

No. 23-1911

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Shelby Roberts,
Plaintiff-Appellant,

Carter-Young, Inc.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of North Carolina
Hon. William L. Osteen, Jr.
Case No. 1:22-cv-01114-WO-LPA

BRIEF OF
CONSUMER FINANCIAL PROTECTION BUREAU
AND FEDERAL TRADE COMMISSION
IN SUPPORT OF PLAINTIFF-APPELLANT

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To ensure fair and accurate credit reporting, the Fair Credit Reporting Act (FCRA or the Act), 15 U.S.C. § 1681 , requires consumer reporting agencies (CRAs) and entities that furnish information to CRAs (furnishers) to follow various requirements when they compile and disseminate personal information about individuals. The Consumer Financial Protection Bureau (CFPB or Bureau) has exclusive rule-writing authority for most provisions of the FCRA. § 1681s(e). The Bureau interprets and, along with various other federal and state regulators, enforces the Act's requirements. § 1681s(a)– (c).

The Federal Trade Commission (FTC or Commission) has been charged by Congress with the mission to protect consumers from deceptive or unfair trade practices. 15 U.S.C. § 45(a). As part of that mission, the Commission has long played a key role in the implementation, enforcement, and interpretation of the FCRA. The FTC enforces the FCRA through Section 5 of the FTC Act. Congress deemed a violation of the FCRA to "constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the [FTC Act]." 15 U.S.C. § 1681s(a). And the FCRA grants the Commission "such procedural, investigative, and

substantial interest in correcting the decision below and clarifying the governing legal standards.

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A. 7 K H) D & L W H G L W 5 H S F U W L Q J

1. Information contained in consumer reports has critical effects on Americans' daily lives.² Consumer reports are used to evaluate consumers' eligibility for loans and determine the interest rates they pay

2. Since its enactment in 1970, the FCRA has governed the practices of CRAs that collect and compile consumer information into consumer reports for use by credit grantors, insurance companies, employers, landlords, and other entities that make eligibility decisions affecting consumers. To further ensure that consumer reports are accurate, in 1996 Congress amended the FCRA to also impose “duties on the sources that provide credit information to CRAs, called ‘furnishers’ in the statute.”

, 584 F.3d 1147, 1153-54 (9th Cir. 2009). These duties include a requirement that furnishers investigate when consumers dispute information that a furnisher has given to a CRA. Under the Act, furnishers have an obligation to investigate potential inaccuracies in two circumstances: (i) when a consumer submits a dispute directly to a furnisher; and (ii) when a consumer submits an “indirect” dispute to a CRA, which must forward the dispute to the furnisher under § 1681i(a). 15 U.S.C. § 1681s-2(a)(8) and (b).

With an “indirect” dispute like the one here, when a consumer

part of the FCRA's overall framework for ensuring accuracy in credit reports.

A consumer may sue a furnisher for willful or negligent noncompliance with its obligation to respond to indirect disputes under Section 1681s-2(b). §§ 1681n, 1681 .

3.

deposit and charged her almost \$800 for alleged damage to the unit.⁵ Ms. Roberts alleges that these damages "either never occurred, were ordinary wear and tear items, or were grossly overstated." Specifically, she alleges that the primary expense for which she was charged was the cost of a new stove but that the complex's only asserted damage to the stove was that the handle had become detached from the oven door. Ms. Roberts alleges that, according to the lease and governing North Carolina law, this was an ordinary maintenance issue that the complex could have fixed by reattaching the handle, rather than replacing the stove at the cost of hundreds of dollars.

Ms. Roberts refused to pay the invoice from the apartment complex, and the complex referred the claim to Carter-Young, Inc. ("Carter-Young") for debt collection. When Carter-Young sought to collect the debt, Ms. Roberts responded with a letter disputing the claim as "obvious[ly

retaliatory and false." Carter-Young reported the debt to the three major CRAs.

