IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
May 30, 2018
Lyle W. Cayce
Clerk

No. 17-41071
Summary Calendar

SHIRLEY INFANTE,

Plaintiff - Appellee

v.

LAW OFFICE OF JOSEPH ONWUTEAKA, P.C.; JOSEPH ONWUTEAKA, individually,

Defendants - Appellants

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:14-CV-324

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Joseph Onwuteaka is a lawyer and the sole owner of the Law Office of Joseph Onwuteaka, P.C. He and his wife are the owners and managing members of Samara Portfolio Management, L.L.C.[1] Until 2014, Samara was in

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[1] For the sake of simplicity, we refer to Onwuteaka and his firm collectively as "Onwuteaka." We refer to the law firm separately as "Onwuteaka, P.C." We refer to Samara Portfolio Management, L.L.C., as "Samara."

the business of buying debts and referring them to Onwuteaka for collection. Between 2008 and 2012, Onwuteaka filed nearly 2,000 cases on Samara's behalf—many against borrowers who lived far from the courthouse in Houston where he filed the lawsuits. So fecund a filer was he that the court even assigned Onwuteaka a "frequent filer" number.

Eventually, some of the defendants fought back, filing counterclaims alleging violations of state and federal consumer protection laws. In response, Onwuteaka would routinely dismiss Samara's claims. Many of the defendants in the collection cases would likewise drop their claims. But some persisted. Indeed, this is not our first encounter with Onwuteaka. In another case, we affirmed a judgment against him for violations of federal consumer protection laws, including an award of $1,000 in statutory damages and over $72,000 in fees and costs. *Serna v. Law Office of Joseph Onwuteaka, P.C.*, 614 F. App'x 146, 147-48, 150, 159 (5th Cir. 2015) (per curiam). In time, Onwuteaka caught the attention of the State of Texas. Texas ultimately secured a $25,000,000 judgment against him in state court, along with over $500,000 in attorneys' fees. *See Texas v. Samara Portfolio Mgmt., LLC*, No. 2013-35721 (80th Dist. Ct., Harris County, Tex. July 14, 2017).

I.

With this background, we turn to the matter at hand. In June 2013, two weeks after Texas filed its lawsuit against Onwuteaka, Onwuteaka filed a lawsuit against Shirley Infante. Infante is a 64-year-old resident of Beaumont, Texas. Incensed that Onwuteaka would try to hale her into court in Houston, Infante enlisted the services of a legal aid organization. Roughly six months after Infante filed an answer in the state-court litigation, Onwuteaka nonsuited. Infante then sued Onwuteaka, Onwuteaka, P.C., and Samara in federal court, alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p. The defendants moved to dismiss, and

both parties moved for summary judgment. The district court denied the defendants' motions and granted summary judgment in Infante's favor. The court thereafter held a trial on damages and awarded the maximum of $1,000 in statutory damages.[2] *See* 15 U.S.C. § 1692k(2)(A). Onwuteaka appeals.[3]

II.

"We review a grant of summary judgment de novo, applying the same standard as the district court." *Vela v. City of Houston*, 276 F.3d 659, 666 (5th Cir. 2001). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Onwuteaka raises four arguments on appeal. First, he argues that neither he nor his firm qualifies as a "debt collector" under the FDCPA. Second and third, he argues that two statutory exceptions to the "debt collector" definition apply. Fourth, he argues that there is insufficient evidence of a covered "debt." His arguments concerning the statutory exceptions have been forfeited on appeal. The rest lack merit. We consider each in turn.

A.

Under the FDCPA, a "debt collector" is one whose "principal purpose . . . is the collection of any debts" or "who regularly collects or attempts to collect . . . debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). This definition describes two types of debt collectors: those whose "principal purpose" is debt collection and those who "regularly collect" others'

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[2] To date, two other district courts in this circuit have also awarded the statutory maximum in FDCPA cases brought against Onwuteaka. *Alaniz v. Law Office of Joseph Onwuteaka, P.C.*, No. 5:15-CV-00587, 2015 WL 13545188, at *3 (W.D. Tex. Dec. 4, 2015); *Serna v. Law Office of Joseph Onwuteaka*, PC, No. 4:11-CV-3034, 2014 WL 109402, at *10 (S.D. Tex. Jan. 10, 2014), *aff'd*, 614 F. App'x 146.

[3] Onwuteaka has represented himself in this litigation, just as he did in *Serna*. *See* 614 F. App'x at 147.

debts. *See Garrett v. Derbes*, 110 F.3d 317, 318 (5th Cir. 1997). A "creditor," by contrast, is "any person who offers or extends credit creating a debt or to whom a debt is owed." 15 U.S.C. § 1692a(4).

