

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

JAMES J. O'CONNOR : CIVIL ACTION  
 :  
 v. :  
 :  
 TRANS UNION CORPORATION : NO. 97-4633

**MEMORANDUM AND ORDER**

HUTTON, J.

September 28, 1999

Presently before the Court are Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 31), Plaintiff's response thereto (Docket No. 33), and Defendant's reply thereto (Docket No. 35). For the reasons stated below, the Defendant's motion is **GRANTED IN PART AND DENIED IN PART.**

**I. BACKGROUND**

On July 16, 1997, the Plaintiff James J. O'Connor ("O'Connor" or Plaintiff") brought this action against Defendant Trans Union Corporation LLC ("Defendant" or "Trans Union") alleging various violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (1988) ("FCRA") and Pennsylvania tort law. In his complaint, O'Connor alleges, in substance, that Defendant prepared a credit report containing false and defamatory information, and that it refused to delete the information from his credit file after he notified it of the inaccuracy. To the extent the facts

are disputed, they are reviewed in the light most favorable to the nonmoving party.

In December of 1996, Trans Union, a credit reporting service, prepared a credit report regarding O'Connor that erroneously included five items of "adverse" credit information. In preparing the report concerning Plaintiff, Trans Union retrieved four adverse items from the data banks of creditors of Plaintiff's son and/or daughter in-law and reported them as if they pertained to Plaintiff. Trans Union apparently Plaintiff confused with his son, James J. O'Connor, Jr. The information retrieved by Trans Union concerning Plaintiff's son neither contained a social security number, address, nor a date of birth that matched those of Plaintiff. The report also identified two former addresses of Plaintiff, neither of which were Plaintiff's former addresses, but were instead those of his son. The fifth item of adverse information negligently reported that Plaintiff's Macy's card had been "cancelled [sic] by credit grantor" when Macy's had simply reported it as closed.

In December of 1996, Plaintiff applied to First Union Bank for an increase in his credit line for check overdraft protection. Based on the adverse information in Trans Union's report, First Union denied Plaintiff's application by letter dated December 16, 1996. Plaintiff does not allege any other credit denials in his complaint. After receipt of the report, Plaintiff

wrote to Trans Union on February 12, 1997, and requested that Trans Union check each item in his report and delete the information that did not relate to his credit history. O'Connor stated that the report contained inaccurate items including addresses and accounts which did not relate to him. O'Connor provided Trans Union with his social security number, identified the wrong addresses attributed to him in the report, and contested ever living at said addresses.

On March 14, 1997, Plaintiff received a second report from Trans Union concerning his credit. The report indicated that Trans Union deleted three of the five adverse items which did not relate to O'Connor. Two adverse items erroneously reappeared in the second report, however. On March 31, 1997, Plaintiff's counsel notified Trans Union via letter that the second report issued to Plaintiff had incorrect information, and asked Defendant whether it had any desire to resolve this problem without resorting to litigation. Trans Union responded by letter dated April 5, 1997, contending that no reinvestigation of Plaintiff's dispute was possible until Plaintiff identified the "specific items" in dispute.

Consequently, Plaintiff brought suit against Trans Union asserting violations of §§ 1681e(b) and 1681i of the FCRA and seeking punitive damages pursuant to these claims. (Count I).

Plaintiff also claimed defamation under Pennsylvania law (Count II).

On April 24, 1998, Defendant filed a Motion for Summary Judgment. On May 12, 1998, Plaintiff filed a Response in Opposition to this Motion, and in the alternative, requested the Court to grant a continuance until close of discovery. Defendant filed a Reply Memorandum on June 5, 1998. Plaintiff filed a Sur Reply Memorandum on June 18, 1998. On September 24, 1998, this Court denied Defendant's Motion for Summary Judgment but granted Defendant leave to renew said Motion upon close of discovery. Defendant filed the instant Motion for Summary Judgment on March 30, 1999. This Court now considers said Motion as it is ripe for adjudication.

## **II. SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate "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 a judgment as a matter of law." Fed. R. C.V. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Cheilitis Corp. v. Citrate, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through

affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

### **III. DISCUSSION**

The FCRA was enacted in order to ensure that "consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." 15 U.S.C. § 1681(b) (1999). The FCRA was prompted by "congressional concern over

abuses in the credit reporting industry." Guimond v. Trans Union Credit Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995); see also St. Paul Guardian Ins. Co. v. Johnson, 884 F.2d 881, 883 (5th Cir. 1989). "In the FCRA, Congress has recognized the crucial role that consumer reporting agencies play in collecting and transmitting consumer credit information, and the detrimental effects inaccurate information can visit upon both the individual consumer and the nation's economy as a whole." Philbin v. Trans Union Corp., 101 F.3d 957, 962 (3d Cir. 1996), citing 15 U.S.C. § 1681(a)(1), (3).

It is undisputed that Trans Union is a "consumer reporting agency" within the meaning of 15 U.S.C. § 1681a(f), the credit reports in question are "credit report[s]" within the meaning of § 1681a(d), and O'Connor is a "consumer" for purposes of § 1681a(c). Sections 1681n and 1681o of Title 15 respectively provide private rights of action for willful and negligent noncompliance with any duty imposed by the FCRA and allow recovery for actual damages and attorney's fees and costs, as well as punitive damages in the case of willful noncompliance. See Casella v. Equifax Credit Information Serv., 56 F.3d 469 (2d Cir. 1995), cert. denied, 517 U.S. 1150, 116 S. Ct. 1452 (1996); Guimond, 45 F.3d at 1332; Henson v. Csc Credit Serv., 29 F.3d 280, 284 (7th Cir. 1994); Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151, 1156 & n.4 (11th Cir. 1991).

**A. The § 1681e(b) Claim**

Turning first to Plaintiff's claims under § 1681e(b), that section states in relevant part as follows:

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

15 U.S.C. S 1681e(b) (1999). To succeed on a claim under this section, a plaintiff must establish that: (1) the consumer reporting agency was negligent in that it failed to follow reasonable procedures to assure the accuracy of its credit report; (2) the consumer reporting agency reported inaccurate information about the plaintiff; (3) the plaintiff was injured; and (4) the consumer reporting agency's negligence proximately caused the plaintiff's injury. Philbin, 101 F.3d at 963; see also Houston v. TRW Info. Servs., Inc., No. 88 CIV.0186, 1989 WL 59850, at \*1 (S.D.N.Y. May 2, 1989) (citing Morris v. Credit Bureau of Cincinnati, Inc., 563 F. Supp. 962, 967 (S.D. Ohio 1983)), aff'd, 896 F.2d 543 (2d Cir. 1990); Neptune v. Trans Union Corp., No. Civ.A.92-6193, 1993 WL 505601, at \*1-2 (E.D. Pa. Dec. 8, 1993) (articulating same requirements), aff'd, 27 F.3d 558 (3d Cir. 1994). In considering a challenge pursuant to § 1681e(b), the "threshold question" is whether the challenged credit information is accurate; if the information is accurate, "no further inquiry into the reasonableness of the consumer reporting agency's procedures is necessary." Houston v. TRW Info. Servs., Inc., 707

F. SUPP. 689, 691 (S.D.N.Y. 1989); see also Boothe v. TRW Credit Data, 768 F. SUPP. 434, 437 (S.D.N.Y. 1991). But even if the information is inaccurate, a credit reporting agency is not held strictly liable under the FCRA merely for reporting it; rather, the consumer must show that the agency failed to follow reasonable procedures in generating the inaccurate report. Cahlin, 936 F.2d at 1156; Stewart v. Credit Bureau, Inc., 734 F.2d 47, 51 (D.C.Cir. 1984); Neptune, 1993 WL 505601, at \*2. To defeat a motion for summary judgment on a § 1681e(b) claim, a plaintiff "must minimally present some evidence from which a trier of fact can infer that the consumer reporting agency failed to follow reasonable procedures in preparing a credit report." Stewart, 734 F.2d at 51.

Defendant does not dispute that it produced at least one report that contained inaccurate information about O'Connor and that the inaccuracy was due to its failure to follow reasonable procedures. Nor does Trans Union contest that O'Connor's emotional distress damages are cognizable. See Guimond, 45 F.3d at 1333; Stevenson v. TRW Inc., 987 F.2d 288, 196 (5th Cir. 1993). In its motion for summary judgment, Defendant makes two arguments with respect to Plaintiff's § 1681e(b) claim. As its main contention, Defendant alleges that Trans Union's duties under the FCRA are not implicated in the present case because O'Connor did not communicate a dispute to Trans Union prior to the only credit denial he allegedly sustained. Trans Union additionally contends that

Plaintiff failed to establish that Trans Union was the proximate cause of any of his alleged injuries. The Court will review both of Defendant's arguments in turn.

