containing information about Plaintiff's purported debt to a letter vendor which then populated some or all of the information into a prewritten template and printed and mailed the letter to Plaintiff. As for the nature of the parties' relationship, the complaint does not allege that Plaintiff had any relationship with the letter vendor such that a communication from SN and McCalla to the letter vendor would have induced Plaintiff or the third party to pay his debt. *See Stallworth*, 2023 Ill. Cir. LEXIS at *9.

Lastly, the objective purpose and context of SN and McCalla's communication was not intended to induce payment. Plaintiff alleges that the letter vendor used SN and McCalla's communication to "populate[] some or all of this information into a prewritten template, printed, and mailed the letter to Plaintiff." "Objectively, the purpose and context of Defendants' communication to the letter vendor was not to induce payment, rather it was to provide necessary information to the letter vendor to populate a letter on behalf of Defendants." *Stallworth*, 2023 Ill. Cir. LEXIS at *10. In order to be a communication "in connection with the collection of any debt," "the communication itself must attempt to collect the debt, someway somehow." *Ostojich*, 618 F.Supp.3d at 790. Even construing the facts in a light most favorable to Plaintiff, it is clear that SN and McCalla's communication to the letter vendor was not, itself, an attempt to collect the debt

and thus, was not made in connection with the collection of a debt. *See Stallworth*, 2023 Ill. Cir. LEXIS at *10.

Contrary to Plaintiff's argument, SN and McCalla's alleged transmission of an electronic file to a letter vendor which then populated some of Plaintiff's personal information into a prewritten template and printed and mailed the letter to Plaintiff is not analogous to an employee of the creditor calling the debtor's neighbor, giving the neighbor his contact information, and telling the neighbor to ask the debtor to contact him because the matter was "very important" (*West v. Nationwide Credit*, 998 F.Supp. 642, 645 (W.D.N.C 1998)), or a debt collector calling a consumer's co-worker and asking her to tell the consumer "to quit being such a [expletive] bi***" (*Horkey v. J.V.D.B. & Associates*, 333 F.3d 769 (7th Cir. 2003)). Such conduct clearly falls within Section 1692c(b) and is consistent with the purpose behind that provision to eliminate abusive debt collection practices. These examples illustrate the point that Congress was concerned with disclosures to people who knew the debtor, not limited disclosures to third-party providers of clerical services, such as in the present case. *See Nabozny*, 583 F.Supp.3d at 1215.

Additionally, the weight of case law establishes that the use of a letter/mail vendor does not violate the FDCPA. Plaintiff relies on several federal cases to support this letter vendor/mail vendor theory, including *Ali v. Credit Corp. Sols., Inc.*, 2022 U.S. Dist. LEXIS 59126 (N.D. Ill. Mar. 30, 2022); *Khimmat v. Weltman, Weinberg & Reis Co., LPA*, 585 F.Supp.3d 707 (E.D. Pa. Feb. 7, 2022); *Jackin v. Enhanced Recovery Co., LLC*, 2022 U.S. Dist. LEXIS 104273 (E.D. Wash. June 10, 2022). These cases are based on *Hunstein v. Preferred Collection & Mgmt. Servs.*, 994 F.3d 1341 (11th Cir. 2021).

However, subsequent cases, including the United States Supreme Court's decision *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2210 n.6 (2021) and the Eleventh Circuit's *en banc* decision in *Hunstein v. Preferred Collection & Mgmt. Servs.*, 48 F.4th 1236, 1239 (11th Cir. 2022), cast significant doubt on the viability of this mail vendor theory.

In *TransUnion*, the United States Supreme Court stated, when construing the Fair Credit Reporting Act, that many courts have not recognized disclosures to printing vendors as actionable publications. *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2210 n.6 (2021).[1] Subsequent courts have rejected the application of Section 1692c(b) of the FDCPA to claims involving disclosures of debt information to mailing vendors, suggesting that the "mailing vendor" theory does not appear viable in the wake of *TransUnion*. *See In re FDCPA Mailing Vendor Cases*, 551 F.Supp.3d 57, 64 (E.D.N.Y. July 23, 2021); *Bush v. Optio Solutions, LLC*, 551 F.Supp.3d 66, 70 (E.D.N.Y. July 28, 2021).

In the most recent decision in *Hunstein*, the United States Court of Appeals for the Eleventh Circuit, *en banc*, vacated its prior decision, rejected the mail vendor theory and dismissed the

[1] Even *dicta* provide insight into how the Supreme Court is likely to rule on an issue. *Nabozny v. Optio Sols., LLC*, 583 F.Supp.3d 1209, 1213 (W.D. Wis. Feb. 1, 2022), citing *United States v. Bloom*, 149 F.3d 649, 653 (7th Cir. 1998).

plaintiff's claim under Section 1692c(b), finding that plaintiff had no standing. *Hunstein*, 48 F.4th at 1248.