While the dispositive motions in this case were pending, the Supreme Court held that debt purchasers who collect for their own accounts are not "debt collectors" under the "regularly collects" alternative. *See Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721-22 (2017). Recognizing that she had not pleaded the "principal purpose" alternative, Infante conceded that her complaint no longer stated a claim against Samara, at least not in its present form. Citing the potential for delay, she declined to seek leave to amend.

On appeal, Onwuteaka claims that he deserves "creditor" status by proxy. His argument (though only barely more elaborate than those he has forfeited) seems to run as follows: Samara owns the debts, Onwuteaka owns Samara, and therefore Onwuteaka owns the debts. According to this argument, because Onwuteaka owns the debts, he was not collecting *another's* debts and is therefore not a debt collector under the "regularly collects" alternative. Onwuteaka never clarifies why, in his view, that status should also extend to Onwuteaka, P.C. He seems simply to assume it should based on common ownership.

Onwuteaka's creditor-by-proxy argument lacks support in the law and defies logic. Under Texas law, Onwuteaka, his limited liability company, and his professional corporation are distinct legal personalities. *Spates v. Office of Att'y Gen., Child Support Div.*, 485 S.W.3d 546, 550-51 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (limited liability company); *Newman v. Toy*, 926 S.W.2d 629, 631 (Tex. App.—Austin 1996, writ denied) (professional corporations). Onwuteaka could have bought the debts himself. Instead, he decided to take advantage of the benefits of limited liability. *See Shook v.*

Walden, 368 S.W.3d 604, 613 n.10 (Tex. App.—Austin 2012, pet. denied). But he must accept the bitter with the sweet. Samara—not Onwuteaka or Onwuteaka, P.C.—owns the debt. *Cf.* Tex. Bus. Orgs. Code § 101.106 ("A member of a limited liability company . . . does not have an interest in any specific property of the company."). Thus, Onwuteaka was collecting "debts . . . asserted to be owed or due another," not himself. 15 U.S.C. § 1692a(6).

Indeed, the pre-suit demand letters Onwuteaka sent to Infante both represented that Samara Portfolio Management was Onwuteaka's "client." "[T]he term 'debt collector' in the Fair Debt Collection Practices Act applies to a lawyer who 'regularly,' through litigation, tries to collect consumer debts." *Heintz v. Jenkins*, 514 U.S. 291, 292 (1995) (emphasis removed) (citation omitted). As if to underscore the point, both of the demand letters state at the bottom (albeit in conspicuously small type): "This Is An Attempt to Collect A Debt By A Debt Collector." We reject Onwuteaka's argument that he is not a debt collector by virtue of a legally distinct entity's ownership of the debt.

B.

After defining "debt collector," the FDCPA lists a number of exceptions to that definition, two of which Onwuteaka tries to invoke. *See* 15 U.S.C. § 1692a(6)(A), (B). The entirety of Onwuteaka's argument for the exceptions spans two short sentences—sentences in which he not only misstates the exceptions, but also fails to explain why either applies to this case and to provide citations to the factual record. We have already chastised Onwuteaka for his "conclusory" and "deficient" briefing. 614 F. App'x at 151, 159. We also admonished him that in opposing summary judgment, he "must not only 'identify specific evidence in the record,' but also 'articulate the "precise manner" in which that evidence'" supports his position. *Id.* at 152 (quoting *Willis v. Cleco Corp.*, 749 F.3d 314, 317 (5th Cir. 2014)). This is because "Rule 56 does not impose upon the district court [or the court of appeals] a duty to

sift through the record in search of evidence to support a party's opposition to summary judgment." *Id.* (alteration in original). Despite having already been sanctioned by this court for his "persistently deficient briefing and misrepresentation of legal authority," *id.* at 159, Onwuteaka once again asks this court to consider half-baked arguments devoid of legal citation or factual support. We again decline to do so.[4] *See id.* at 151-53 & n.8, 156-57, 159 n.14.

C.

Finally, Onwuteaka argues that there is insufficient evidence of a covered "debt." Under the FDCPA, a "debt" is "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5).

Onwuteaka's argument is difficult to follow because it merely recounts facts that have no obvious legal significance without explaining why they support his argument. *Cf. Serna*, 614 F. App'x at 152 (advising Onwuteaka that he must "articulate the 'precise manner' in which [the factual record] support[s]" his argument (quoting *Willis*, 749 F.3d at 317)). Onwuteaka explains that the complaint alleges that Infante bought two televisions from a Conn's store on an installment plan. But, significantly in Onwuteaka's view, Conn's Appliance, Inc., not Conn's, was the original creditor. Onwuteaka then highlights that Infante stipulated at the damages hearing that she did not produce any contract with Conn's Appliance, Inc., and that her testimony at the hearing provides no evidence of a relationship with the original creditor.

[4] Since filing this appeal, Onwuteaka has filed an appeal of the district court's post-judgment attorneys' fees award. *See Infante v. Law Office of Joseph Onwuteaka, P.C.*, No. 18-40231 (filed Mar. 16, 2018). He should carefully consider in that case whether his briefing adequately presents his arguments under our caselaw. *See United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010).

According to Onwuteaka, it follows—as night the day—that Infante has failed to prove a debt.

His argument misses the mark. The FDCPA's definition of "debt" includes "any . . . *alleged* obligation." 15 U.S.C. § 1692a(5). It is undisputed that Onwuteaka sent two demand letters and filed a lawsuit alleging that Infante owed a debt to *Conn's Appliance, Inc.*, and demanding payment. Moreover, Infante produced two retail installment contracts with *Conn's Credit Corporation*, *Inc.* To the extent Onwuteaka is playing a semantic game, his argument is not well taken. Even assuming that Conn's Appliance, Inc., is not the original creditor, any error in identifying the original creditor is entirely of Onwuteaka's making. He failed to identify the original creditor correctly in his demand letters and state-court petition. Because the FDCPA covers alleged debts, *see* 15 U.S.C. § 1692a(5), his failure matters not a whit.

III.

In sum, all of Onwuteaka's claims of error fail. We find no ground upon which to reverse the district court. For the foregoing reasons, we AFFIRM.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BILL OF COSTS

NOTE: The Bill of Costs is due in this office *within 14 days from the date of the opinion, See* FED. R. APP. P. & 5TH CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

_____ **v.** _____ **No.** _____

The Clerk is requested to tax the following costs against: _____

COSTS TAXABLE UNDER Fed. R. App. P. & 5th Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee ($500.00)								
Appendix or Record Excerpts								
Appellant's Brief								
Appellee's Brief								
Appellant's Reply Brief								
Other:								
				Total $ _____				Costs are taxed in the amount of $ _____

Costs are hereby taxed in the amount of $ _____ **this** _____ **day of** _____, _____.

LYLE W. CAYCE, CLERK

State of
County of _____

By _____
Deputy Clerk

I _____, **do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This** _____ **day of** _____, _____.

_____
(Signature)

***SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS**

Attorney for _____

FIFTH CIRCUIT RULE 39

39.1 Taxable Rates. *The cost of reproducing necessary copies of the brief, appendices, or record excerpts shall be taxed at a rate not higher than $0.15 per page, including cover, index, and internal pages, for any for of reproduction costs. The cost of the binding required by 5TH CIR. R. 32.2.3that mandates that briefs must lie reasonably flat when open shall be a taxable cost but not limited to the foregoing rate. This rate is intended to approximate the current cost of the most economical acceptable method of reproduction generally available; and the clerk shall, at reasonable intervals, examine and review it to reflect current rates. Taxable costs will be authorized for up to 15 copies for a brief and 10 copies of an appendix or record excerpts, unless the clerk gives advance approval for additional copies.*

39.2 Nonrecovery of Mailing and Commercial Delivery Service Costs. *Mailing and commercial delivery fees incurred in transmitting briefs are not recoverable as taxable costs.*

39.3 Time for Filing Bills of Costs. *The clerk must receive bills of costs and any objections within the times set forth in FED. R. APP. P. 39(D). See 5TH CIR. R. 26.1.*

FED. R. APP. P. 39. COSTS

(a) ***Against Whom Assessed.*** The following rules apply unless the law provides or the court orders otherwise;

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) ***Costs For and Against the United States.*** Costs for or against the United States, its agency or officer will be assessed under Rule 39(a) only if authorized by law.

©) ***Costs of Copies*** Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) ***Bill of costs: Objections; Insertion in Mandate.***

(1) A party who wants costs taxed must – within 14 days after entry of judgment – file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must – upon the circuit clerk's request – add the statement of costs, or any amendment of it, to the mandate.

(e) ***Costs of Appeal Taxable in the District Court.*** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

May 30, 2018

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 17-41071 Shirley Infante v. Samara Portfolio Mgmt, L.L.C., et al
USDC No. 1:14-CV-324

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

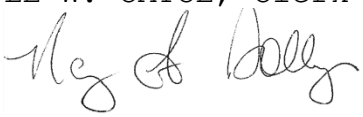
Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that defendants-appellants pay to plaintiff-appellee the costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk



By:_____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. Joseph Onwuteaka
Mr. Richard Tomlinson