Ms. Roberts filed a formal dispute with the three CRAs, who forwarded the dispute to Carter-Young. Carter-Young investigated the disputed information, allegedly by asking the apartment complex to recertify the validity of its claim. Because the apartment complex confirmed the validity of the claim, Carter-Young did the same, resulting in the three CRAs continuing to report this debt. Ms. Roberts alleges that she refiled formal disputes with the CRAs, but Carter-Young continued to recertify the debt after neglecting to conduct any meaningful investigation.

Ms. Roberts filed this suit in December 2022, alleging that Carter

magistrate judge cited _____, No. 19-CV-6446L, 2021 WL 5239902, at *6 (W.D.N.Y. Nov. 10, 2021) — a case decided before _____ and other recent decisions like _____ 74 F.4th 38 (2d Cir. 2023), which reject the notion that “legal” inaccuracies need not be investigated under the FCRA. The magistrate judge also distinguished _____ on its facts, pointing out that in _____ “some prior operation of law . . . had rendered the debt invalid . . . [so] the defendant in _____ did not need to resolve a legal issue, only ascertain that resolution of a legal issue had previously occurred.” Finally, the magistrate judge rejected plaintiff’s contention that her dispute was factual rather than legal, reasoning that investigating (and determining) the validity of the debt would have required Carter-Young to interpret Plaintiff’s lease and _____ t R

decisions, and undercuts the remedial purpose of the FCRA. Moreover,

Moreover, n

copyright registrant to treat multiple works as copyright-able under a single application if those works did not satisfy the regulatory requirement that they be included in the "same unit of publication"). A statement that a consumer owes \$500 when the consumer does not owe \$500 is naturally understood to be not "accurate" regardless of whether the law or the facts (or some combination) is the reason the consumer does not owe the money.

Neither does the word "complete" in the statutory text suggest that furnishers need only investigate disputes that challenge the "completeness" of furnished information. In ordinary usage, "complete" is defined as "having all necessary parts, elements, or steps."⁹ That term naturally applies equally to disputes

study [it] by close examination and systemic inquiry.”¹⁰ Legal questions are just as capable as factual issues of being studied closely and systemically. And this court has specifically used the verb “investigate” to refer to inquiries into legal, as well as factual, topics. B

942 F.2d 236, 240 (4th Cir. 1991) (“Rule 11 imposes upon substitute counsel a duty to investigate the legal and factual sufficiency of the claims he or she takes up.” (emphasis added)).

Ultimately, when a consumer disputes “the completeness or accuracy” of information furnished about a debt, the inquiry is typically whether the consumer owes the amount asserted. Depending on the dispute, that inquiry may involve factual questions, legal questions, or both. Under § 1681s-2(b)’s text, the furnisher must “conduct an investigation” about the disputed information to reach a judgment about whether the consumer owes the amount asserted.

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The fact that “legal” disputes sometimes involve questions that have not previously been resolved by a court and that may have colorable

¹⁰ , Merriam-Webster.com Dictionary, Merriam-Webster,

of making decisions about what they can bill consumers for and what debts they can collect.¹¹

The Bureau's regulations governing direct disputes¹² confirm that furnishers are capable of, and are expected to, investigate legal issues of liability. Those regulations specifically require furnishers to conduct a reasonable investigation of direct disputes that relate to "[t]he consumer's

¹¹ The district court held that furnishers have no obligation to investigate "legal" disputes, relying on *First Nat'l Bank of Boston v. Bellotti*, 438 U.S. 265, 50 L. Ed. 2d 120, 48 A.L.R.3d 1148 (1978), *mt* « "p /

liability for a credit account or other debt with the furnisher," a question that will often implicate "legal" questions. 12 C.F.R. § 1022.43(a), (a)(1).

In addition, the concern that furnishers are not "qualified" to address "legal" disputes misunderstands the nature of furnishers' obligation to investigate such disputes. Where a dispute raises an unsettled "legal" question, that may affect what the furnisher needs to do to fulfill its obligation to reasonably investigat

a sufficient legal basis to support the conclusion that the debt is owed in the amount asserted.

If after that

law; one decided that same question was a mixed question of law and fact; and still other courts "eschewed a rigid distinction between law and fact and focused on the institutional competency of the [CRAs] to resolve the claims."