Further, in remanding this case to state court, Judge Kocoras held:

> "The legislative history of the passage of the FDCPA explains that the need for the FDCPA arose because of collection abuses such as use of 'obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, ***disclosing a consumer's personal affairs to friends, neighbors, or an employer***, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process.' S. Rep. No. 95-382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696 (emphasis added). But it is difficult to imagine Congress intended for the FDCPA to extend so far as to prevent debt collectors from enlisting the assistance of mailing vendors to perform ministerial duties, such as printing and stuffing the debt collectors' letters, in effectuating the task entrusted to them by the creditors—especially when so much of the process is presumably automated in this day and age. In the Court's view, such a scenario runs afoul of the FDCPA's intended purpose to prevent debt collectors from utilizing truly offensive means to collect a debt." *Quaglia v. NS193, LLC*, 2021 U.S. Dist. LEXIS 254290, at *6-7 (N.D. Ill. Oct. 12, 2021).

As Judge Kocoros points out, the Colorado Supreme Court held that "the use of an automated mailing service . . . by a debt collector is a *de minimus* communication with a third party that cannot reasonably be perceived as a threat to the consumer's privacy or reputation," citing FTC Official Staff Commentary, § 805(b)(3), 53 Fed. Reg. 50097, 50104 (Dec. 13, 1988) (stating that "incidental contacts" between a debt collector and a telephone company for the purpose of transmitting information to the consumer do not constitute an impermissible communication with a third party). The Colorado Supreme Court assessed whether the use of a mailing service violated a provision of the Colorado Fair Debt Collection Practice Act which is virtually identical to Section 1692c(b) of the FDCPA. *Flood v. Mercantile Adjustment Bureau, LLC*, 176 P.3d 769, 777 (Colo. 2008).

The Seventh Circuit "recognized (albeit in a slightly different context) that the FDCPA is not aimed 'at companies that perform ministerial duties for debt collectors, such as stuffing and printing the debt collector's letters.' *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000) (discussing whether such companies are appropriate defendants in an FDCPA action and finding joinder of the company that stuffed and mailed envelopes was frivolous)." *Quaglia*, 2021 U.S. Dist. LEXIS 254290 at *9.

Many other courts agree with this analysis. *See, e.g., Blaise v. Transworld Sys.*, 2022 U.S. Dist. LEXIS 156773 (N.D. Ill. Aug. 30, 2022) (communication with a mail vendor "is not a harm at which Congress aimed by enacting the FDCPA"); *Nabozny*, 583 F.Supp.3d at 1211; *Navarroli v. Medicredit, Inc.*, 2022 U.S. Dist. LEXIS 174289 (N.D. Ill. Sept. 26, 2022) (complaint merely "alleged that Defendant disclosed [plaintiff's] personal information to a single party, a third-party letter vendor, for the ministerial purpose of creating a form collection letter" which was not a harm at which Congress aimed in passing the FDCPA); *Maldonado v. Credit Control Servs.*, 2022 U.S.

Dist. LEXIS 173477 (N.D. Ill. Sept. 26, 2022); *Rembert v. Am. Coradius Int'l, LLC*, 2022 U.S. Dist. LEXIS 74670 (N.D. Ill. Apr. 25, 2022); *Stallworth v. Terrill Outsourcing Grp., LLC*, 2022 U.S. Dist. LEXIS 97555 (N.D. Ill. June 1, 2022).

Communications to mail/letter vendors as alleged by Plaintiff in this case do not fall within the purpose or legislative history of the FDCPA. *See Stallworth*, 2023 Ill. Cir. LEXIS at *10-11; *Madlinger v. Enhanced Recovery Co., LLC*, 2022 U.S. Dist. LEXIS 109328, *25 (the "routine mailing of a letter by a third-party vendor notifying a consumer that their outstanding debt has been placed with a debt collector for collection is a far cry from the abusive, harassing debt collection practices that Congress sought to curtail"); 15 U.S.C. 1692(e) (the purpose of the FDCPA is "to eliminate abusive debt collection practices ..."); S. Rep. 95-382, 2, 1977 U.S.C.C.A.N. 1695, 1696 (explaining that the FDCPA arose from the need to protect consumers from various collection abuses such as "disclosing a consumer's personal affairs to friends, neighbors, or an employer").

Accordingly, this Court finds there is no genuine issue of material fact and SN and McCalla are entitled to judgment on the pleadings as a matter of law. In light of the Court's decision, the Court need not address SN and McCalla's alternative argument that Plaintiff has no standing.

CONCLUSION

Accordingly, this Court grants Defendants SN and McCalla's Motion for Judgment on the Pleadings and enters judgment on the pleadings on Count IV in favor of Defendants McCalla and SN and against Plaintiff Paul Quaglia.

Count I remains pending against Defendant NS193 and Counts II and III remain pending against Defendant SN.

Judge Clare J. Quish
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ENTERED:

Judge Clare J. Quish

DATE: June 30, 2023

Judge Clare J. Quish
JUN 30 2023
Circuit Court - 2160