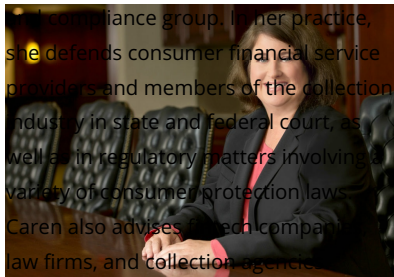


# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR

[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation



compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises a broad range of law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

## Misstated Summons Did Not Create FDCPA Violation

April 6, 2017 | by

A summons which stated the consumer had thirty days to answer a debt collection suit did not violate the FDCPA when the state rules of civil procedure only provided for twenty days. In *Bryant v. Kass Shuler, P.A.*, the consumer filed an FDCPA complaint alleging that the collection suit summons indicated the plaintiff had thirty days to answer the suit when the court's publicly stated docket indicated the plaintiff only had twenty days to respond. The court granted the debt collector's motion to dismiss. In doing so, the court focused on the "least sophisticated consumer" standard to determine whether the summons as a communication violated Section 1692e of the FDCPA which prohibits false or misleading representations.

The court noted that while a communication violated section 1692e if the least sophisticated consumer would be deceived or misled by the communication, the least sophisticated consumer is "presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care." *Bryant v. Kass Shuler, P.A.*, 2017 U.S. Dist. LEXIS 27811, quoting *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1194 (11th Cir. 2010). Moreover, the court noted that only material misrepresentations violate the FDCPA. Material misrepresentations are only those that influence the consumer's ability to pay or challenge a debt. *Bryant* at \*4. The court rejected the consumer's argument that the summons was misleading because it misstated the law and conflicted with the state court's publicly accessible docket. In doing so, the court stated that the summons was not materially misleading.

[t]he difference between the two response times would not have influenced even the least sophisticated consumer's ability to either pay or challenge the debt. Defendant's grant of additional days to respond in no way obfuscates the existence of the debt or the means by which the Plaintiff could contest the creditor's allegations.

*Id.* at \*4-5. The court was equally dismissive of the consumer's argument that the misleading summons presented a heightened risk of default noting that the Florida state procedure would have required the defendant to produce the original summons to prove default and would have been bound by the thirty-day response period set forth in the summons.

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

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