IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHADEE ABUSAAB	:	CIVIL ACTION
v.	:	
EQUIFAX INFORMATION SERVICES, LLC, et al.	:	NO. 05-5094

MEMORANDUM

Bartle, C.J. May 4, 2006

Plaintiff Shadee Abusaab has sued Equifax Information Services for alleged violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq.[1] Equifax has moved for partial summary judgment arguing that there is no factual basis for the plaintiff's claim for punitive damages, the plaintiff's state law claims of negligence, defamation, and false light are preempted, and that plaintiff does not state a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL").

In February, 2002 the plaintiff was involved in a three-car automobile accident in Philadelphia. Unbeknownst to Abusaab, one of the other drivers sued him in the Court of Common Pleas of Philadelphia County and received an award from arbitration. Abusaab did not know of the award until January,

1. Abusaab also sued Experian Information Solutions, Inc. as a defendant in this case. The plaintiff and Experian settled and on March 22, 2006 we entered an order dismissing the case as to Experian.

2005 when it appeared on his credit report. He immediately contacted an attorney and appealed the decision and award of the arbitrators. Arbitrators found in favor of Abusaab on June 22, 2005. Unfortunately, even though the award against him had been reversed, Equifax did not remove it from his credit report.

On several occasions, Abusaab disputed his credit report with Equifax arguing that the judgment should be removed though the parties dispute the number of times the plaintiff called the defendant. Despite plaintiff's efforts, Equifax did not remove the judgment. Contending its policies required it to remove the notation, Equifax asserts that its employees misread Abusaab's objection and listed the judgment as "satisfied." Abusaab again protested, insisting the errant information be completely removed. Equifax eventually requested its public records vendor check with the Court of Common Pleas of Philadelphia County, that is, the source of the information, and verify the accuracy of the judgment. The vendor reported that the judgment was accurate and that it had been satisfied. Despite repeated requests from Abusaab that were supported by extensive documentation, Equifax did not remove the judgment from plaintiff's credit report.

Rule 56 of the Federal Rules of Civil Procedure permits us to grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to

summary judgment as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 254. We review all evidence and make all reasonable inferences from the evidence in the light most favorable to the non-movant. See In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004). The non-moving party may not rest upon mere allegations or denials of the moving party's pleadings but must set forth specific facts showing there is a genuine issue for trial. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990).

To recover punitive damages pursuant to 15 U.S.C. § 1681n(a)(2), our Court of Appeals has held a plaintiff "must show that defendants knowingly and intentionally committed an act in conscious disregard for the rights of others, but need not show malice or evil motive." Cushman v. Trans Union Corp., 115 F.3d 220, 226 (3d Cir. 1997) (internal quotation omitted); Philbin v. Trans Union Corp., 101 F.3d 957, 970 (3d Cir. 1996); see also Lawrence v. Trans Union LLC, 296 F. Supp. 2d 582, 590 (E.D. Pa. 2003). "To justify an award of punitive damages, a defendant's actions must be on the same order as willful concealments or misrepresentations." Cushman, 115 F.3d at 227; Lawrence, 296 F. Supp. 2d at 590. The record reveals the existence of genuine issues of material fact as to whether Equifax willfully violated the FCRA. See Lawrence, 296 F. Supp.

2d at 590; Crane v. Trans Union LLC, 282 F. Supp. 2d 311 (E.D. Pa. 2003). Accordingly, the defendant's motion for summary judgment with respect to the plaintiff's punitive damage claim will be denied.

Equifax argues that the plaintiff's state law claims of negligence, defamation, and false light are preempted by § 1681h(e).[2] The FCRA provides Equifax immunity from state law causes of action identical or similar to those listed in § 1681h(e) unless it acted willfully. In Cushman, our Court of Appeals assumed without deciding that the requirements for a showing of willfulness under § 1681n are identical to showing willfulness under § 1681h(e). This court has held the standards are identical. See, e.g., Lawrence, 296 F. Supp. 2d at 590-91. Because there are genuine issues of material fact as to whether Equifax willfully violated the FCRA, summary judgment on the plaintiff's state law claims is inappropriate at this time.

Finally, defendant argues that plaintiff's claims under the UTPCPL are preempted or, if not preempted, that he fails to state a claim. 73 Pa. Cons. Stat. Ann. § 201-1 et seq. Plaintiff does not make any effort to counter the defendant's

---

2. Section 1681h(e) states in relevant part: "[e]xcept as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence ... except as to false information furnished with malice or willful intent to injure such consumer."

argument. Even assuming the claim is not preempted,[3] see Crane, 282 F. Supp. 2d 311; Lawrence, 296 F. Supp. 2d at 591, the decisions of the Pennsylvania courts, our Court of Appeals, and this court demonstrate that plaintiff cannot state a claim under the UTPCPL. The Pennsylvania courts have not applied the UTPCPL to credit reporting agencies. See Lawrence, 296 F. Supp. 2d at 591. Abusaab did not purchase or lease any goods or services from the defendant, nor has the plaintiff argued that Equifax is a purchaser or lessor under the UTPCPL. See id. at 591-92. Abusaab cannot maintain his claim against Equifax under the UTPCPL.

Accordingly, we will grant the defendant's motion for summary judgment on plaintiff's claim under the UTPCPL but will deny it in all other respects because of the existence of genuine issues of material fact.

---

3. Several cases suggest the FCRA does preempt the UTPCPL, at least in certain contexts. See, e.g., Jaramillo v. Experion Info. Serv., 155 F. Supp. 2d 386 (E.D. Pa. 2001); Agosta v. Inovision, Inc., 2003 WL 22999213 (E.D. Pa. 2003).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHADEE ABUSAAB	:	CIVIL ACTION
v.	:	
EQUIFAX INFORMATION SERVICES, LLC, et al.	:	NO. 05-5094

ORDER

AND NOW, this 4th day of May, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendant Equifax Information Services for partial summary judgment with respect to plaintiff's claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law is GRANTED;

(2) judgment is entered in favor of defendant Equifax Information Services and against plaintiff Shadee Abusaab on his claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law; and

(3) the motion of defendant Equifax Information Services for partial summary judgment is otherwise DENIED because of the existence of genuine issues of material fact.

BY THE COURT:

/s/ Harvey Bartle III
C.J.