### **1. Prior Notification Requirement**

Defendant alleges that because Plaintiff never notified Trans Union of an error in its credit report regarding Plaintiff until after the credit denial by First Union, Defendant is entitled to summary judgment as a matter of law with respect to Plaintiff's § 1681e(b) claim. Defendant cites a number of cases for the proposition that "[p]rior to being notified by a consumer, a credit reporting agency generally has no duty to reinvestigate credit information" under § 1681e(b) of the FCRA. Casella, 56 F.3d at 474; see also Philbin, 101 F.3d at 965; Koropoulos v. Credit Bureau, Inc., 734 F.2d 37, 42 (D.C. Cir. 1984); Houston v. TRW, Inc., 707 F. Supp. 689, 693 (S.D.N.Y. 1989); Whelan v. Trans Union Credit Reporting Agency, 862 F. Supp. 824, 830 (E.D.N.Y. 1994). This Court disagrees with Defendant's analysis and argument.

Despite Defendant's contention, the Third Circuit never held that in order to satisfy a prima facie case under § 1681e(b) of the FCRA for reporting inaccurate information, a plaintiff must show that the defendant had prior notice of the inaccuracies from the consumer. In support of its position, Defendant relies on Philbin. The Philbin court, however, never made such a finding. See Philbin, 101 F.3d at 963 (addressing the plaintiff's burden in

demonstrating a prima facie under § 1681e(b) of the FCRA). In fact, the Philbin court mentioned the prior notification requirement in only one setting. In finding that "once a plaintiff has demonstrated inaccuracies in the report, a defendant could prevail on summary judgment only if it were to produce evidence that demonstrates as a matter of law that the procedures it followed were reasonable," Philbin, 101 F.3d at 965 (citing Henson v. CSC Credit Servs., 29 F.3d 280, 285 (7th Cir. 1994) ("[A]s a matter of law, a credit reporting agency is not liable under the FCRA for reporting inaccurate information obtained from a court's Judgment Docket, absent prior notice from the consumer that the information may be inaccurate.")). Although the Henson decision may support Defendant's argument,<sup>1</sup> it is clear that the Third Circuit in Philbin never addressed the issue of whether a prior notification requirement is part of a plaintiff's prima facie case under § 1681e(b) of the FCRA. Moreover, this Court refuses to accept Defendant's invitation to do so here.

## **2. Proximate Cause**

Defendant contends that it is entitled to summary

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<sup>1</sup> As with Philbin and the other cases that the Defendant cites, Henson concerned the accuracy of information provided to the agency by a creditor concerning the consumer being reported on. In the instant case, Trans Union's systems did not simply relay information concerning the consumer being reported on, but instead retrieved information concerning other consumers. The Plaintiff contends that such cases are therefore not controlling on the Plaintiff's case. Because the Court finds that the Third Circuit has not articulated a prior notification requirement to a plaintiff's prima facie case under § 1681e(b), the issue need not be considered.

judgment as a matter of law with respect to Plaintiff's § 1681e(b) claim because any inaccuracies on their part which were subsequently included in Plaintiff's consumer credit report would have made no difference to O'Connor's credit denial. More specifically, Defendant alleges that even if inaccurate information was reported in Plaintiff's consumer credit report, O'Connor's application with First Union would have been turned down anyway due to the derogatory Macy's account which Defendant asserted was accurately reported on Plaintiff's credit report. For the foregoing reasons, this Court disagrees.

"[A] FCRA plaintiff must prove causation by a preponderance of the evidence." Philbin, 101 F.3d at 966. Under this standard, a prima facie showing of causation is satisfied if the plaintiff "[produces] sufficient facts from which a reasonable jury could find that defendant['s] alleged negligence caused [his or her] injuries." Id. The Court finds that Plaintiff established sufficient facts from which a reasonable jury could find that Trans Union's erroneous credit report caused the credit denial of O'Connor's application by First Union.

