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## West v. Nationwide Credit, Inc. - Third Party Communication Clarified in the Fair Debt Collection Practices Act

Brian Keith Faulkner

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# NOTE

## *WEST v. NATIONWIDE CREDIT, INC.*—Third Party Communication Clarified in the Fair Debt Collection Practices Act

### I. INTRODUCTION

“The harassment, humiliation, and fear I experienced after threats of being sued immediately and arrested [were] so bad that at one time I considered suicide. I pounded on my bed, cried, got a pistol out, and made a list of pallbearers.”<sup>1</sup> This feeling, caused by overaggressive debt collection agents, has been shared by many individual consumer debtors, and continues to be felt today.<sup>2</sup>

The Fair Debt Collection Practices Act of 1978<sup>3</sup> (hereinafter the “FDCPA”) is the principal federal statute that regulates debt collection.<sup>4</sup> The Act, though limited in coverage to mainly debt collection agencies and lawyers, has had a significant impact on consumer protection against abusive debt-collection practices.<sup>5</sup> The FDCPA established the general standards of prohibited conduct of collectors, defined and restricted abusive collection acts, and provided specific rights for consumers.<sup>6</sup>

At the time of the Act’s inception in 1978, there were more than 5,000 collection agencies across the country with more than \$5 billion in debts being turned over to them.<sup>7</sup> These agencies

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1. Laurie A. Lucas, *Update on the Federal Fair Debt Collection Practices Act*, 49 Bus. Law. 1385 (1994). See *The Fair Debt Collection Practice Act: Hearing Before the Subcomm. On Consumer Affairs and Coinage of the House Comm. On Banking, Finance and Urban Affairs*, 102d Cong., 2d Sess. 5 (1992) (statement of Carver H. Jones, a citizen).

2. *Id.*

3. 15 U.S.C. § 1692 (1994).

4. Thomas D. Crandall et. al., *Debtor-Creditor Law Manual* ¶ 5.09, at 5-40 (1985).

5. Robert J. Hobbs et al., *Fair Debt Collection* 69 (3rd ed. 1996).

6. *Id.*

7. S. Rep.No. 95-382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N 1695, 1699.

generally operated on a 50-percent commission basis.<sup>8</sup> This means of payment led to unscrupulous collection practices.<sup>9</sup> Congress realized the problems associated with the collection of debts and recognized that abusive and unfair debt collection practices were a widespread and serious national problem.<sup>10</sup>

Since its inception, the FDCPA has resulted in a decrease in consumer complaints regarding abusive collection practices from greater than 4,000 per year in the late 1970's to approximately 2,000 per year in 1992.<sup>11</sup> However, there still remains a significant number of reported violations of the Act annually.<sup>12</sup> In its 1998 annual report to Congress, the Federal Trade Commission complied frequent complaints by consumers, including harassment of the alleged debtor or others, failure of the debt collector to send the required consumer notices, calling the consumer's place of employment, and revealing the alleged debt to third parties.<sup>13</sup> The FTC acknowledges that although the number of reported violations has decreased, many consumers do not know that the FTC is the appropriate agency to report alleged violations, or that they have been victims of violations of the act.<sup>14</sup>

This Note examines the United States District Court, Western District of North Carolina's decision in *West v. Nationwide Credit, Inc.*<sup>15</sup> In *West*, a consumer's neighbor was contacted by a debt collector and asked to relay a message to the consumer.<sup>16</sup> This Note takes the position that the district court correctly interpreted and applied section 1692c(b) of the FDCPA, which prohibits debt collector contact with third parties except under limited circumstances.<sup>17</sup> This court's application of section 1692c(b) of the FDCPA conforms to the consumer protection spirit of the Act as a

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8. *Id.*

9. *Id.*

10. *Id.*

11. Lynn A. S. Araki, *RX For Abusive Debt Collection Practices: Amend the FDCPA*, 17 U. Haw. L. Rev. 69, 77-78 (1995).

12. *Id.*

13. 21st Annual Federal Trade Commission Report to Congress Regarding the Fair Debt Collection Practices Act (1998). ("The Federal Trade Commission is required by Section 815(a) of the Fair Debt Collection ('FDCPA' or 'ACT'), 15 U.S.C. §§ 1692-1695o, to submit a report to Congress each year summarizing the administrative and enforcement actions taken under the Act over the preceding twelve months.")

14. *Id.*

15. 998 F. Supp. 642 (W.D.N.C. 1998).

16. *Id.*

17. 15 U.S.C. § 1692c(b) (1994).

whole, and the decision reflects the court's willingness to apply this statute readily.

This Note begins with an overview of the Fair Debt Collection Practices Act (FDCPA). A discussion of its purpose, scope, and to whom it applies is included. Further discussion includes the protection the FDCPA offers to consumers, specifically provisions of the Act that deal with third party contacts and communications. Finally, the discussion analyzes the *West* holding and its impact on the debt-collection industry in North Carolina.

## II. HISTORY OF THE FAIR DEBT COLLECTION PRACTICES ACT

### A. *Purpose of the Fair Debt Collection Practices Act*

The Fair Debt Collection Practices Act of 1978 became effective on March 20, 1978.<sup>18</sup> The Act arose out of Congressional concern over abusive, deceptive, and unfair debt collection practices by many debt collectors.<sup>19</sup> In 1986, the Act was amended and abrogated an exemption for attorneys regularly collecting consumer debts for creditors or collection agencies.<sup>20</sup>

The FDCPA's purpose is to eliminate abusive debt collection practices and to promote fair and ethical collection practices. This is accomplished by ensuring that debt collectors adhering to the Act do not suffer a competitive disadvantage in the marketplace.<sup>21</sup> The FDCPA was not enacted to allow consumers to avoid paying their debts.<sup>22</sup> However, the FDCPA is a strict liability statute, and a consumer who is able to prove a violation of the Act has sufficient proof to sustain a summary judgment in his or her favor against a debt collector.<sup>23</sup>

The Federal Trade Commission is vested with primary enforcement responsibilities under the Act, but it shares this responsibility with several other agencies.<sup>24</sup> The goal of the FTC,

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18. 15 U.S.C. § 1692.

19. *Id.*

20. Hobbs, *supra* note 5, at 70.

21. David Hilton, *As If We Had Enough To Worry About. . . Attorneys And The Federal Fair Debt Collection Act: Supreme Court Rules On Former Attorney Exemption*, 18 Campbell L. Rev. 165 (1996).

22. Araki, *supra* note 11, at 77.

23. *Id.*

24. 21st Annual Federal Trade Commission Report to Congress Regarding the Fair Debt Collection Practices Act (1998). The other Federal Agencies sharing enforcement responsibilities with the Federal Trade Commission include the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the

in its enforcement of the Act, is to ensure compliance with the FDCPA without reasonably impeding legitimate debt collection.<sup>25</sup>

### *B. Scope of the Fair Debt Collection Practices Act*

The FDCPA's scope is generally limited to debt collectors "acting on behalf of, but unaffiliated with, the actual creditor."<sup>26</sup> Debt collector is specifically defined in the Act as "any person who uses any instrumentality of interstate commerce or the mails in any business, the principal purpose of which is the collection of any debts."<sup>27</sup> The FDCPA generally considers the following entities as debt collectors: "debt collection agencies, creditors using false names or collecting for other creditors, collection attorneys, purchasers of delinquent debts, repossession companies, and suppliers or designers of deceptive forms."<sup>28</sup>

The scope of the Act is further limited in that it only covers activities involved in the collection of consumer debts.<sup>29</sup> Commercial debts are not covered under the FDCPA.<sup>30</sup> However, there are some general exclusions to the Act. The following are generally excluded from coverage under the FDCPA: creditors (collecting their own debts), retail stores, banks, finance companies, government employees, and business debts.<sup>31</sup> When trying to determine whether or not a particular person falls under the Act, it is imperative that one carefully examine the statute, and if necessary, look to the legislative history of the statute for clarification.

### *C. The Federal Debt Collection Practices Act Regulates Communication With the Debtor and Third Parties*

#### *1. Communications with Debtors*

The FDCPA places restrictions on the manner in which debt collectors may contact consumers regarding a debt. Specifically, the Act "restricts the times and places a debt collector may contact a consumer, limits third-party contacts and prohibits contacting a

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National Credit Union Administration, the Department of Transportation, and the Department of Agriculture.

25. *Id.*

26. Crandall, *supra* note 4, at 5-41.

27. 15 U.S.C. § 1692a(6).

28. Hobbs, *supra* note 5, at 69.

29. Hobbs, *supra* note 5, at 69. *See also* 15 U.S.C. § 1692.

30. Hobbs, *supra* note 5, at 104.

31. Hobbs, *supra* note 5, at 77.

consumer represented by an attorney.”<sup>32</sup> Communication, or contact, is interpreted to include mail, telegrams, and telephone calls, and is deemed communication, even if a collector does not identify himself during the contact.<sup>33</sup> Debt collectors may never imply threats or use harassing, oppressive, or abusive language in the collection of a debt from a consumer.<sup>34</sup> This includes threats of violence, obscenity, or the use of annoying phone calls in an attempt to collect a debt.<sup>35</sup>

## 2. *Communications with Third Parties*

One of the FDCPA’s most important provisions is the limitation it places on debt collector contact with third parties.<sup>36</sup> In its annual report to Congress, the FTC said that third party contact

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32. Hobbs, *supra* note 5, at 116. See also 15 U.S.C. § 1692c. Section 1692c explains:

Communication in connection with debt collection:

(a) Communication with the consumer generally – Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt; at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o’clock antemeridian and before 9 o’clock postmeridian, local time at the consumer’s location; if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or at the consumer’s place of employment if the debt collector knows or has reason to know that the consumer’s employer prohibits the consumer from receiving such communication.

33. Hobbs, *supra* note 5, at 117. See also *Austin v. Great Lakes Collection Bureau, Inc.*, 834 F. Supp. 557 (D. Conn. 1993).

34. 15 U.S.C. § 1692d.

35. Hilton, *supra* note 21, at 191.

36. S. Rep. No. 95-382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N 1695, 1699.

[T]his legislation adopts an extremely important protection . . . it prohibits disclosing the consumer’s personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as consumer’s friends, neighbors, relatives or employer. Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as loss of jobs.

*Id.*

with consumers' employers, relatives, children, neighbors, and friends is a tactic used by some collectors which results in intimidation or embarrassment to the consumer.<sup>37</sup> Debt collector contact with consumers' employers and co-workers frequently threatens the job security and promotion potential of the consumer.<sup>38</sup> "Relationships between consumers and their families, friends, or neighbors may also suffer from improper third-party contacts."<sup>39</sup> The FDCPA proscribes collector contact with third parties except in closely regulated situations.<sup>40</sup> Debt collectors may not "phone, write or visit a consumer's employer, co-worker or secretary, relatives (except spouse), friends, social worker, neighbors, or any other third party about a debt" except under limited circumstances.<sup>41</sup> Third parties that may be contacted by the collector include the consumer's attorney, a credit reporting agency, the creditor, the creditor's or collector's attorney, the debtor's spouse, the debtor's parents if the consumer is a minor, guardians, executors or administrators, and codebtors.<sup>42</sup>

Despite the Act's seemingly absolute restriction on third party contact, the FDCPA grants a very narrow exception allowing collectors to contact third parties. Section 1692b allows a debt collector to communicate with "any person" other than the consumer in order to obtain the consumer's residential address and phone number or his or her work address.<sup>43</sup> Only this limited class of information is allowed under the exception, and requests for any additional information, even requests pertaining to the location of the debtor, are prohibited by the Act.<sup>44</sup> When requesting location information, the debt collector is not allowed to inform the third party that the consumer owes money and cannot use the collection company's name unless the third party requests this information.<sup>45</sup> Debt collectors cannot communicate with third parties more than once, unless the consumer has consented to the communication or further contact with the third party is neces-

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37. 21st Annual Federal Trade Commission Report to Congress Regarding the Fair Debt Collection Practices Act (1998).

38. *Id.*

39. *Id.*

40. *Id.*

41. Hobbs, *supra* note 5, at 122.

42. Hobbs, *supra* note 5, at 123. *See also* 15 U.S.C. § 1692c.

43. 15 U.S.C. § 1692b.

44. Alvin C. Harrell, *Update on the Federal Fair Debt Collection Practices Act*, 45 *Bus. Law.* 2001 (1990).

45. Hobbs, *supra* note 5, at 123.

sary to correct or complete information previously obtained.<sup>46</sup> Moreover, if the collector is aware that the consumer is represented by counsel whose name and address is readily available, the debt collector cannot communicate with any third party other than either party's attorneys, credit reporting agencies, the debtor's spouse, the debtor's parents if the debtor is a minor, guardians, executors or administrators, and codebtors.<sup>47</sup>

### 3. *Civil Liability for Violations of the FDCPA*

Debt collectors that violate the provisions of the FDCPA face substantial penalties. "If a violation occurs, the debtor is entitled to actual damages, statutory damages not to exceed \$1,000.00, plus reasonable attorney fees."<sup>48</sup> Class action suits are possible allowing fines to "balloon" and can be as large as \$500,000 or one percent of the collection company's net worth.<sup>49</sup> In the case of an individual, there remains a question as to whether the \$1,000.00 penalty is a per violation or a per proceeding award.<sup>50</sup>

## III. FACTUAL BACKGROUND AND PROCEDURAL HISTORY OF *WEST*

Norman West, plaintiff, filed a complaint under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, N.C. Gen. Stat. § 58-70-90, and N.C. Gen. Stat. §75-1.1.<sup>51</sup>

Mr. West became indebted to American Express on a credit card and defaulted on his payments.<sup>52</sup> Mr. West alleged that on or about October 6, 1997, Mr. Beaulieu, a debt collector working for Nationwide Credit, contacted his neighbor.<sup>53</sup> Mr. Beaulieu left his name and telephone number with the neighbor along with instructions for the neighbor to have Mr. West call him regarding a "very

46. Harrell, *supra* note 44.

47. 15 U.S.C. § 1692b(1-5).

48. Scott Andrew Farrow, *The Fair Debt Collection Practices Act: Nightmare or Just a Bad Dream?*, 7 Norton Bankr. L. Adviser 6 (1999).

49. 15 U.S.C. § 1692k(2)(B).

50. Farrow, *supra* note 48. Compare *Wright v. Finance Serv. of Norwalk, Inc.*, 22 F.3d 647 (6th Cir. 1994) (holding that debt collectors are liable on a per violation basis), with *Harper v. Better Bus. Bureau Servs., Inc.*, 961 F.2d 1561 (11th Cir. 1992) (holding that the plain meaning of 15 U.S.C. § 1692k(2)(A) provides for a maximum penalty per action).

51. *West*, 998 F. Supp. at 643. See N.C. Gen. Stat. §§ 58-70-90 et. seq., 75-1.1 (1994).

52. *Id.*

53. *Id.*

important matter."<sup>54</sup> Mr. West contended that Mr. Beaulieu's telephone conversation with his neighbor violated the FDCPA and its North Carolina equivalent because it contained "false or misleading information."<sup>55</sup>

Nationwide Credit moved to dismiss the case under Fed. R. Civ. P. 12(b)(6).<sup>56</sup> Mr. Beaulieu also moved the court to dismiss Mr. West's action against him personally, pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(5) because he had not been served with a complaint or summons.<sup>57</sup>

The district court denied both Nationwide Credit and Mr. Beaulieu's motions to dismiss.<sup>58</sup> Nationwide Credit's motion to dismiss was denied because the court's interpretation of 15 U.S.C. § 1692c(b)<sup>59</sup> included the alleged actions of Nationwide Credit and Mr. Beaulieu. The court denied Mr. Beaulieu's motion for dismissal because Mr. West had 120 days from the filing of the complaint to perfect service, and that period had not passed as of the date of Mr. Beaulieu's motion to dismiss.<sup>60</sup>

54. *Id.* at 643.

55. *Id.*

56. *West*, 998 F. Supp. at 643. *See also* Fed. R. Civ. P. 12(b)(6). This rule states:

HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted.

57. *West*, 998 F. Supp. at 643. *See also* Fed. R. Civ. P. 12(b)(2) and 12(b)(5). Fed. R. Civ. P. 12(b)(2) allows for the defense of lack of jurisdiction over the person to be pleaded by motion before pleading if a further pleading is permitted. Federal Rule of Civil Procedure 12(b)(5) allows for the defense of insufficiency of service of process to be pleaded by motion before pleading if a further pleading is permitted.

58. *West*, 998 F. Supp. at 646.

59. 15 U.S.C. § 1692c(b).

60. *West*, 998 F. Supp. at 646. *See* Fed. R. Civ. P. 4(m), which states:

TIME LIMIT FOR SERVICE. If the service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

IV. ANALYSIS

A. *West v. Nationwide Credit, Inc. — The Court’s Reasoning*

In *West v. Nationwide Credit, Inc.*, the overarching issue was, whether Congress intended the phrase “information regarding a debt” to include the conveying of any information relating to a debt or whether Congress intended to limit the definition of this phrase only to those conversations where a debt collector actually discloses some information about a specific debt to a third party.<sup>61</sup>

The North Carolina federal district court interpreted 15 U.S.C. § 1692c(b) holding that the defendant did, in connection with the collection of a debt, communicate with a third party in relation to the plaintiff’s debt, and that this communication was not for the purpose of obtaining location information.<sup>62</sup> Section 1692c(b) states:

[e]xcept as provided in section 1692b<sup>63</sup> of this title [which permits certain third party communications for the purpose of acquiring

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61. *West*, 998 F. Supp. at 644.  
62. *Id.* at 645. *See* 15 U.S.C. § 1692c(b).  
63. 15 U.S.C. § 1692b states:

Acquisition of location information:

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall –

- identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- not state that such consumer owes any debt;
- not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- not communicate by post card;
- not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney’s name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

*Id.*

location information], without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.<sup>64</sup>

In its motion to dismiss, the defense argued that Mr. Beaulieu's communication with Mr. West's neighbor "did not violate section 1692c(b) because Mr. Beaulieu did not actually convey any information about plaintiff's debt to the neighbor."<sup>65</sup> Their position was that in order for there to be a violation of section 1692c(b), a "collector must convey some information about the debt to the third party," Mr. West's neighbor in this case.<sup>66</sup>

Mr. West's position was that any communications to a third party relating to a debt violates section 1692c(b).<sup>67</sup> He suggested that the term "communication" should be broadly construed in order to give the FDCPA meaning.<sup>68</sup>

The court began its analysis by looking to the statute for the meaning of "communication." The district court adhered to the "well settled rule" that "the 'plain meaning' of statutory language controls its construction."<sup>69</sup> The court continued by explaining that the underlying legislative purpose of a statute can be derived from the ordinary meaning of words used in the statute.<sup>70</sup> "Communication" is defined in section 1692a(2) as "the conveying of information regarding a debt directly or indirectly to any person through any medium."<sup>71</sup>

Continuing in its analysis of the statute, the court dissected the term "regarding" found in the definition of "communication" in section 1692a(2).<sup>72</sup> "Webster's Ninth New Collegiate Dictionary (1st ed. 1983) defines the term 'regard' as, *inter alia*, 'to relate to',

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64. 15 U.S.C. § 1692c(b).

65. *West*, 998 F. Supp. at 644.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* (quoting *Summit Inv. & Dev. Corp. v. Leroux*, 69 F.3d 608, 610 (1st Cir. 1995)).

70. *Id.* See also *Laracuenta v. Chase Manhattan Bank*, 891 F.2d 17, 23 (1st Cir. 1989).

71. *West*, 998 F. Supp. at 644, (quoting 15 U.S.C. § 1692a(2)).

72. *Id.* See also 15 U.S.C. § 1692a(2).

while it provides the following definition for the term ‘regarding’: ‘with respect to: concerning’.<sup>73</sup> The court concluded that the plaintiff’s position that any contact other than for the express exceptions listed in the statute more closely aligned with the meaning of the term “regarding.”<sup>74</sup> The defendant’s phone call to Mr. West’s neighbor conveyed information that concerned the defendant’s attempt to collect a debt from Mr. West.

As the court continued its evaluation of section 1692c(b), it found that Congress intended for the FDCPA to “broadly regulate contact between debt collectors and third parties.”<sup>75</sup> The court evaluated the defense’s argument and found that the defense’s narrow interpretation of the statute would allow debt collectors to not only acquire location information regarding consumers, but would enable debt collectors to communicate with third parties as long as they did not reveal any information about the consumer’s debt.<sup>76</sup>

Applying the defense’s position would yield results clearly not within Congress’ intent behind the statute. For example, a debt collector could contact a debtor’s neighbor with intent to build a relationship with the neighbor in order to glean information about the consumer. According to the defense’s position, as long as the debt collector did not make the neighbor aware of the consumer’s debt, then no violation of the act would have occurred.

The court pointed out that “[i]f Congress had intended for the statute to be interpreted in this manner, it would not have drafted section 1692b.”<sup>77</sup> “[A] narrow interpretation of section 1692c(b) would render other portions of statute ‘superfluous’.”<sup>78</sup> The court concluded by stating that “section 1692c(b) should be broadly interpreted to prohibit a debt collector, in connection with the collection of any debt, from conveying any information relating to a debt to a third party (except for the purpose of obtaining location information as permitted under section 1692b).”<sup>79</sup> The court found that plaintiff’s allegations were sufficient to state a claim under the FDCPA and North Carolina law; therefore, defendant’s motion

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73. *West*, 998 F. Supp. at 644.

74. *Id.*

75. *Id.* at 644-45. *See also* 15 U.S.C. § 1692c(b).

76. *West*, 998 F. Supp. at 645.

77. *Id.* *See also* 15 U.S.C. § 1692b.

78. *West*, 998 F. Supp. at 645.

79. *Id.* *See also* 15 U.S.C. §§ 1692b, c(b).

to dismiss for failure to state a claim upon which relief could be granted failed.<sup>80</sup>

### *B. Policy Considerations Behind the Court's Ruling*

Congress, while drafting the FDCPA, recognized the competing interests at work. Congress tried to strike a balance between crafting meaningful legislation geared to protect the consumer's right to privacy by placing limitations on the types of communications that debt collectors could engage in with third parties, while at the same time being mindful that debt collection was a legitimate industry.<sup>81</sup> In order to achieve this balance, Congress carved out exceptions to the Act's general prohibition against third party contact in that a debt collector may contact a third party solely for the purpose of obtaining location information regarding a consumer.<sup>82</sup>

By applying the Congressional rationale behind the Act to *West*,<sup>83</sup> it can be seen that the district court carried out the broad intent of the Act. The court determined that the defendant's action clearly did not meet the limited exception to section 1692c(b)'s general proscription of third party contact.<sup>84</sup>

It is not clear from the record why the defendant called Mr. West's neighbor. It is clear that Mr. Beaulieu left word with the neighbor for Mr. West to contact him regarding a "very important matter."<sup>85</sup> Did this "innocent" phone call by Mr. Beaulieu result in an invasion of Mr. West's privacy?