Likewise, in another case, a distr72.(a) TJETQq0.00000912 0 612 792 reW* nBT

report was simply a notation of the residual value of the car at lease-end, as the furnisher itself acknowledged. Despite the reporting being clear error, the district court rejected the consumer's FCRA claim because it viewed that "contractual" issue as a "legal" dispute (i.e., resolving the dispute required reading the contract). at 13-14. Given that debts generally arise from contracts, and thus almost any dispute about a debt might require a review of the contract terms, the district court's analysis shows how easily an exclusion for "legal" inaccuracies could create a loophole that would gut the requirement to investigate disputes.¹⁴ On

¹⁴ As a result of the difficulty in cleanly distinguishing legal and factual issues, even in the context of CRAs' obligations under the FCRA, some courts have correctly rejected a formal legal/factual distinction (some even before the recent and decisions). For example, "the Ninth Circuit has endorsed holding a CRA liable under the FCRA when it 'overlooks or misinterprets' . . . publicly available documents of significance." No. 3:14-cv-00419-HZ, 2014 WL 2866841, at *5 (D. Or. June 23, 2014) (emphasis added) (relying on

appeal, the Second Circuit reversed, explicitly rejecting a rigid distinction and holding that the FCRA does not contemplate a “ threshold inquiry into

investigation, or such minimal investigation that no court could consider it reasonable.

Particularly given the difficulty in distinguishing "legal" from "factual" disputes, this Court should clarify there is no exemption in the FCRA's reasonable investigation requirement for disputes that raise legal questions. Such an exemption would undermine the purpose of the reasonable-investigation requirement to ensure accuracy on credit reports. It would also result in an unworkable standard where mixed questions of fact and law are presented, and it would encourage furnishers to ignore their statutory obligations to conduct a reasonable investigation when a dispute could be characterized as "legal."

II. 7 R & R Q G X F W D 5 H D V R Q D E O H , Q Y H V W L J D W L R Q V
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The district court here erred in stating that " the reasonableness of an investigation turns on the 'information

, 2023 WL 4366059 at *7 (quoting

, 701 F. App'x 246, 253 (4th Cir. 2017)) (emphasis added by

). Depending on the circumstances, a furnisher may be required to

look beyond the information it already has to fulfill its obligations under the FCRA.

The FCRA requires furnishers to conduct a reasonable investigation in response to an indirect dispute. *_____*, 357 F.3d 426, 431 (4th Cir. 2004). What constitutes a “reasonable” investigation is case specific; the investigation must be “reasonable under the circumstances. It may be either simple or complex, depending on the nature of the dispute.” Fed. Trade Comm’n, 40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations (2011) (“FTC Staff Report”), at 96, <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>.

Thus, depending on the circumstances, the furnisher may or may not need to look beyond the information it already possesses to fulfill its reasonable investigation obligation. For instance, if the evidence within the furnisher’s possession is “sufficient ... to support the conclusion that the [disputed] information [i]s true,” the furnisher need not look beyond the information that it already has; it can report that its investigation verified the debt. *_____*, 827 F.3d at 1303. If, however, the “furnisher does not already possess evidence establishing that an item of disputed information is true, 15 U.S.C. § 1681s-2(b) requires the furnisher to seek out and obtain

collector that the apartment complex hired to collect the debt that Ms. Roberts purportedly owed it — would not even have had to check with the apartment complex about Ms. Roberts's claims and the complex's response. The FCRA does not permit such insufficient inquiries.

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For the foregoing reasons, this Court should hold that, under the FCRA, furnishers must reasonably investigate indirect disputes, regardless of whether the dispute can be characterized as legal, and regardless of whether it may entail seeking information beyond what the furnisher already possesses.

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Certificate of Compliance

This brief complies with the length limits permitted by Federal Rule of Appellate Procedure 29(a)(5). The brief is 6,497 words, excluding the portions exempted by Rule 32(f). The brief's typeface and type style comply with Rule 32(a)(5) and (6).

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Certificate of Service

I hereby certify that on December 8, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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