Even if the information pertaining to the Macy's account was properly reported by Trans Union, this Court disagrees with Defendant that it is beyond question that First Union would have denied O'Connor's application based on this one solitary adverse credit item. It is not clear to a reasonable person that a

creditor grantor would view an applicant with one adverse credit item equally to an applicant with four adverse credit items (presuming, as the Court must, that all adverse credit items carry equal weight). Assuming that the Macy's account information was properly reported by Defendant, Plaintiff has still produced evidence from which a reasonable trier of fact could infer that the other four inaccurate entries were a "substantial factor" that brought about the denial of credit. Philbin, 101 F.3d at 968 (finding that to overcome summary judgment, "a FCRA plaintiff [only needs to] produce evidence from which a reasonable trier of fact could infer that the inaccurate entry was a "substantial factor" that brought about the denial of credit.").

Moreover, Plaintiff contends that the information on the report pertaining to the Macy's account was "incorrectly retrieved and characterized by [Trans Union] as 'Cancelled [sic] by Credit Grantor,' and reported as an adverse item when, in fact, it was closed because Plaintiff was assigned a new account number. As such, there is a genuine issue of material fact as to whether Trans Union's credit report was the proximate cause of O'Connor's credit denial by First Union, and therefore, the Court finds that Plaintiff satisfied his burden with respect to the issue of causation. Accordingly, the Court denies Defendant's motion for summary judgment with respect to the Plaintiff's § 1681e(b) claim.

**B. The § 1681i Claim**

Plaintiff also alleges a claim against Trans Union under Section 1681i(a). In relevant part, that section provides:

If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information . . . .

15 U.S.C. § 1681i(a) (1999). Accordingly, in order to prove Trans Union's liability under § 1681i(a), O'Connor must show that he disputed an item in his file and that any reinvestigation conducted by Trans Union did not resolve the dispute. See Guimond, 45 F.3d at 1335. It is undisputed that O'Connor disputed the content of his file and that Trans Union did not delete all of the erroneous adverse credit items from his file. Defendant instructs the Court that § 1681i(a) plainly requires a consumer to identify any specific credit item in dispute in order to trigger the consumer reporting agency's duty of reinvestigation. Trans Union argues that it did not violate a duty to reinvestigate because it had no duty to reinvestigate as a matter of law because Plaintiff failed to satisfy the requirements of § 1681i(a). More specifically, Defendant contends that O'Connor's letter to Trans Union dated February 12, 1997, and his counsel's letter to Trans Union dated

March 31, 1997, did not satisfy the requirement of identifying an "item" in dispute. This Court disagrees.

Plaintiff's initial letter to Trans Union of February 12, 1997, clearly disputed the adverse information in his credit report and demanded that Trans Union "carefully check each item reported and delete the information which does not relate to me." Contrary to Defendant's assertion that Plaintiff did not dispute any particular item, the letter states that "none of the 'adverse' information relates to me." The "adverse" information consisted of five items. Furthermore, in his letter, Plaintiff told Trans Union that he had never resided in either Aston or Media, Pennsylvania, and provided the only address he has had since "1959." Plaintiff further explained that his son had lived at the Aston and Media addresses and that of the five adverse credit items corresponded to the said addresses. Finally, and perhaps most telling, Plaintiff's initial letter did in fact result in Trans Union conducting an investigation, which culminated in Trans Union's reinvestigation report of March 14, 1997. In direct contrast with the arguments that Defendant now sets forth in support of its instant motion, Trans Union had felt obliged to conduct an investigation upon receipt of Plaintiff's initial letter. It seems disingenuous to the Court for Trans Union to now state that it never had such a duty. Accordingly, the Court finds that Plaintiff has satisfied a prima facie case against Trans Union under § 1681i(a).

**C. The Punitive Damages Claim**

O'Connor also claims that he is entitled to punitive damages because Trans Union's alleged noncompliance with § 1681e(b) was willful. Plaintiff's claim for punitive damages is governed by 15 U.S.C. § 1681n, which provides in relevant part as follows:

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of . . . such amount of punitive damages as the court may allow.

15 U.S.C. § 1681n (1999). "To show willful noncompliance with the FCRA, [the consumer] must show that [the credit agency] 'knowingly and intentionally committed an act in conscious disregard for the rights of others,' but need not show 'malice or evil motive.'" Cushman, 115 F.3d 220, 226 (3d Cir. 1997) (citing Philbin, 101 F.3d at 970. In Cushman, the Third Circuit held that only defendants who have engaged in actions "on the same order as willful concealments or misrepresentations" have committed a willful violation for FCRA purposes, and are subject to punitive damages under § 1681n. Cushman, 115 F.3d at 227. To justify an award of punitive damages, O'Connor must prove that Trans Union adopted its reinvestigation policy either knowing that policy to be in contravention of the rights possessed by consumers pursuant to the FCRA or in reckless disregard of whether the policy contravened those rights. See id.

O'Connor claims that Trans Union is liable for a willful violation because Trans Union failed to implement or follow reasonable procedures required under the FCRA to assure maximum accuracy of information. Plaintiff explains that the design and employment of procedures to produce accurate reports lies within the intentional actions of Trans Union. The Court rejects Plaintiff's argument and finds that Plaintiff has not produced sufficient evidence of willful noncompliance with § 1681e(b) to survive summary judgment. In the present case, Plaintiff failed to put forth any affirmative evidence from which a reasonable trier of fact might infer that Trans Union adopted its reporting procedures either knowing that policy to be in contravention of rights pursuant to the FCRA or in reckless disregard of whether the policy contravened those rights. Accordingly, the Court finds that Plaintiff failed to satisfy a prima facie case against Trans Union under § 1681n.

**D. The Defamation Claim**

Plaintiff's state law defamation claim is preempted by the FCRA. Plaintiff's claim for defamation is governed by 15 U.S.C. § 1681h(e), which provides in relevant part as follows:

[N]o consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to sections 1681g, 1681h, or 1681m of this title, except

as to false information furnished with malice or willful intent to injure such consumer.

15 U.S.C. § 1681h(e) (1999). While the term "willful" is not defined under the FCRA, some courts have interpreted it as requiring a showing that the agency "'knowingly and intentionally committed an act in conscious disregard for the rights of others.'" Wiggins v. Equifax Serv., Inc., 848 F. SUPP. 213, 219 (D.D.C. 1993) (citing Stevenson v. TRW Inc., 987 F.2d 288, 293, 294 (5th Cir. 1993)). Courts considering what constitutes "malice" under this section have borrowed the meaning of the term used in the context of libel litigation, see New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); in other words, an allegedly defamatory statement will be deemed to have been made with malice if the speaker knew it was false or acted with reckless disregard of its truth or falsity. See, e.g., Thornton v. Equifax, Inc., 619 F.2d 700, 705 (8th Cir.), cert. denied, 449 U.S. 835, 101 S. CT. 108 (1980); Wiggins, 848 F. Supp. at 223 & n. 17. The Eighth Circuit has held that a showing of "malice or willful intent to injure" pursuant to § 1681h(e) is a higher requirement of proof than under § 1681n. Cushman, 115 F.3d at 229 (citing Thornton, 619 F.2d at 706). In Cushman, the Third Circuit considered the requirements for the two showings to be identical while noting that it was not setting the standard of "willfulness" under § 1681h(e) because neither the parties nor the district court addressed the issue. Similarly, the parties in the instant case do not address the

issue, and therefore, this Court will apply the same standard of willfulness under § 1681h(e) as stated above in § 1681n. Because the Court found that Plaintiff failed to provide any evidence of "malice or willful intent to injure" pursuant to § 1681n, it similarly finds that Plaintiff failed to satisfy a prima facie case against Trans Union under § 1681h(e).

#### **IV. CONCLUSION**

For the foregoing reasons, the Court finds that Plaintiff satisfied his burden under U.S.C. §§ 1681e(b) and 1681i for negligent noncompliance with the duties imposed by the FCRA. The Court, however, finds that Plaintiff failed to satisfy his burden under § 1681n and § 1681h(e) for willful noncompliance.

An appropriate Order follows.

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

JAMES J. O'CONNOR : CIVIL ACTION  
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 TRANS UNION CORPORATION : NO. 97-4633

**ORDER**

AND NOW, this 28<sup>th</sup> day of September, 1999, upon consideration of Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 31), Plaintiff's response thereto (Docket No. 33), and Defendant's reply thereto (Docket No. 35), IT IS HEREBY ORDERED that:

(1) Defendant's Motion for Summary Judgment on Plaintiff's § 1681e(b) claim is **DENIED**;

(2) Defendant's Motion for Summary Judgment on Plaintiff's § 1681i(a) claim is **DENIED**;

(3) Defendant's Motion for Summary Judgment on Plaintiff's claim for punitive damages is **GRANTED**; and

(4) Defendant's Motion for Summary Judgment on Plaintiff's Defamation claim is **GRANTED**.

BY THE COURT:

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HERBERT J. HUTTON, J.