What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

Caren Enloe leads Smith Debnam' s consumer financial services litigation and 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 fintech companies, 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 financial services and has

District Court Dismisses Suit Over Collection Letter

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Any opinion that starts out by stating "[t]his case is about $82.00" is not likely to go well for one party and in this instance, that was the case for Nestor Saroza. A New Jersey district court recently held that a debt collection letter was not false or deceptive when it included court costs in its demand for the balance. In *Saroza v. Lyons, Doughty & Veldhuis,* 2017 U.S. Dist. LEXIS 208913 (D.N.J. Dec. 19, 2017), the collection law firm filed a collection suit seeking recovery of the balance due ($9,971.55), plus court costs. Its subsequent collection letter demanded a balance of $10,053.55. The difference, $82.00, was comprised of court costs. The consumer filed suit asserting that the demand letter violated the FDCPA because the $82.00 was not part of the debt. The demand letter in question read as follows:

> LYONS, DOUGHTY & VELDHUIS, P.C. . . .
>
> Re: Capitol One Bank (USA), N.A. v. NESTOR SAROZA
>
> Docket No. DC-00065-16
>
> Amount Due: $10,053.55
>
> Dear NESTOR SAROZA:
>
> We have filed suit to recover the balance due in the above matter. However, our goal is to resolve the debt in a way that is manageable for you. We encourage you to contact us. If you would rather not call us, you can ask questions and/or make a settlement offer or payment arrangement proposal via our website: www.ldvlaw.com . . .
>
> THIS FIRM IS A DEBT COLLECTOR

In support of dismissal, the law firm presented the credit card agreement which provided for the recovery of the creditor's collection expenses, attorneys' fees and court costs and pointed to the collection suit to support its argument that the letter was

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.

accurate. The consumer meanwhile argued that the letter did not explain the filing fees were included and thus, was false, deceptive or misleading. According to the court, "[i]n essence, the line Saroza wants this Court to draw seems to be that collection notices which say 'with costs' are permissible under the FDCPA but those that add the costs into the requested sum are not." *Saroza* at *7-8. The court declined to do so. Instead, the court determined that this was a distinction without a difference – particularly where the costs are accurate and the consumer was on notice from the Customer Agreement that this could happen.

The court also rejected the consumer's argument that the omission of the court costs from the summons issued by the state court, coupled with the letter, was misleading. In doing so, the court noted that the summons was issued by the court not the defendant and placed the burden on Saroza to read the complaint served with the summons.

In dismissing the lawsuit, the Court made clear that certain basic responsibilities fall upon a consumer – to read the documents provided to him by the creditor and debt collector. The Court further emphasized a theme that is becoming more prevalent in FDCPA opinions: that the FDCPA will not allow liability for bizarre or idiosyncratic interpretations of collection notices and preserves a quotient of reasonableness and presumes a basic level of understanding and willingness to read with care. *See Wilson v. Quadramed Corp.,* 225 F.3d 350, 354-55 (3rd Cir. 2000)

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