

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

WILLIAM A. PARUS,

Plaintiff,

and

GERMANTOWN MUTUAL INSURANCE COMPANY,

Intervening Plaintiff,

v.

OPINION AND ORDER

05-C-0063-C

THOMAS KROEPLIN, CLAY KREITLOW,
individually and in his capacity as an employee
of the Town of Woodruff Police Department,
and TOWN OF WOODRUFF, WISCONSIN,

Defendants.

In this civil action for monetary relief, plaintiff William Parus contends that defendants Thomas Kroeplin, Clay Kreitlow and Town of Woodruff, Wisconsin illegally obtained personal information from his Wisconsin Department of Motor Vehicles record in violation of the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721. Plaintiff alleges that, as a result of defendants' actions, he suffered fear and emotional distress for which he is entitled to compensation. Jurisdiction is present under 28 U.S.C. § 1331.

The case is now before the court on defendants' motion for partial summary judgment regarding damages. Under the Driver's Privacy Protection Act "any person who knowingly obtains personal information from a motor vehicle record, for a purpose not permitted under the Act" is liable "to the individual to whom the information pertains." 18 U.S.C. § 2724(a). Liability may be in the form of actual or liquidated damages, punitive damages or attorney fees and costs. 18 U.S.C. § 2724(b). The parties agree that plaintiff will be entitled to reasonable attorney fees and liquidated damages if the jury returns a verdict in his favor. However, defendants contend that plaintiff has alleged no actual damages fairly traceable to their actions, and therefore is not entitled to actual or punitive damages.

Because plaintiff has alleged facts from which a reasonable jury could infer that he suffered actual damage as a result of defendant Kroeplin's actions, but not as a result of defendant Kreitlow's action, I will grant Kreitlow's motion to bar an award of actual damages against him. However, I will deny defendant Kroeplin's motion to bar an award of actual damages against him because plaintiff has alleged facts from which a jury could find that Kroeplin's actions caused a portion of the fear and anxiety plaintiff experienced in connection with the events at issue in this case. Finally, I will deny defendants' request to bar plaintiff from recovering punitive damages. If the jury finds that defendants acted with the intention of "willfully or recklessly" disregarding the law, it may award punitive damages against them.

Before I turn to the undisputed facts of this case, I note that defendant Kroeplin submitted proposed findings of fact, in which defendant Kreitlow joined, that do not conform in any way to this court's procedures. The proposed findings are often incomprehensible and include proposed "facts" that, according to a footnote, defendants assert are *not* true. Because it appears that the proposed "undisputed facts" are, in fact, disputed, I will not consider them in ruling on defendants' motions. From plaintiff's proposed findings of fact, I find the following to be material and undisputed.

UNDISPUTED FACTS

On the night of September 20, 2004, plaintiff William Parus spoke with his former wife, Annette Parus, who told him that Andrew Cator had been contacting police departments, providing them with plaintiff's license plate and asking for the name of the license plate's owner. Annette told plaintiff that Cator wanted to injure or kill him, and that Cator had asked his uncle, defendant Kroeplin, to "call in" plaintiff's license plate. Plaintiff knew that defendant Kroeplin was a law enforcement officer. Plaintiff immediately began fearing for his life and purchased a gun "for protection."

On September 21, 2004, plaintiff went to the Minocqua Police Department to find out how he could protect himself from Cator. He spoke with Minocqua Police Department employee Toni Haling, who told him that "there was nothing he could do" unless Cator first

took action against him. Haling confirmed that Cator had called law enforcement agencies trying to learn plaintiff's identity and that defendant Kroeplin had called the Minocqua Police Department to find out the owner of plaintiff's license plate; however, she stated that the department had not released any information to him. Plaintiff's conversation with Haling led plaintiff to believe that defendant Kroeplin had obtained his identity and disclosed it to Cator.

OPINION

Civil actions brought under the Driver's Privacy Protection Act (DPPA) are governed by 18 U.S.C. § 2724, which states:

(a) Cause of action. A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies. The court may award:

- (1) actual damages, but not less than liquidated damages in the amount of \$2,500;
- (2) punitive damages upon proof of willful or reckless disregard of the law;
- (3) reasonable attorney's fees and other litigation costs reasonably incurred; and
- (4) such other preliminary and equitable relief as the court determines to be appropriate.

