

Violation of Automatic Stay  
Fair Debt Collections Act

Credit Bureau of Josephine County v. Deborah Ranee Todor, Adversary No. 14-6195-fra  
Francis and Deborah Todor, Case No. 11-64859-fra13

4/16/2015

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Unpublished (2015 WL 1811851)

Debtors filed a chapter 13 bankruptcy case and listed a claim in the amount of \$212 owed to “Ear, Nose, and Throat” of Grants Pass, Oregon. A Plan was confirmed which provided a dividend of approximately 4% to nonpriority unsecured creditors.

Thereafter, the Ear Nose and Throat claim was assigned to Credit Bureau of Josephine County, the Plaintiff, for collection. When Plaintiff sent Defendant a notice referring to the claim and asking whether legal action would be necessary to collect it, the Defendant responded that she had filed a bankruptcy petition and was represented by counsel. Plaintiff continued to contact the Defendant about the claim and eventually filed a small claims proceeding in state court. Defendant, through counsel, removed the small claims action to bankruptcy court and then filed a counterclaim for violation of the automatic stay and of various provisions of the Fair Debt Collection Practices Act (FDCPA).

Plaintiff conceded that the commencement of the small claims proceeding and the communications to Defendant violated the automatic stay and that the communications delivered to the Defendant after Plaintiff became aware she was represented by counsel was prohibited conduct under 15 USC § 1692c(a)(2) of the Fair Debt Collections Act. What remained to be determined was the Defendant’s claim that the notice of the small claim trial indicating the Plaintiff as “Credit Bureau of Josephine County,” omitting the “Inc.” from the name, violated 15 USC § 1692(e). That provision prohibits a “false, deceptive, or misleading representation” as to the nature or identity of the collection entity.

The court determined that under the “least sophisticated debtor” standard required under the FDCPA, as defined in the Ninth Circuit, a debtor would not be misled by the complaint into believing that the claim was being advanced on behalf of, or with the special support of, a governmental agency, as argued by Defendant.

The court awarded the Defendant \$500 and reasonable attorney fees incurred by Defendant for those violations to which the Plaintiff had conceded.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

IN RE	)	Bankruptcy Case
	)	No. 11-64859-fra13
FRANCIS ANTHONY TODOR and	)	
DEBORAH RANEE TODOR,	)	
	)	
Debtors.	)	
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CREDIT BUREAU OF JOSEPHINE COUNTY,	)	Adversary Proceeding
	)	No. 14-06195-fra
	)	
Plaintiff,	)	
vs.	)	
	)	
DEBORAH RANEE TODOR,	)	
	)	
Defendant.	)	MEMORANDUM OPINION

The parties have agreed that the above-referenced matter may be tried by the Court on stipulated facts.<sup>1</sup> My findings and conclusions follow:

I. FACTS

Defendant Deborah Todor and her husband filed a petition for relief under Chapter 13 of the Bankruptcy Code on September 30, 2011. Accompanying the petition was a set of bankruptcy schedules in

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<sup>1</sup> After the case was at issue, Defendant Todor filed a motion for summary judgment. The argument on the motion was heard on March 19, 2015. At the hearing the parties, mutually agreeing to resolve the matter as expeditiously and economically as possible, agreed that the Court could determine any disputed facts on the record before it.

1 the prescribed form. Schedule F, listing creditors holding unsecured nonpriority claims, disclosed a claim of  
2 \$212 owed to “Ear, Nose and Throat” of Grants Pass, Oregon. A plan of reorganization was confirmed on  
3 November 30, 2011. The plan provides for a dividend to unsecured creditors of approximately 4% of their  
4 claims, depending on secured claims at the time of confirmation, the total amount of allowed claims, and the  
5 costs of administration. The case remains open, and the plan remains in effect.

6 At some point thereafter, the Ear, Nose and Throat claim was assigned to Credit Bureau of Josephine  
7 County, Inc., the Plaintiff, for collection. On or about June 22, 2012, Plaintiff sent a notice to Defendant  
8 referring to the ENT account, and asking “In regards to the above account, is legal action going to be  
9 necessary??” On July 25<sup>th</sup> the Defendant replied in writing, stating that she had filed a bankruptcy petition,  
10 that the claim was included in her schedules, and that she was represented by an attorney. Notwithstanding  
11 this advice, Plaintiff continued to contact the Debtor with respect to the claim. Finally, on or about  
12 October 2, 2014, Plaintiff commenced a small claims proceeding in the Circuit Court for Josephine County,  
13 Oregon. Defendant, through counsel, more or less simultaneously demanded that the proceeding be  
14 dismissed, and removed it from the Circuit Court to this Court. After the removal was effected, Defendant  
15 filed a counterclaim alleging violation of the automatic stay, 11 U.S.C. § 362, and violation of various  
16 provisions of the Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692 *et seq.*

## 17 II. DISCUSSION

18 Defendant asserts, and the Plaintiff concedes, that commencement of the small claims proceeding in  
19 the Circuit Court, and the communications preceding the filing, were in violation of the automatic stay  
20 provided for in 11 U.S.C. § 362. In addition, Plaintiff concedes that communications delivered to the  
21 Defendant after the Plaintiff became aware that the Defendant was represented by counsel was prohibited  
22 conduct under 15 U.S.C.A. § 1692c(a)(2).

23 What remains to be determined is the Defendant’s third claim, that the form of the small claim, as  
24 served on her, constituted a false or misleading representation under 15 U.S.C.A. § 1692e(1) and (9):

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1 15 U.S.C.A. § 1692e provides:

2 A debt collector may not use any false, deceptive, or misleading representation or means in  
3 connection with the collection of any debt. Without limiting the general application of the  
foregoing, the following conduct is a violation of this section:

4 (1) The false representation or implication that the debt collector is vouched for, bonded by,  
5 or affiliated with the United States or any State, including the use of any badge, uniform or  
facsimile thereof.

6 (9) The use or distribution of any written communication which simulates or is falsely  
7 represented to be a document authorized, issued, or approved by any court, official, or agency  
8 of the United States or any State, or which creates a false impression as to its source,  
authorization, or approval.

9 The small claim and notice of small claim filed with the Circuit Court and served on the Defendant  
10 was included in the record before the Court, and is set out in Appendix A of this Memorandum. The head of  
11 the document indicates that the proceeding is “In the Circuit Court of the State of Oregon for Josephine  
12 County Small Claims Department.” The Plaintiff is named as “Credit Bureau of Josephine County,” not as  
13 Defendant points out, “Credit Bureau of Josephine County, *Inc.*” The claim sets out the parties’ respective  
14 addresses, and the assertion that Defendant owes Plaintiff the sum of \$275.50 for goods and services  
15 provided by Ear, Nose and Throat Associates.

16 Defendant’s declaration states that

17 Credit Bureau’s use of its name on the complaint it sent me was misleading. I was confused  
18 about who the complaint was from. I thought it may have come from the court or from the  
19 county, and I work as an employee for Josephine County. Only after calling Credit Bureau, I  
then understood it was a private collection company.

20 The record is silent respecting other documents received by the Defendant in connection with the  
21 small claims proceeding. Small claims are governed by ORS Chapter 46. ORS 46.445 provides that a notice  
22 and claim shall be served on the defendant, accompanied by a notice which includes the following:

23 If you have questions about the small claims court filing procedures after reading this notice,  
24 you may contact the clerk of the court; however, the clerk cannot give you legal advice on the  
claim.

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1 The full text of ORS 46.445 is set out in Appendix B of this Memorandum. As noted, the record is  
2 silent as to whether this notice was delivered as Oregon law requires. However, in the absence of evidence  
3 to the contrary, the Court must presume that the notice was delivered.

4 A complaint such as the one described here is a communication for the purposes of the Fair Debt  
5 Collection Practices Act. *Donohue v. Quickcollect, Inc.*, 592 F.3d 1027 (9<sup>th</sup> Cir. 2010). What the Court must  
6 determine is (1) whether the complaint fits the description of a communication set out in § 1692c(1) or (9), or  
7 (2) whether the “least sophisticated debtor” would likely be misled by the communication.

8 To begin with, the complaint is genuine. It presents no false representation or implication that the  
9 Plaintiff is vouched for or affiliated with any governmental entity, nor does it simulate or falsely represent to  
10 be a document authorized, issued or approved by any court. It is not a simulation, but an actual complaint.

11 The Court of Appeals for the Ninth Circuit has described the applicable standard for determining  
12 whether a communication is misleading:

13 The “least sophisticated debtor” standard is “lower than simply examining whether particular  
14 language would deceive or mislead a reasonable debtor.” [internal citation omitted] The  
15 standard is “designed to protect consumers of below average sophistication or intelligence,”  
or those who are “uninformed or naive,” particularly when those individuals are targeted by  
debt collectors.

16 *Gonzales v. Arrow Financial Services, LLC*, 660 F.3d 1055 (9<sup>th</sup> Cir. 2011). The *Gonzales* opinion goes on to  
17 note that the standard “preserves any quotient of reasonableness and presumes a basic level of understanding  
18 and willingness to read with care.” It follows that the standard includes not only a willingness to read with  
19 care, but a willingness to make a simple inquiry regarding the provenance of the communication, particularly  
20 in light of the Circuit Court’s advice that defendants with questions could contact the clerk of court.

21 While greater clarity such as a statement that the Plaintiff is a private collection agency would be  
22 useful, I cannot, on balance, find that the least sophisticated consumer, as defined by the law of this Circuit  
23 would be misled by the complaint in this case into believing that the claim was being advanced on behalf of,  
24 or with the special support of, a governmental agency.

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1 III. DAMAGES

2 Defendant makes no claim for damages other than her right to her attorney's fees, and the statutory  
3 damages provided for under the Fair Debt Collection Practices Act at 15 U.S.C. § 1692k.

4 Appropriate damages for violation of the automatic stay are attorney's fees incurred to the extent  
5 necessary to remedy the violation. *Sternberg v. Johnson*, 595 F.3d 937 (9<sup>th</sup> Cir. 2010), *cert. denied* 131 S.Ct.  
6 102. The statutory damages under the FDCPA are any actual damages sustained by the consumer, and "such  
7 additional damages as the court may allow, but not exceeding \$1,000."

8 Given all of the facts presented in this case, an appropriate award is the sum of \$500, plus  
9 Defendant's reasonable attorney's fees. Counsel for the Defendant shall submit an order and his declaration  
10 claiming allowable fees, and documenting that claim, within 21 days of the date of this Memorandum.  
11 Plaintiff may respond within 21 days after the claim is filed with the Court.

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14 FRANK R. ALLEY, III  
15 Chief Bankruptcy Judge  
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