

Circuit Court for Anne Arundel County  
Case No. C-02-CV-16-002931

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1872

September Term, 2017

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EDMUND AWAH

v.

WELLS FARGO DEALER SERVICES, INC.

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Wright,  
Berger,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: January 31, 2019

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Anne Arundel County, Edmund Awah, the appellant, filed a seven-count complaint against Wells Fargo Dealer Services, Inc. (“Wells Fargo”), the appellee, asserting a claim for unfair and deceptive trade practices under the Maryland Consumer Protection Act, Md. Code Ann. (1975, 2013 Repl. Vol.), Comm. Law §§ 13-101–13-501 (Count I); for violations of the Maryland Consumer Debt Collection Act, Comm. Law §§ 14-201–14-204 (Counts II-V); for intrusion upon seclusion (Count VI); and for fraud (Count VII). Wells Fargo’s motion for summary judgment was denied. The case was tried to a jury and, at the close of Mr. Awah’s case, the court granted Wells Fargo’s motion for judgment on all counts.

Mr. Awah’s claims arose from an \$11,017.70 consumer loan extended to him to finance the purchase of a used car. The loan was assigned to Wells Fargo shortly after it was made. One month after he purchased the car, Mr. Awah made a \$5,000 payment on the loan to Wells Fargo. He alleged he instructed Wells Fargo to apply the \$5,000 toward his monthly installment payments on the loan with the expectation that he would not need to make any monthly payments for 18 months. Instead, Wells Fargo applied the payment, in part, against his monthly payments (for three months) and, in part, against the principal of the loan. Three months later, Wells Fargo resumed billing Mr. Awah for installment payments on the loan, but he did not pay the bills. Ultimately, Wells Fargo agreed to “recast and adjust” the portion of the \$5,000 lump sum payment that was applied to the principal to apply it toward the monthly payments and refunded Mr. Awah late charges and fees.

At trial, Mr. Awah testified and called one witness, his wife, Linda Jones. Ms. Jones testified that Wells Fargo made 15 to 17 phone calls to Mr. Awah relative to the loan and that he became anxious and depressed as a result. On cross-examination, Ms. Jones confirmed that she was not a signatory to the loan and was not a participant in any of the phone calls between Mr. Awah and Wells Fargo. Mr. Awah testified about his intentions in making the lump sum payment, his conversations and correspondence with Wells Fargo, and the debt collection efforts. He did not testify about the total volume of calls, but said that he sometimes received three calls a day. He did not answer all the phone calls. In some of the phone calls and in written correspondence, Wells Fargo threatened to repossess Mr. Awah's car, though it did not follow through on that threat. Mr. Awah testified generally that the phone calls caused him emotional distress and that he met with a clinical psychologist as a result.

After Mr. Awah rested, the court granted Wells Fargo's motion for judgment on all counts. Mr. Awah appeals, challenging pre-trial rulings made by the court and its ruling on the merits of his claims. Preliminarily, he argues that the court erred by denying his motion *in limine* to exclude a witness for Wells Fargo, and to strike an affidavit filed by Wells Fargo in support of its motion for summary judgment. Wells Fargo did not call any witnesses at trial and its motion for summary judgment relying on the challenged affidavit was denied. Thus, because Mr. Awah could not have been prejudiced by either ruling, we need not decide if the court erred. Mr. Awah also challenges the court's decision to grant Wells Fargo's motion *in limine* to exclude

evidence of news coverage bearing on its “persistent corporate culture of fraudulent financial transactions.” The court did not abuse its broad discretion by excluding that evidence because it was not probative of Mr. Awah’s claims and because Mr. Awah was unprepared to proffer to the court what evidence he intended to present on that subject.

On the merits, the court did not err by granting judgment in favor of Wells Fargo. At trial, Mr. Awah did not introduce evidence of the terms of the loan between him and Wells Fargo.<sup>1</sup> Viewed in a light most favorable to Mr. Awah, the evidence showed that Wells Fargo misapplied the \$5,000 lump sum payment in contradiction of his instruction causing it to erroneously bill him for overdue payments and, upon realizing its mistake, corrected it in his favor. On Count I, there was no evidence that Wells Fargo, through its agents, made any material misrepresentations or false statements during its debt collection efforts in violation of the Maryland Consumer Protection Act or that their conduct caused Mr. Awah to suffer any actual damages. *See* Comm. Law §§ 13-303 & 13-408.<sup>2</sup> For the same reasons, on Count VII, Mr. Awah failed to prove by clear and

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<sup>1</sup> Mr. Awah moved to admit the loan document during his wife’s testimony, but the court declined to admit it because Ms. Jones was not a signatory to the loan and had no personal knowledge of its terms. Mr. Awah did not renew his motion to admit the exhibit during his testimony.

<sup>2</sup> Mr. Awah mistakenly believes he was not obligated to prove damages under the Maryland Consumer Protection Act. The statute he relies upon pertains to an enforcement action brought by the Division of Consumer Protection of the Office of the Attorney General. Comm. Law. § 13-302 (no damages necessary to show a violation of the Act). In a private cause of action, however, the plaintiff must prove that he or she suffered an “injury or loss . . . as a result of a practice prohibited by [the Act].” Comm. Law § 13-408(a).

convincing evidence that Wells Fargo engaged in fraud in their handling of the loan dispute. *See White v. Kennedy Krieger Inst., Inc.*, 221 Md. App. 601, 635 (2015) (citing *Hoffman v. Stamper*, 385 Md. 1, 29 (2005)) (discussing elements of a claim for fraud).

With respect to the Consumer Debt Collection Act counts, Mr. Awah did not provide any evidence in support of Count II that Wells Fargo’s agents made any disclosures affecting Mr. Awah’s reputation for credit worthiness “with knowledge that the information is false,” Comm. Law § 14-202(3), or in support of Counts IV and V that Wells Fargo’s agents were attempting to “enforce a right with knowledge that the right does not exist.” Comm. Law. § 14-202(8).

In Count III, Mr. Awah alleged that Wells Fargo violated Comm. Law § 14-202(6), which prohibits a debt collector from “communicat[ing] with the debtor . . . with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor.” The only evidence bearing on this count showed that Wells Fargo made 15 to 17 phone calls to Mr. Awah, some of which were answered and some of which were not, and that during some of those calls, Wells Fargo threatened to repossess Mr. Awah’s car. The court reasoned that because Mr. Awah provided little specificity about the content of the calls, he failed to meet his burden on this count. We perceive no error. *See Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 67 (1986) (testimony that debt collection agents called co-buyer on an automobile loan repeatedly, including in the middle of the night, and used harassing and abusive language despite her requests that the calls stop was sufficient to create a jury question under Comm. Law §

14-202(6)). For the same reasons, the court did not err by ruling that Mr. Awah failed to show that the volume and timing of the phone calls amounted to an intentional intrusion upon his seclusion that “would be highly offensive to a reasonable person.” *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 522 (2005) (quoting *Furman v. Sheppard*, 130 Md. App. 67, 73 (2000)).

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
THE APPELLANT.**