

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

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STACIA HILL,

Plaintiff,

OPINION AND ORDER

v.

12-cv-313-wmc

SEVENTH AVENUE,

Defendant.

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In this proposed civil action, plaintiff Stacia Hill alleges that defendant Seventh Avenue violated the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.* Hill asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. Based on the financial affidavit Hill provided, the court concludes that she is unable to prepay the fee for filing this lawsuit. The next step is determining whether Hill’s proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Hill meets this step as to her FCRA claim, she will be allowed to proceed. Hill’s proposed state law claim for defamation or libel, however, is preempted by the FCRA. Accordingly, the court will deny her leave to proceed as to that claim.

ALLEGATIONS OF FACT

In addressing any pro se litigant’s complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes these probative facts based on the allegations in her complaint:

- Plaintiff Stacia Hill is a resident of Iowa.

- Defendant Seventh Avenue is a purported creditor of plaintiff, with a corporate address of 1112 7th Avenue, Monroe, Wisconsin 53566.<sup>1</sup>
- Beginning in September 2011, Hill began noticing errors in defendant's reports of Hill's accounts to credit bureaus, particularly as to the timeliness of Hill's payments.
- Still in September 2011, Hill initiated several disputes regarding these accounts by utilizing the dispute resolution services offered by Experian, a Credit Reporting Agency.
- Despite her efforts, Seventh Avenue continued to report inaccuracies regarding Hill's account.
- Hill alleges that Seventh Avenue violated 15 U.S.C. § 1681s-2(b) because it received notice of her dispute from Experian and failed to conduct an adequate and truthful investigation.
- Pursuant to her claim under 15 U.S.C. § 1681s-2(b), Hill also alleges that Seventh Avenue willfully reported information that it knew or should have known was false.
- Hill also alleges that Seventh Avenue committed libel and defamed plaintiff by publishing false information about Hill's accounts knowing, and with the intent that, the false information would be accessed by others. Hill further alleges that the false information was indeed accessed by others.
- Finally, Hill alleges that the "publications were done maliciously, without privilege, and with the intent to injure the Plaintiff." (Compl. (dkt. #1) ¶ 15.)
- As a result of Seventh Avenue's actions, Hill alleges that she "has suffered distress, loss of credit," "embarrassment, mental anxiety, emotional suffering, worry, humiliation, and mental distress," and "been chilled from seeking any additional credit and has suffered corresponding economic damages." (Compl. (dkt. #1) ¶¶ 12, 15.)

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<sup>1</sup> From the Department of Financial Institutions website, the court discerns that Seventh Avenue is a Wisconsin corporation with its principal office in Monroe, Wisconsin. See <https://www.wdfi.org/apps/CorpSearch/Details.aspx?entityID=S037243&hash=1899863322&searchFunctionID=c02bbc27-d741-4ee2-9688-f1333a1a4b6f&type=Simple&q=seventh+avenue> (last visited December 2, 2013).

## OPINION

Hill's complaint pursues legal claims for violations of the FCRA, 15 U.S.C. § 1681s-2(b), and of the common law of libel and defamation. The court will consider whether Hill's complaint states a claim on which relief may be granted under the FCRA and the common law.

### **I. FRCA Claims, 15 U.S.C. § 1681s-2(b)**

The Fair Credit Reporting Act sets forth certain duties required of furnishers of credit information once notified of a dispute as to the accuracy of the information. In pertinent part, 15 U.S.C. § 1681s-2(b) provides:

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall--

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting

to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly--

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

The FCRA limits a private right of action in several significant respects, but allows for a civil lawsuit for willful noncompliance (15 U.S.C. § 1681n) and for negligent noncompliance (15 U.S.C. § 1681o) of the duties described above. 15 U.S.C. § 1681s-2(c). Hill alleges that Seventh Avenue (1) received valid notice from a credit reporting agency that she disputed the accuracy of the information reported; and (2) “failed to conduct an adequate and truthful investigation.” (Compl. (dkt. #1) ¶ 9.)

However bare bone they may be, these allegations are sufficient to state a claim under 15 U.S.C. § 1681n, § 1681o, and § 1681s-2(b). *See Lang v. TCF Nat’l Bank*, No. 07-1415, 2007 WL 2752360, at \*2 (7th Cir. Sept. 20, 2007) (finding similar allegations sufficient to state a claim under 15 U.S.C. § 1681s-2); *see also Scheel-Baggs v. Bank of Am.*, 575 F. Supp. 2d 1031, 1039 (W.D. Wis. 2008) (describing § 1681s-2 as requiring a “reasonable investigation” and citing cases in support). Accordingly, the court will grant Hill leave to proceed with FCRA claims.

## II. Libel and Defamation

Hill also asserts state common law claims for libel and defamation. The Seventh Circuit, however, has held that another provision of the FCRA, 15 U.S.C. § 1681t(b)(1)(F), “explicitly preempts state-law claims alleging violations of the federal

act.” *Todd v. Franklin Collection Service, Inc.*, 694 F.3d 849, 852 (7th Cir. 2012); *Purcell v. Bank of Am.*, 659 F.3d 622, 623-25 (7th Cir. 2011) (dismissing state law claim for defamation as preempted by the FCRA). Under this precedent, Hill fails to state a claim for relief under state law. Accordingly, the court will deny her leave to proceed on her defamation and libel claim.

## ORDER

IT IS ORDERED that:

- 1) Plaintiff Stacia Hill is GRANTED leave to proceed on her claims that defendant Seventh Avenue violated the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b).
- 2) Plaintiff is DENIED leave to proceed on her state law claims for defamation and libel.
- 3) The summons and complaint are being delivered to the U.S. Marshal for service on defendant.
- 4) For the time being, plaintiff must send defendant a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court’s copy that she has sent a copy to defendant or to defendant’s attorney.
- 5) Plaintiff should keep a copy of all documents for her own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of her documents.

Entered this 2nd day of December, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge