

CRA's, but Not Creditor, Granted Summary Judgment on Voluntary Surrender Reporting Claims

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Furnishers and consumer reporting agencies must both reinvestigate a consumer's dispute under the Fair Credit Reporting Act. What each of them must do to satisfy their dispute investigation obligations, however, is a different matter. A recent case serves as a good example.

Jeffrey Chijioke-Uche bought a Buick Encore from Chapman Chevrolet, LLC, with financing from AmeriCredit Financial Services, Inc. When the car began experiencing acceleration problems, Chapman Chevrolet told Chijioke-Uche that he needed a new turbocharger, but it was on backorder. A few months later, Chijioke-Uche was involved in an accident that he alleged was caused by the defective turbocharger. Chapman Chevrolet advised him to take the car to Chapman Ford for a new turbocharger and body work. The car remained at Chapman Ford until it could fix the car.

Four months later, Chapman Ford contacted AmeriCredit stating that Chijioke-Uche had abandoned the car, that storage charges were accumulating, and that AmeriCredit should pick up the car. Chijioke-Uche claimed that he was told he could leave the car at Chapman Ford, and that no storage charges would accrue, until the replacement turbocharger arrived. AmeriCredit retrieved the car and sold it, claiming that Chijioke-Uche violated his retail installment contract by exposing the car to a lien for the accumulated storage charges. Until the time of the repossession, Chijioke-Uche had continued to make timely payments on the account. AmeriCredit reported the account as a voluntary surrender to the three nationwide credit reporting agencies (Experian, Equifax, and TransUnion) and later sold the car.

Chijioke-Uche disputed the information that AmeriCredit had reported to the CRAs, including the "voluntary surrender" notation. The CRAs notified AmeriCredit of the dispute, and AmeriCredit verified the information. Each of the CRAs eventually removed the disputed information, though well outside the 30-day timeframe permitted under the FCRA. Chijioke-Uche sued the CRAs and AmeriCredit for violating the FCRA. Chijioke-Uche also sued AmeriCredit for violating the Pennsylvania Motor Vehicle Sales Finance Act, specifically for failing to comply with requirements governing notice of repossession. The defendants moved for summary judgment with respect to all claims against them.

As to the CRAs, Chijioke-Uche alleged that they violated the FCRA by failing to have reasonable procedures to assure maximum possible accuracy when they reported the voluntary surrender, which he alleged to be inaccurate, and by failing to properly conduct a reinvestigation of the information after he disputed the account. The U.S. District Court for the Eastern District of Pennsylvania granted summary judgment to the CRAs. In particular, the court found that Chijioke-Uche's FCRA claims were

really a challenge to the underlying actions of AmeriCredit and the right of AmeriCredit to take such actions. The court held that the FCRA does not require a CRA to adjudicate the legal rights of contracts between a furnisher and a consumer. The court also found that the CRAs satisfied their duty to conduct a reasonable reinvestigation of Chijioke-Uche's dispute when they forwarded the information to AmeriCredit as required by the FCRA and received a reasonable response that they had no reason to question. Having found that the CRAs were not negligent, the court also dismissed the claim that they willfully violated the FCRA.

Turning to AmeriCredit's motion for summary judgment as to the MVSFA claim for failure to give proper notice of repossession, the court found that there is no private right of action under the applicable provisions of the MVSFA. The court relied on its 2007 opinion in *Nawrocki v. Faulkner Ciocca Ford of Souderton* in which it determined that the legislature did not intend to create a private right of action for violations of the repossession provisions because a plaintiff can use this violation to establish an element of the tort of conversion. Therefore, and even though the statute was enacted for the purpose of assisting consumers, the court granted AmeriCredit summary judgment on this claim.

The court, however, refused to grant AmeriCredit summary judgment on Chijioke-Uche's FCRA claims that AmeriCredit failed to reasonably investigate and correct inaccurate information it provided to the CRAs, finding that material facts were in dispute. First, the court cited with approval a series of cases holding that such claims are best settled by a trier of fact and are not appropriate to be decided on a motion for summary judgment. Moreover, the court found that there was a genuine dispute of material fact as to the accuracy of AmeriCredit's reporting of a voluntary surrender, especially because Chijioke-Uche was current on his payments at the time AmeriCredit took possession of the car and had evidence in the form of emails and phone recordings instructing him to leave his car at Chapman Ford until the new turbocharger was installed and advising him that he would not be charged storage fees. For those reasons, the court allowed the matter against AmeriCredit to proceed to trial.

Creditors that furnish to CRAs should take note of this case and remember that, when reinvestigating a consumer dispute, a furnisher must review all information provided by the consumer and all relevant information available in its own records and not rely solely on information provided by a third party.

Chijioke-Uche v. Equifax Information Services, LLC, 2021 U.S. Dist. LEXIS 95614 (E.D. Pa. May 20, 2021).

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