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Payment Demand In Collection Letter Valid Under Statutes

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A collection letter that urged plaintiff to pay his debt "today" did not violate state or federal collection practices statutes, which give the debtor 30 days to dispute a debt, a U.S. Eastern District Judge has ruled.

The letter contained both a request for payment "today" and a statutorily required notice that the debtor had 30 days to dispute the debt. The court ruled that the request for immediate payment did not "overshadow" or stand "in threatening contradiction" to the required notice.

The case is *Burns v. Accelerated Bureau of Collections of Virginia, Inc.* (Lawyers Weekly No. ED-9508 - 7 pages).

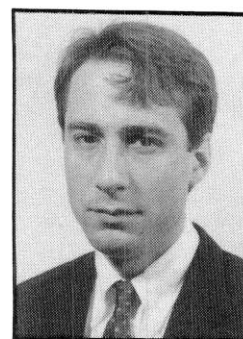
U.S. District Judge Stewart A. Newblatt distinguished a case in which requesting payment within 10 days was held to be in direct conflict with the statutorily required notice. In that case, the demand was accompanied with a threat to the debtor's credit rating if the payment was not made within the 10 days. Judge Newblatt also distinguished a case where a demand that payment be made "now" was held to be in direct conflict with the required notice language. In that case the demand was in two-inch lettering, accompanied with "screaming headlines [and] bright colors."

Federal and state statutes require debt collectors to tell debtors that 1) the amount owed will be presumed valid unless the debtor disputes its validity within 30 days and 2) if the debtor disputes the debt's validity in writing within the 30-day period, the debt collector will provide some evidence of the debt. The debt collector must include this information in the initial communication with a debtor or provide it in writing within five days after first contacting the debtor.

The statutes are the Michigan Collection Practices Act, MCL 339.901, *et seq.*

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— Frederick A. Acomb



(MCPA) and the Federal Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (FDCPA).

Detroit attorney Frederick A. Acomb, who represented defendant-debt collection agency, said the decision provides guidance to attorneys and debt collectors regarding compliance with both federal and state debt collection acts.

"A debt collection letter is not magically transformed into a violation of the Fair Debt Collection Practices Act or the Michigan Collection Practices Act merely because the letter informs the debtor of his rights and demands prompt payment," Acomb asserted.

"The collection letter may be designed to encourage payment of the debt," he added.

Plaintiff was represented by UAW-GM Legal Services. Frederick L. Miller, litigation coordinator for UAW Legal Services Plan, explained that the typical consumer issues in collection cases are "whether the debtor got the notices that the law requires and whether what is said in the letter overshadows those notices and buries them so that they are not read." See, "Judgment Collections Letter Needs 'Notice and Disclosure' Language," 6 Mich.L.W. 1249 (August 17, 1992).

Miller said the case "is defining for collectors and plaintiffs' attorneys how

the lines will be drawn as far as what collectors can say. Follow the federal act and don't overshadow or undercut the notice requirement," he stated.

Miller said the court identified four ways in which a collection letter could violate the collection acts: 1) a demand for payment within a specific time limit that is shorter than the statutory 30-day period, 2) specific threatened action if the debt is not paid in less than 30 days, 3) a demand for payment that is "extreme" in size or style relative to the rest of the body of the letter and 4) the "burying" of validation notice provisions in the letter or on the back of a page of correspondence.

"Any one of these four factors may be enough to invalidate the letter," Miller said.

Facts

Plaintiff owed a bank \$3,547.56. The bank turned the account over to defendant-collection agency when plaintiff fell behind in his payments.

Defendant sent plaintiff a letter that contained both a request that payment in full be "made today" and advised plaintiff that within 30 days he had the right to contest the debt or be provided with some evidence that the debt was actually owed.

Plaintiff sued the collection agency in federal district court, alleging violations of both state and federal debt collection practices act. Plaintiff alleged that the letter's request for payment "overshadowed" the advice of his rights — the so-called "validation notice." The demand language read:

"THE ABOVE ACCOUNT HAS BEEN LISTED WITH THIS AGENCY FOR IMMEDIATE COLLECTION. TIME IS OF THE ESSENCE. THEREFORE IT IS IMPORTANT THAT PAYMENT IN FULL FOR \$3547.46 BE MADE TODAY."

"Follow the federal act and don't overshadow or undercut the notice requirement."

— Frederick L. Miller



Defendant moved to dismiss the case for failure to state a claim.

Judge Newblatt granted the motion, holding that the letter at issue "effectively communicated the debtor's rights as required by the [state and federal] statutes."

Appearance, Effect

"The request for payment is in the first paragraph of the letter which is immediately followed by two paragraphs of slightly smaller type, fully discussing the debtor's right to dispute the debt," Judge Newblatt wrote.

"These two paragraphs are in type that is easily readable and since they are in the body of the letter immediately following the request they can not be overlooked," he added.

Judge Newblatt said that defendant-agency had not attempted to "deprive the debtor of his rights." The payment request did not "overshadow" or "stand in threatening contradiction" to the validation notice. Therefore, no violation of federal or state statute occurred, the federal judge concluded.

Other Cases Distinguished

Judge Newblatt distinguished the facts presented in other federal cases cited by plaintiff.

In *Swanson v. Southern Oregon Credit Services, Inc.*, 869 F.2d 1222 (9th Cir. 1988), the collection letter demanded pay-

ment within 10 days and implied that the plaintiff's failure to do so would result in his name being placed on the agency's "master file" and that his credit rating could be diminished.

The *Swanson* court ruled that the payment demand was misleading because the language stood "in threatening contradiction" to the notice text which allowed the debtor thirty days to verify the debt."

Judge Newblatt said that the demand for payment in the instant case presented "no direct conflict with the thirty day time period allowed by the statute. The letter simply communicates to the debtor that [defendant] is interested in collecting the debt in a timely fashion.

"The letter states that it is important for the plaintiff to pay 'today,' but this would in no way mislead even the least sophisticated debtor as to his rights," Judge Newblatt reasoned.

Judge Newblatt also distinguished the letter in this case from the "screaming headlines, bright colors and huge lettering" that effectively buried the statutorily required notice in *Miller v. Payco-General American Credits, Inc.*, 943 F.2d 482 (9th Cir. 1991). The letter in that case commanded the debtor to pay "now."

"This information directly conflicted" with the information provided by the statute. The statute "gives the debtor thirty

days in which to notify the collector in writing that they are disputing the debt," Judge Newblatt wrote.

"The letter before the court today is dramatically different from the letter described in *Miller*. While the request for payment language is in slightly larger and bolder print, the language required by the statute is directly beneath," the judge said. "In addition, the letter does not contain any information that directly conflicts with the information required by the statute. There is no attempt on the part of the collector to mislead the debtor or to deprive him of his statutory rights."

Ethical Collectors Supported

Acomb observed that the court had vindicated the efforts of "ethical debt collectors."

The purpose of both state and federal collections practices acts, said Acomb, "is to eliminate abusive debt collection practices without imposing unnecessary restrictions on ethical debt collectors.

"Clearly neither act is designed to preclude a debt collector from being a debt collector," he stated.

The decision "implicitly held that neither act mandates that a debt collector's notice communication consist solely of the debtor's validation rights," Acomb asserted.

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