

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JOEL BYSTROM,

Plaintiff,

v.

BURGESS LAW OFFICE and  
ALAN DEACON, Individually,

Defendants.

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MEMORANDUM AND ORDER  
06-C-619-S

Plaintiff Joel Bystrom commenced this action against defendants Burgess Law Office and Alan Deacon for alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. Plaintiff claims that in August 2006 defendant Deacon left two messages on his answering machine in violation of the Act.

On January 16, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. Pursuant to this Court's Preliminary Pre-Trial Conference Order plaintiff's brief in opposition to the motion was to be filed not later than February 5, 2007 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by

both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Joel Bystrom is an adult resident of the City of Somerset, Wisconsin. Defendant Burgess Law office (Law Office of Douglas R. Burgess, LLC) is a law firm operating from an address of

2805 Wehrle Drive, Suite 4, Williamsville, NY, 14221. Burgess is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6). Defendant Alan Deacon is employed by Burgess and is also a "debt collector".

Prior to August 2006 plaintiff incurred a debt with Treasure Island Casino. Plaintiff's account was transferred to Burgess on August 29, 2006. Burgess assigned plaintiff's account case number 76524.

On or about August 29, 2006 Deacon left a message on plaintiff's answering machine. The recording on plaintiff's answering machine said, "It's Joel, leave a message." On or about August 30, 2006 plaintiff left a follow up message on plaintiff's answering machine requesting a return call.

On or about September 5, 2006 an individual identified as "Erin" from plaintiff's worker's compensation attorney's office called Deacon and stated that the call was being made at plaintiff's request. "Erin" offered to forward a message from Deacon that plaintiff should call Deacon. On September 6, 2006 plaintiff called and spoke to Burgess Office Manager Michael Gormley.

Burgess intended to file suit against plaintiff if he refused to pay the debt.

#### MEMORANDUM

Defendants move for summary judgment on plaintiff's Fair Debt

Collection Practices Act claims. In opposing defendants' motion for summary judgment plaintiff cannot rest on the mere allegations of the pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has submitted no affidavits or evidence that contradict the affidavits submitted by the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

The Fair Debt Collection Practices Act prohibits debt collectors from using false, deceptive or misleading representations in connection with the collection of a debt. 15 U.S.C. §1692e. The Act also prohibits a debt collector from engaging in conduct which is harassing, oppressing or abusive. 15 U.S.C. §1692d. Further, a debt collector may not use unfair or unconscionable means to attempt to collect any debt. 15 U.S.C. § 1692f.

Plaintiff alleges that the two messages left by Deacon on his answering machine were harassing, abusive, false, misleading, unfair or unconscionable. For purposes of summary judgment defendants accept the plaintiff's version of the messages.

In his complaint, plaintiff states that the first message said, "This is Alan Deacon calling him from the Burgess Law Office....I am trying to get a hold of Joel Bystrom in regards to a pending legal matter that involves you...failure to respond to this message may result in you having to appear in court as well as incur any and

all legal expense." According to plaintiff, the second message said, "Joel, this is Deacon calling from the Burgess Law Office...this is about case number 76524, Please note Joel, it is important that you get back to us as soon as possible...I've got a legal matter I need to talk to you about..."

The first message referred to a pending legal matter. This statement was true and was neither false nor misleading under 15 U.S.C. § 1692e.

The content of the two messages as described by plaintiff were neither harassing, abusive or threatening in violation of 15 U.S.C. §1692d. Further, there are no statements in the messages which are unfair or unconscionable.

Plaintiff also claims that the defendants violated the Act by disclosing information to a third party. Plaintiff's worker's compensation attorney called defendants at plaintiff's request. The act allows the disclosure of information about a debt to a third party with the consumer's consent. See 15 U.S.C. § 1692c(b). Although defendants do not concede that they told the attorney any information about the debt, such disclosure would not violate the Act.

Defendants are entitled to judgment as a matter of law on plaintiff's Fair Debt Practices Act claims. Accordingly, defendants' motion for summary judgment will be granted.

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ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 20<sup>th</sup> day of February, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge