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Experian, Equifax Escape FCRA Suit For Now, 9th Circ. Rules

By **Hailey Konnath**

Law360 (March 25, 2019, 11:27 PM EDT) -- A split Ninth Circuit panel on Monday tossed out claims in related Fair Credit Reporting Act cases against Experian and Equifax over allegedly misleading credit reports, ruling that the five individuals suing the credit agencies failed to show how the reports harmed them.

The five suits stem from how the credit reporting agencies allegedly handled confirmed Chapter 13 bankruptcy plans for the plaintiffs, neglecting to reflect the consumers' repayment plans in their credit reports.

However, the consumers don't make any allegations regarding how the misrepresentations on the credit reports would affect their transactions, the Ninth Circuit majority found, and it's "not obvious that they would" affect them, given their bankruptcy status to begin with. And so their claims don't hold up, the majority of the three-judge panel said Monday, affirming the district courts' rulings but allowing the consumers to file new complaints.

"Without any allegation of the credit report harming plaintiffs' ability to enter a transaction with a third party in the past or imminent future, plaintiffs have failed to allege a concrete injury for standing," U.S. Circuit Judge Michelle T. Friedland and U.S. District Judge Daniel R. Dominguez, sitting by designation, said in the majority opinion.

However, U.S. Circuit Judge Marsha Berzon disagreed, writing in her dissent that there is no requirement the plaintiffs must allege their inaccurate credit reports affected a specific transaction.

" ... Adverse information on a credit report, often resulting in a lower credit rating, constitutes a reputational injury creating a material risk of harm, whether or not an individual contemplates a specific, imminent transaction," Judge Berzon said.

Plaintiffs Wilbur Green, Howard Rydolph, Kimberly Contreras, Scott Hunt and Jesus Jaras filed for Chapter 13 bankruptcy between 2011 and 2014, according to court filings. After garnering the bankruptcy court's approval of their Chapter 13 plans, they requested their credit reports and discovered their credit reports didn't reflect their plans, the plaintiffs said in the filings. They then asked Experian Information Solutions Inc., Equifax Inc. and TransUnion LLC to update their reports, but their information remained inaccurate, they claimed.

That failure to correct constitutes a violation of the FCRA as well as California law, they said in their suits. A confirmed bankruptcy plan needs to be reflected in a credit report, the plaintiffs said, otherwise the report is misleading. Their complaints also named several banks as defendants.

But district courts ruled that the claims didn't hold up because the statements on their credit reports weren't, in fact, inaccurate, according to the filings.

The Ninth Circuit majority on Monday agreed that the claims should be tossed but found that the statements may have indeed been inaccurate.

"On review, we affirm the dismissal of these complaints, but on the grounds that plaintiffs — a group of individuals in bankruptcy who gave no indication that they had tried to engage in or were imminently planning to engage in any transactions for which the alleged misstatements in their credit reports made or would make any material difference — lack standing to pursue their claims," the majority said.

Counsel for the parties and representatives with Experian and Equifax didn't immediately return requests for comment late Monday.

U.S. Circuit Judges Marsha S. Berzon and Michelle T. Friedland and U.S. District Judge Daniel R. Dominguez sat on the panel for the Ninth Circuit.

The plaintiffs were represented by Elliot Gale, most recently of Sagaria Law PC, which closed March 15.

Equifax, Experian and the banks are represented by Andrew Soukup and David M. Zionts of Covington & Burling LLP, Meir Feder and David L. Wallach of Jones Day, Thomas P. Quinn Jr. of Nokes & Quinn APC, Jan T. Chilton of Severson & Werson, Phyllis B. Sumner, Misty L. Peterson, Allison Hill White and Anne M. Voigts of King & Spalding LLP, Donald Falk of Mayer Brown LLP.

The cases are Jesus Jaras v. Equifax Inc., case number 17-15201; Wilbur Green v. Experian Information Solutions, case number 17-15987; Howard Rydolph v. Experian Information Solutions Inc. et al., case number 17-15990; Kimberly Contreras v. Experian Information Solutions Inc. et al., case number 17-15991; Scott Hunter v. Experian Information Solutions Inc. et al., case number 17-15992, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Cara Bayles. Editing by Emily Kokoll.

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