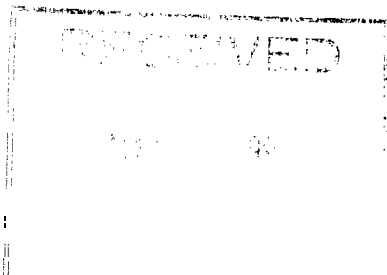


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

STEVEN SCHMIDT,

Plaintiff

vs.

JOHN DOE, a/k/a E.T. HOWELL
and CREDIT BUREAU OF ATHENS,
INC.,

Defendants

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DOCKET NO: 95-6-ATH(Df)

Honorable Duross Fitzpatrick

DEFENDANT CREDIT BUREAU OF ATHENS, INC.'S RESPONSE TO PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS AND DEFENDANT'S CROSS-MOTION
FOR JUDGMENT ON THE PLEADINGS AND IN THE ALTERNATIVE
MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant CREDIT BUREAU OF ATHENS, INC. ("CBA")
and files its response to Plaintiff's Motion for Judgment on the
Pleadings, and files its Cross Motion for Judgment on the
Pleadings, and in the Alternative Motion for Summary Judgment,
as follows:

I.

CASE PROCEEDINGS

On or about January 11, 1995, Plaintiff filed his Complaint
in this Court against E.T. Howell and CBA. Defendant E.T.
Howell has not been served to date, and therefore, is not subject
to the personal jurisdiction of this Court. Defendant CBA
acknowledged service of process, pursuant to FRCP 4, and
subsequently filed a Motion for More Definite Statement and to

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Strike pursuant to FRCP 12(e) and 12(f). By Order dated April 3, 1995, this Court denied Defendant CBA's Motions to Strike and for More Definite Statement, and required Defendant CBA to file an Answer to Plaintiff's Complaint. While Defendant CBA did not know the specific statutory basis for paragraph 9(c) of Plaintiff's Complaint, Defendant CBA denied the material allegations in Plaintiff's Complaint, and specifically denied that a previous employee, E.T. Howell, was attempting to collect a debt, pursuant to the FDCPA, when sending a request to Plaintiff's employer for employment location verification. On April 10, 1995, Plaintiff filed his Motion for Judgment on the Pleadings, pursuant to FRCP 12(c). On April 14, 1995, Defendant CBA files its Motion to Stay filing its response to Plaintiff's Motion for Judgment on the Pleadings, until the end of discovery. On April 17, 1995, this Court sent a Rule 16 and 26 Order. On April 24, 1995, this Court denied Defendant's Motion to stay its response.

II.

SCOPE OF REVIEW

Defendant Credit Bureau of Athens, Inc. understands this Court will only consider those matters which are contained within the pleadings or those matters which are attached pursuant to FRCP 10(c) which is considered a part of the pleadings for purposes of a Rule 12(c) Motion. Therefore, matters outside the

pleadings cannot be considered, unless the parties are accorded appropriate notice and opportunity to conduct discovery on matters which the Court would consider outside of the pleadings. See Chandler vs. Couahlin, 763 F.2d 110, 113 (2nd Cir. 1985); Telecommunications of Key West vs. United States, 757 F2d 1330, 1335 (D.C. Cir. 1985); Finn vs. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). However, Defendant is asking this Court to consider matters outside of Plaintiff's Complaint, and convert this to a Motion for Summary Judgment, pursuant to FRCP 56. Specifically, Defendant is filing the Affidavit of Joyce Fountain, Collection Manager of Defendant CBA. In that affidavit, Ms. Fountain explains the reason for the employment location verification letter which is the subject matter of Plaintiff's Complaint.

III-

ARGUMENT OF LAW AND CITATION OF AUTHORITY

- A. Defendant CBA's letter sent to Plaintiff's employer to verify employment location information does not violate 15 U.S.C. §1692b(1).

Plaintiff alleges that Defendant CBA improperly attempted to verify employment location information, about the Plaintiff, by sending a letter requesting employment location verification to Plaintiff's employer. This communication is attached as Exhibit "A" to Plaintiff's Motion. The FDCPA allows for a debt collection agency to obtain employment location information about

a consumer from third-parties pursuant to 15 U.S.C. §1692a(7) and 15 U.S.C. §1692b(1). In review of Exhibit "A", Defendant's employee, at that time, was E.T. Howell. Mr. Howell had to identify the company that he was employed in order for the Plaintiff's employer to know where to send the response, and which was in response to directions given by the personnel department at Carrier Transicoid. Defendant CBA limited the employment verification inquiry to only confirming employment location information about Steven Schmidt.

As Plaintiff's employer would not allow for employment location information to be given over the telephone, Defendant CBA had to make the subject employment verification request in writing. As shown by the Affidavit of Joyce Fountain, ¶15, an attempt was made to verify employment location, on Plaintiff, by telephone on January 12, 1994, but was told that all requests, to verify employment location information, had to be made in writing. Defendant CBA's action was in response to the employment policy of Plaintiff's employer, Carrier Transicoid. In fact, the legislation proposed in Congress, and subsequently passed, has allowed for the use of either the telephone, the mails (except for postcards) and telegrams. See H.R. 13720, 94th Congress, Second Session, §803 (1976); §.918, 95th Congress, First Session, §804 (1977); (15 U.S.C. §1692a(2)).

B. Defendant CBA's letter did not violate 15 U.S.C. §1692b(5).

Pursuant to 15 U.S.C. §1692b(5), a collection agency may not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business, or that the communication relates to the collection of a debt.

Defendant CBA is in the business of mortgage loan processing, as well as being a credit reporting agency and collection agency. (§3, Affidavit of Joyce Fountain). Further, it sells various services of Equifax to companies who need to use credit bureau services. The subject employment location verification letter, Exhibit "A" to Plaintiff's Motion, has a list of those services in the bottom right hand corner of the letter. However, it does not indicate by its name or services that it is the purpose of the subject employment verification letter to seek information on a "debtor". The subject employment location verification letter contains no information which would lead anyone at Carrier Transicold to be put "on notice" that it is attempting to collect a debt of Steven Schmidt. 15 U.S.C. §1692a(2) defines the term "communication" as conveying information regarding a debt. 15 U.S.C. §1692c(b) refers to communication "in connection with the collection of a debt".

Therefore, the term "communication" does not include situations where the debt collector does not convey information about the debt. Defendant CBA contends that it was not attempting to collect any debt by verifying employment location information. Normally the attempts to collect a debt are evidenced by including the notice required under 15 U.S.C. §1692e(11), that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Clearly, the absence of any collection language cannot be interpreted that Defendant CBA is attempting to collect a debt owed by Stephen Schmidt.

The US Congressional history, as contained in 1977 US Code Congressional and Administrative News, page 1698, states that, "The debt collector may not place any language or symbol on mail to third persons indicating that the mail relates to debt collection..." Clearly, in Defendant CBA's letter to Carrier Transicold, Plaintiff's employer, there was no language or symbol placed on that letter which would indicate or disclose to a third party that the matter pertains to debt collection. Consideration of the subject letter, as a whole, clearly shows there was only one purpose, in using the subject letter, and that was to only verify employment location information on Stephen Schmidt.

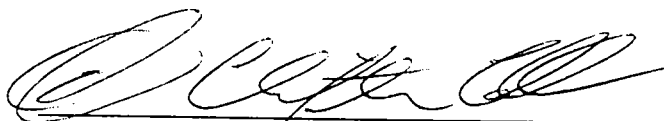
CONCLUSION

Defendant CBA sent a written request to Plaintiff's employer in order to verify employment location information on Plaintiff. Defendant CBA had to submit the request, in writing, at the request of Plaintiff's employer. There is no language or symbol on Defendant CBA's letter which would indicate that it was trying to collect a debt owed by Steven Schmidt. Due to the numerous business activities which Defendant CBA's business is comprised, one would have to stretch the imagination to find that it is debt collection activity being conducted. Further, this activity could not be considered to be debt collection activity.

Defendant requests this court to dismiss Plaintiff's Complaint and return a judgment in favor of Defendant on its Motion for Judgment on the Pleadings, pursuant to FRCP 12b, or in the alternative for Summary Judgment pursuant to FRCP 56, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

GREER, KLOSIK AND DAUGHERTY



H. CLIFTON COBB
Attorney for Defendant CBA
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(404) 252-2020

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

MAY - 5 1985

STEVEN SCHMIDT

Plaintiff

vs.

JOHN DOE, a/k/a E.T. HOWELL
and CREDIT BUREAU OF ATHENS,
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Defendants

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DOCKET NO: 95-6-ATH (DF)

Honorable Duross Fitzpatrick

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF CLARKE

Personally appeared before the undersigned officer, duly authorized to administer oaths JOYCE FOUNTAIN, who, after being duly sworn, states the following:

1.

That I am over the age of eighteen (18) and have personal knowledge as to the facts set forth in this Affidavit.

2.

This Affidavit is given for the purpose of being used by the Defendant in its response to Plaintiff's Motion for Judgment on the Pleadings and Defendant's Cross Motion for Judgment on the Pleadings, and in the Alternative, Motion for Summary Judgment, in the above-captioned case; and if called as a witness, Affiant could and would competently testify to the within and foregoing facts from her own personal knowledge.

3.

Affiant is employed as the Collection Manager of Credit Bureau of Athens, Inc. ("CBA"). CBA provides a variety of services, including collections, credit reporting, employment reports, business reports, and mortgage reports for a variety of industries. As a part of the mortgage reporting process, employments of loan applicants are verified.

4.

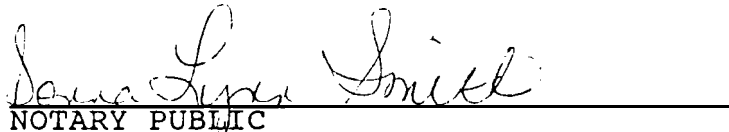
Affiant is familiar with the account of Steven Douglas Schmidt, which was referred to CBA by St. Mary's Hospital, Inc. for collection of a medical debt owed by Steven Schmidt.

Part of Affiant's employment duties, with CBA, are to use the computer to answer matters pertaining to collection accounts which, at times, includes reviewing "computer notes" that are entered on a daily basis at the time the specific account activity is taking place. The "computer notes" on the account, of Steven Schimdt, are kept in the ordinary course of business by CBA, and it is the business of CBA to make such notes. In reviewing those "computer notes", there was a "computer note" which showed that an attempt to verify employment location information, on Steven Schimdt, was made on January 12, 1994. This was done as there was a returned check originally issued by Steven Schimdt in the amount of \$50.00, dated December 27, 1993. A call was made to the personnel department at Carrier Transicold. A CBA employee was told that any requests for employment location verification would have to be done in writing and could not be done over the telephone. Therefore, an employment location verification form was sent by CBA, signed by E.T. Howell of the CBA.

FURTHER AFFIANT SAYETH NOT.


 JOYCE FOUNTAIN
 Collection Manager

Sworn to and subscribed
 before me this 3rd day of
 May, 1995.


 NOTARY PUBLIC

My Commission Expires: Notary Public, Madison, Wis.
 My Commission Expires: 12/31/1995