If a plaintiff proves that his rights under the Act were violated, but is unable to show

actual damages, he is entitled to receive liquidated damages in the amount of \$2,500. See, e.g., Kehoe v. Fidelity Federal Bank & Trust, 421 F.3d 1209, 1213 (11th Cir. 2005) (“Liquidated damages are a contractual substitute for actual damages and are paid even in the absence of proof of actual damages.”); Pichler v. UNITE, 228 F.R.D. 230, 247 (E.D. Pa. 2005) (holding that “a plaintiff may recover liquidated damages of \$2,500 under the DPPA even if she fails to prove actual damages”). In this case, defendants contend that plaintiff should be barred, as a matter of law, from recovering more than liquidated damages and reasonable attorney fees because he has failed to show entitlement to actual or punitive damages.

B. Plaintiff’s Actual Damages

On September 21, 2004, plaintiff confirmed with the Town of Minocqua Police Department that defendant Kroeplin had requested his motor vehicle record information. Plaintiff alleges that from that time onward, he became convinced that defendant Kroeplin had not only obtained the information, but had disclosed it to his nephew, Andrew Cator. Because plaintiff had heard from his ex-wife that Cator wanted to kill him, plaintiff became increasingly fearful and anxious for his safety upon learning that Cator’s uncle had tried to obtain his personal information.

Defendants contends that plaintiff’s fear stemmed from Andrew Cator’s threats of

violence toward him, and not from any actions defendants took to obtain plaintiff's motor vehicle record information. In previous orders, the court has found no evidence that either defendant Kroeplin or defendant Kreitlow disclosed plaintiff's personal information to Cator. In light of this finding, defendants contend, their actions could not have caused plaintiff's emotional distress.

Plaintiff has alleged facts from which a jury could find that defendant Kroeplin's actions caused at least a portion of plaintiff's emotional distress. The Driver's Privacy Protection Act was passed in order to protect individuals from the fear and bodily harm that can occur when "stalkers, harassers, would-be criminals and other unauthorized individuals [] obtain[] and us[e] personal information from motor vehicle records." Margan v. Niles, 250 F. Supp. 2d 63, 68 (N.D.N.Y. 2003). The Act places no limits on the number of individuals who can be held liable for violations of the statute or whose actions can be found to have contributed to the damage suffered by an individual whose personal information has been released in violation of the Act.

It is clear from plaintiff's allegations that he was afraid of Andrew Cator. However, there is no reason why a jury could not find that defendant Kroeplin's alleged actions increased plaintiff's anxiety and were therefore a significant cause of plaintiff's mental anguish. Defendant Kroeplin has not cited any authority supporting a limitation on his potential liability under these circumstances, and no such limitation can be found in the text

of the Act. If a jury finds that defendant Kroeplin obtained plaintiff's motor vehicle record information in violation of the Act, it may also find that Kroeplin's action caused plaintiff damage in the form of fear and needless anxiety. Whether Cator also caused plaintiff anxiety is irrelevant to plaintiff's claim against defendant Kroeplin. Therefore, defendant Kroeplin's motion will be denied with respect to his request to bar plaintiff's request for actual damages.

Plaintiff has not alleged that he knew of defendant Kreitlow's allegedly illegal actions before bringing this lawsuit and has not suggested that Kreitlow's actions caused him fear or any tangible harm. Because he has presented no evidence that he suffered any actual damage as a result of defendant Kreitlow's actions, plaintiff's potential recovery against Kreitlow under § 2724(b)(1) will be limited to liquidated damages in the amount of \$2,500.

C. Punitive Damages

Under the Driver's Privacy Protection Act, punitive damages may be awarded when a defendant has willfully or recklessly disregarded the law. § 2724(b)(2). Defendants contend that plaintiff "has no chance" of receiving punitive damages, because the undisputed facts demonstrate that neither defendant Kroeplin nor defendant Kreitlow acted with malice toward plaintiff. The question, however, is not whether defendants acted with the intention of harming plaintiff; the question is whether they acted with the intention of willfully or

recklessly disregarding the law. Because liability under the Driver's Privacy Protection Act is premised upon "knowing" — that is, intentional — violations of the law, 18 U.S.C. § 2724(a), if a jury finds defendants liable, it could also award punitive damages against them. Under the Act, the difference between facts supporting a finding of liability and facts leading to an award of punitive damages is one of degree, not kind. Therefore, defendants' motion will be denied with respect to their request that plaintiff be precluded from seeking punitive damages.

ORDER

IT IS ORDERED that

1) Defendant Kroeplin's motion for partial summary judgment regarding damages is DENIED.

2) Defendants Krietlow and Town of Woodruff's motion to limit damages is GRANTED in part and DENIED in part.

Entered this 31st day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge