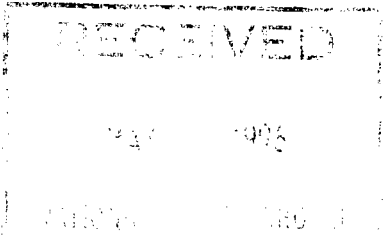


3/17/95



51,146
e
4 p.
1017277
MAY 17 PM 12:37
Walsh
DEPUTY CLERK

U.S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

Steven Schmidt,
Plaintiff,

V,

and Credit
Bureau of Athens, Inc.,
Defendants.

*
*
*
*
*

CIVIL ACTION FILE NO.:
956-ATH (DF)

**RESPONSE OF PLAINTIFF TO MOTION FOR
A MORE DEFINITE STATEMENT AND TO STRIKE**

COMES NOW PLAINTIFF, and files this his response to Defendant's motion entitled Motion for a More Definite Statement and to Strike. In said Motion, Defendant has objected to language contained in the complaint which, in addition to allegations that Defendants violated the following provisions of the Fair Debt Collection Practices Act (hereinafter sometimes referred to as "FDCPA"):

1. a9 (a) of the complaint:

"the use of language the natural consequence of which was give to give to Plaintiffs employer, a third party other than the Plaintiff information that on its face informed the third party employer that the said Defendant John Doe was employed by the Credit Bureau of Athens, Inc., in violation of 15 U.S.C. 51692b (1); and"

2. 19 (b) of the complaint [mistakenly numbered as a second "(a)" in paragraph 9 of the

complaint:] :

“the use of language in the contents of said communication with Plaintiff’s employer, which communication was effected by the mails, which language indicated that the debtor collector was [“is” at the time] in the debt collection business, and which implied that the communication related to the collection of a debt, in violation of 15 U.S.C. § 1692b (5); and”

It appears that from the motion that Defendants object only to 119 (c) of the complaint, which contains the following language:

“any other violation(s) of the FDCPA which upon the trial of this action appears to have been contained in said communication.

Plaintiff shows that Rule 54 (c), Fed. R. Civ. P., provides, in relevant part, as follows: *“Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party’s pleadings.”* Therefore, in accordance with the cited portion of Rule 54(c), Plaintiff is entitled to the relief proved without regard to whether or not the same is alleged in the pleadings, Plaintiff shows that the motion by the defendants is therefore frivolous and apparently interposed only for the purpose of delay and to increase the cost of prosecuting the action by Plaintiff.

In addition, Plaintiff shows that by failing to respond specifically to the specific allegations of the other provisions of paragraph nine (119) of the Complaint, Defendant has

shown that his true intention is to delay filing an answer to the allegations of the complaint which were specifically addressed as noted above.

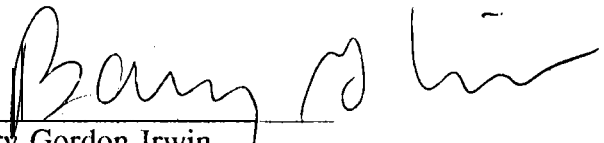
Since the answer of Defendant to the Complaint was due on or about March 15, 1995, and the same has not been received by the Plaintiff on the date of the filing of this response. Unless the same has already been filed and not yet served on the Plaintiff, it therefore appears with regard to the allegations of the complaint which Defendant do not find to be objectionable, the defendant has failed to file any specific denials of the allegations which are not found to be objectionable.

Furthermore, in addition to ‘the foregoing, the defendant alleges, “Defendant is entitled to know how to respond to future discovery requests, as well as what Plaintiff claims as violations.” Since in the past the attorney for these defendant has failed to properly respond to discovery propounded to parties he represents in other cases, Plaintiff does not see how the inclusion of the language complained of, to wit:

“any other violation(s) of the FDCPA which upon the trial of this action appears to have been contained in said communication[.]” in paragraph nine (79) (c) of the complaint would have any bearing at all upon his response to any discovery requests made by Plaintiff in this case.

WHEREFORE, Plaintiff respectfully requests that the motion of Defendant be denied and that the motion be stricken and judgment in default as to the relief prayed for in subparagraphs 9(a), and 9(b) [designated as 9(a), again.1.

This 7th day of March, 1995.


Barry Gordon Irwin
Attorney for Plaintiff
State Bar No. 384667

CERTIFICATE OF SERVICE

I, Barry Gordon Irwin, hereby certify as follows:

1. I have this day mailed by regular first-class mail a copy of the foregoing RESPONSE TO MOTION FOR A MORE DEFINITE STATEMENT AND TO STRIKE to counsel at the below-listed address, in an envelope with sufficient postage affixed thereto and addressed as follows:

Hollis Clifton Cobb, Esquire
GRBER, KLOSMAN & DAUGHERTY, Attorneys
4651-A Roswell Road
Atlanta, Georgia 30342-3048

This 7th day of March, 1995.

6 % * / I L

Barry Gordon Irwin

Post Office Box 80506
Athens, Georgia 30608-0506

(706) 548-9500