SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3156-22

ABDELFATTAH MHREZ,

Plaintiff-Appellant,

v.

CONVERGENT OUTSOURCING, INC.,

Defendant-Respondent.

Submitted April 16, 2024 – Decided June 5, 2024

Before Judges Puglisi and Bergman.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-0394-22.

Zemel Law, LLC, attorneys for appellant (Daniel Zemel and Nicholas Joseph Linker, on the briefs).

Sessions, Israel & Shartle, attorneys for respondent (Aaron R. Easley and Jay I. Brody, on the brief).

PER CURIAM

Plaintiff Abdelfattah Mhrez appeals from the Law Division's orders dated April 19, 2023, dismissing his amended complaint against defendant Convergent Outsourcing, Inc. and May 26, 2023, denying his motion for reconsideration. We affirm.

Plaintiff incurred a personal debt which the lender transmitted to defendant, a debt collector. Defendant engaged a third-party letter vendor to create and mail plaintiff a collection letter. The letter included plaintiff's name and address, the creditor's name and the balance amount of the debt.

On January 31, 2022, plaintiff filed a complaint claiming defendant violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692 to 1692p, by sharing plaintiff's personal information to a third party. Defendant removed the case to federal court, which remanded it back to state court, and then defendant filed a motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e).

After hearing argument on the motion, Judge Veronica Allende issued an order and comprehensive opinion granting defendant's motion.[1] The judge first noted the plain language of the FDCPA, which prohibits a debt collector from

[1] Although plaintiff is not appealing this order, we consider it because it informs the subsequent order and opinion on appeal.

communicating, "in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector." 15 U.S.C. § 1692c(b). The judge found a third-party mailing vendor is "a person other than the consumer" and not one of the exceptions listed in the FDCPA, and defendant "must [have] communicate[d] with the mailing vendor to share the necessary consumer information to print and send the collection letter." The judge further found:

> In viewing [p]laintiff's complaint with liberality as required, the court finds that this factual allegation at the very least suggests that [d]efendant shared [p]laintiff's information with a person employed by the mailing vendor, although the complaint does not make this specific allegation. If [p]laintiff is able to prove this suggested factual allegation before a fact-finder, they would, at best prove that [d]efendant committed a purely procedural violation of the FDCPA. A procedural violation on its own, however, is not enough to establish an injury-in-fact.

After surveying published and unpublished state and federal court decisions and interpretive statements and guidance issued by federal agencies, the judge concluded plaintiff's complaint failed to establish a concrete injury. The judge noted the FDCPA was passed in part "to eliminate abusive debt collection practices by debt collectors," 15 U.S.C. § 1692, and found:

> The facts alleged in [p]laintiff's [c]omplaint simply do not implicate the purpose for which the statutory protection exists. No facts are presently alleged that would permit a conclusion that the alleged supplying of information by the debt collector to the letter vendor was in any way intended to, or had or could have had the effect of, harassing, embarrassing, or humiliating the debtor or was otherwise undertaken for any reason other than legitimate collection activities directed to the debtor.

Accordingly, the judge dismissed the complaint without prejudice and granted plaintiff leave to file an amended complaint. After plaintiff filed an amended complaint, defendant again filed a motion to dismiss.

The motion was heard by Judge Kimberly Espinales-Maloney, who issued a written decision and order granting defendant's motion and dismissing plaintiff's complaint without prejudice. The judge noted the motion was "set on the backdrop of" Judge Allende's opinion finding plaintiff failed to allege facts sufficient to show a violation of the FDCPA. Judge Espinales-Maloney determined plaintiff's amended complaint did not cure the deficiencies identified by the prior opinion and therefore could not survive the motion to dismiss.

The judge acknowledged the salient facts of the case were undisputed: defendant sent information regarding plaintiff's alleged debt to a letter vendor, which was not one of the six persons or entities authorized by §1692c(b) to communicate with defendant about the debt. The judge then considered the

complaint in light of the legislative intent of the FDCPA which, as Judge Allende found, was to eliminate abusive debt collection practices.

The judge found plaintiff's allegation defendant used a letter vendor to create a debt collection letter was "abstract" and

> alone [did] not show that [defendant]'s conduct was abusive, deceptive, or unfair. Simply put, this is not the type of conduct that Congress was interested in preventing. The case may be different if [p]laintiff can genuinely allege that something about this particular transaction between [defendant] and the letter vendor was abusive. But there are no allegations to support such a finding. The most harmful allegations are that the use of a letter vendor "created a substantial risk of harm" and "increased the likelihood of additional improper third party disclosures." There is no allegation within the amended complaint that [defendant] actually abused information about [p]laintiff or [his] alleged debt.

After dismissing the complaint, the judge denied plaintiff's subsequent motion for reconsideration by order and written decision, finding plaintiff renewed the same arguments raised in the initial motions and did not demonstrate the court's decision was reached on a palpably incorrect basis or failed to appreciate the evidence. This appeal follows.

We review de novo a motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e). Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021)

(citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)).

In considering a Rule 4:6-2(e) motion, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). "The essential test [for determining the adequacy of a pleading] is simply 'whether a cause of action is "suggested" by the facts.'" Green v. Morgan Props., 215 N.J. 431, 451-52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). "At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of [the] plaintiffs to prove the allegation contained in the complaint." Printing Mart-Morristown, 116 N.J. at 746.

"[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Dimitrakopoulos, 237 N.J. at 107. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Plaintiff argues the trial court erred in dismissing the complaint by ignoring several conventions of statutory interpretation; specifically, the court should not have considered anything beyond the text of the statute because its plain meaning is clear and unambiguous; the court should have given greater weight to federal court decisions because the FDCPA is a federal statute; and the court should have interpreted the statute to the benefit of the consumer. We disagree and affirm substantially for the reasons set forth the court's thoughtful and well-reasoned decision. We add the following comments.

Plaintiff's amended complaint alleged defendant "employed the use of a third-party vendor . . . to send a letter to [p]laintiff seeking to collect the alleged debt." The complaint claimed "[p]laintiff's information has been exposed to a third party that understands the data received and applies its quality control procedures" to the data, "employees of [the vendor] have the ability to access [p]laintiff's personal and protected data" and, because the vendor's employees "provide the letter to the United States Post Office for mailing," they "have either explicit or implicit knowledge of the fact that [p]laintiff is an alleged debtor."

We discern no error in the trial court's examination of the statute in the context of the legislative intent because it was "unsettled" whether defendant's

conduct was proscribed by the FDCPA. We agree with the trial court that plaintiff's allegations defendant "created a substantial risk of harm" and "increased the likelihood of additional improper third party disclosures" were abstract and insufficient to sustain a cause of action. Even when providing every favorable inference to the allegations in plaintiff's complaint, nothing in it alleged defendant's conduct was abusive, deceptive or unfair, which is the harm Congress intended to prevent.

Because the trial court correctly dismissed plaintiff's complaint, we discern no abuse of discretion in its denial of the motion for reconsideration. See Branch v. Cream-O-Land Diary, 244 N.J. 567, 582 (2021).

To the extent we have not expressly addressed any issues raised by plaintiff, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.