Circuit Court for Prince George's County
Case No. CAL-16-38707

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 177

September Term, 2017

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DAWUD J. BEST

v.

COHN, GOLDBERG AND DEUTSCH, LLC

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Berger,
Fader,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: August 29, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Dawud J. Best appeals the dismissal of his First Amended Complaint against the law firm of Cohn, Goldberg & Deutsch, LLC ("Cohn"), in which he alleges violations of the Fair Debt Collection Practices Act ("FDCPA") and the Maryland Consumer Debt Collection Act ("MCDCA"). For the reasons discussed below, we affirm in part and reverse in part.

## FACTUAL AND PROCEDURAL BACKGROUND

When we review the sufficiency of the complaint to survive a motion to dismiss we assume as true the facts alleged in the complaint. As stated in the First Amended Complaint, Mr. Best, in 2007, executed a note and deed of trust associated with the purchase of residential property in Cheverly, Maryland. Later, Mr. Best received three letters from Cohn, all dated October 13, 2015, in which Cohn represented that the firm had been retained by Capital One, N.A. to "take legal action," including the initiation of foreclosure proceedings. The letters stated that the note was in default, identified Federal National Mortgage Association ("FNMA") as the owner of the note, and identified Capital One, N.A. as the servicer.[1]

[1] The complaint further alleged that on November 15, 2015, Mr. Best mailed a debt validation letter to Cohn but received no response, and that thereafter, on December 18, 2015, Mr. Best contacted Cohn for an explanation as to why no response was provided. In that call, Mr. Best was advised that Cohn had "closed" the file and that the firm would be taking "no further legal action." In his reply brief, Mr. Best points to these allegations to argue that Cohn's failure to respond to the debt validation letter constitutes a sufficient claim under 15 U.S.C. § 1692g to survive dismissal. 15 U.S.C. § 1692g(b) requires that if the debt collector receives written notification of a dispute, "the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt." On its face, the complaint acknowledges that the firm—assuming it received the debt validation letter, which it denies in its Motion to Dismiss—complied with 15 U.S.C. § 1692g(b) by ceasing all collection activity.

Brock & Scott PLLC took over the account from Cohn and sent a letter to Mr. Best identifying Capital One, N.A. as the current creditor of the mortgage account. The complaint alleged that the Brock & Scott PLLC letter contradicted Cohn's letters, which, about four months earlier, identified FNMA as the creditor.

In Count I of the complaint, Mr. Best alleged that Cohn violated the FDCPA by (i) mispresenting that it was the trustee under the deed of trust and had the right to enforce the note and deed of trust, (ii) attempting to collect a debt it had no right to collect, and (iii) failing to identify the true creditor in its initial letter to appellant.[2] In Count II of the complaint, Mr. Best alleged that Cohn simultaneously violated the MCDCA[3] by threatening to foreclose when it had no legal right to do so.

Mr. Best filed his initial complaint on October 13, 2016, and Cohn moved to dismiss. Mr. Best then filed the First Amended Complaint. Cohn again moved to dismiss, which Mr. Best opposed. By order entered March 3, 2017, the circuit court, without a hearing, summarily granted Cohn's motion and dismissed the First Amended Complaint with prejudice. When the circuit court denied Mr. Best's motion to alter or amend the judgment, Mr. Best filed a timely notice of appeal.

Mr. Best raises two questions for our review, which we have slightly rephrased:

[2] Mr. Best specifically alleged violations of 15 U.S.C. §§ 1692e(2), (5), (10), 1692f(6); and 1692g(a)(2).

[3] Mr. Best specifically alleged a violation of Md. Code Ann., Comm. Law § 14-202(8), which provides: "In collecting or attempting to collect an alleged debt a collector may not … (8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist."

1. Did the circuit court err when it dismissed the complaint with prejudice?

2. Did the circuit court err and/or commit a plain error when it dismissed appellant's case, contrary to the provisions set forth in Md. Rule 2-201, when it failed to allow the opportunity for the real party in interest to be identified and to pursue the action?

We answer the first question in the affirmative as to Count I and the allegation that Cohn misidentified the creditor in violation of 15 U.S.C. § 1692g(a)(2), and reverse the dismissal as to Count I only. As to Count II, we affirm the circuit court's judgment of dismissal. We do not need to reach the second question.[4]

## DISCUSSION

We reverse the circuit court's dismissal of Count I because Mr. Best has alleged sufficient facts to state a claim that Cohn violated the FDCPA when it incorrectly identified the then-current creditor in its letters to Mr. Best. The complaint alleged that if Brock & Scott, PLLC correctly identified Capital One, N.A. as the creditor, then Cohn incorrectly identified Federal National Mortgage Association as the current creditor in its letters sent four months earlier. While the allegation is conditional in tone, we must credit any reasonable inferences in favor of Best. In other words, the complaint must be read as adequately alleging that the Cohn letters misidentified FNMA as the current creditor.

[4] We note that the appellant's second question is based on the assumption that the circuit court dismissed the case on grounds that Mr. Best was not the real party in interest and thereby not entitled to prosecute the action. Maryland Rule 2-201 provides, in pertinent part: "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest." The circuit court did not detail its reasoning or the specific basis for dismissing the case, but there is nothing to suggest that the circuit court dismissed the case on the grounds that Mr. Best was not the real party in interest.

Under Section 1692g(a) of the FDCPA, Cohn was required to accurately identify "the name of the creditor to whom the debt is owed." 15 U.S.C. § 1692g(a)(2). The failure to do so is grounds for imposing liability against a debt collector under the FDCPA. *See, e.g., Wallace v. Washington Mutual Bank, F.A.*, 683 F.3d 323, 327-8 (6th Cir. 2012) (holding that plaintiff's allegations that a foreclosure complaint misidentified the holder of the mortgage was sufficient for the FDCPA complaint to survive a motion for dismissal on the pleadings); *Bourff v. Rubin Lublin, LLC*, 674 F.3d 1238, 1241 (11th Cir. 2012) (vacating dismissal where allegations of the complaint, taken as true, alleged that a collection letter misidentified the creditor where the creditor identified was an assignee of the debt for purposes of collection, and not a "creditor" as that term is defined by 15 U.S.C. § 1692a(4)); *Wheeler v. Codilis & Assocs., P.C.*, No. 13-3093, 2013 WL 6632125, at *4-5 (N.D. Ill. Dec. 16, 2013) (denying motion to dismiss § 1692g(a)(2) claim where plaintiffs alleged that defendant misidentified the current creditor); *Schneider v. TSYS Total Debt Mgmt., Inc.*, No. 06-345, 2006 WL 1982499, at *4 (E.D. Wis. July 13, 2006) (denying motion to dismiss where plaintiff alleged that reference to "Target" was inadequate under § 1692g(a)(2), when creditor's name was "Target National Bank").

As to the balance of the violations alleged in Count I, and the single alleged violation of the MCDCA alleged in Count II, the complaint failed to state sufficient allegations that, if true, would impose liability on Cohn under 15 U.S.C. §§ 1692e(2), (5), (10), and f(6), or Md. Code Ann., Comm. Law, §14-202(8). Specifically, there was no allegation in the complaint that Cohn represented that any members or the firm had been appointed as the trustee under the deed of trust, or that Cohn, by its letters, threatened to undertake any

action not permitted by law. Nor did the complaint allege that the loan documents were not in default or that the secured creditor, whether it was Capital One, N.A. or FNMA, lacked the authority to pursue its collection remedies, including foreclosure.[5] Likewise, there were no allegations that Cohn was not retained by the secured creditor, that Cohn's letters falsely represented the amount or status of the debt,[6] threatened any action the creditor could not or did not intend to take,[7] used any false or deceptive means in an attempt to collect the debt,[8] threatened to take any non-judicial action to effect dispossession or disablement of property,[9] or threatened to enforce a right with knowledge that the right does not exist.[10] Absent such allegations, Best's claims under 15 U.S.C. § 1692e(2), (5), (10), and f(6) and Md. Code Ann., Comm. Law, §14-202(8), all fail. And, because the sole claim contained in Count II of the complaint was based upon Md. Code Ann., Comm. Law, § 14-202(8), the circuit court correctly dismissed that count.

[5] In the First Amended Complaint and by implication in Mr. Best's briefs, is the contention that neither Cohn nor any of its attorneys were trustees or substitute trustees. This appears to be the underpinning of Mr. Best's argument that Cohn was without "legal authority" to take any action in regard to the note and the deed of trust. The creditor in this case clearly had the authority to pursue its collection remedies and to retain counsel for that purpose. Maryland Rule 14-207(b)(4) does not require a deed of appointment of substitute trustees to be filed prior to the filing of an order to docket to foreclose.

[6] *See* 15 U.S.C. §1692e(2).

[7] *See* 15 U.S.C. §1692e(5).

[8] *See* 15 U.S.C. §1692e(10).

[9] *See* 15 U.S.C. §1692f(6).

[10] *See* Md. Code Ann., Comm. Law, §14-202(8).

## CONCLUSION

We reverse the dismissal of Count I of the First Amended Complaint as to 15 U.S.C. § 1692g(a)(2) and remand for further proceedings. We otherwise affirm the dismissal of Count II. In reversing in part the circuit court's dismissal of Count I, we express no comment on the merits of the claim, the impact of Mr. Best's bankruptcy filing on this litigation, or any defenses available to Cohn.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.**