The court concluded that this call did result in an "invasion" into Mr. West's private life. Consider the following hypothetical: A debtor's neighbor receives a call from a person asking him to have his neighbor, the consumer, contact the caller regarding something very important. Even if the neighbor did not ask the caller about the nature of this "important matter," the neighbor would probably ask Mr. West what this message was about when relaying it to him. Mr. West would then feel obligated to give some answer to his neighbor. This supposedly "innocent" call allowed the collector to enter the private realm of the consumer,

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80. *West*, 998 F. Supp. at 645. See also Fed. R. Civ. P. 12b(6).

81. S. Rep. No. 95-382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N 1695, 1699.

82. *Id.*

83. *West*, 998 F. Supp. at 644-45.

84. *Id.* at 645. See 15 U.S.C. § 1692c(b). See also 15 U.S.C. § 1692b for exception.

85. *West*, 998 F.Supp. at 644.

the realm of consumer privacy that Congress tried to protect in the drafting of the third party contact provisions of the FDCPA.

Mr. Beaulieu's contact with Mr. West's neighbor could have resulted in an invasion of Mr. West's privacy in another way. Suppose the neighbor had been asked to verify the address and phone number of Mr. West. He probably would have asked who was asking for this information and why. If Mr. West's neighbor had done this, Mr. Beaulieu would have been required to disclose information regarding his employer's name, thereby exposing Mr. West's neighbor to personal information about Mr. West's finances. This is exactly the sort of situation that Congress contemplated when drafting the FDCPA. In its report on the FDCPA, the Senate said that the FDCPA "adopts an extremely important protection" in prohibiting the disclosure of a consumer's "personal affairs to third persons."<sup>86</sup> "Other than to obtain location information, a debt collector may not contact third persons such as consumer's friends, neighbors, relatives, or employer. Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as the loss of jobs."<sup>87</sup> From the record, it is undeniable that a representative from Nationwide Credit did contact Mr. West's neighbor and communicated with this neighbor in a manner that was not for the sole purpose of obtaining location information.

### C. *Issues the Court Did Not Address*

There are some peripheral issues not specifically addressed by the court in this decision. For example, the decision leaves unclear how the court would apply section 1692b<sup>88</sup> and 1692c(b)<sup>89</sup> to the following situation. Suppose a debt collector contacted a neighbor, friend, or relative of the debtor in order to obtain location information about the debtor, and during this legal conversation, the third party begins to volunteer information about the debtor not specifically requested by the collector. How would the court approach this question in light of the *West* decision? Would it be fair to find that the debt collector violated the FDCPA under this fact pattern?

Remember the balancing of interests Congress attempted to obtain in the drafting of this legislation. There must be some con-

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86. S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N 1695, 1699.

87. *Id.*

88. 15 U.S.C. § 1692b.

89. 15 U.S.C. § 1692c(b).

sideration given to the collector in the above fact pattern. The court's interpretation and application of section 1692c(b)<sup>90</sup> seems to give great deference to the consumer protection position of the balancing act. Although no case has been reviewed under the above facts, the court's very broad holding implies that the court would apply this statute in a manner very deferential to the consumer. This holding may prove very injurious to debt collectors that are trying to abide by the guidelines of the Act.

#### V. CONCLUSION

The district court has put the collection industry on notice that communications with third parties in the collection of debts, that do not in any way mention the consumer's debt specifically, may nevertheless be considered to relate to the debt and violate the FDCPA. The court's holding reflects a very broad reading of section 1692c(b)<sup>91</sup>, but it is consistent with Congress' intent to protect consumers from overaggressive debt collection practices. The court's interpretation of the statute favors to consumer protection advocates, and it leaves the collection industry with a clear message that this section of the FDCPA is going to be construed very broadly by the courts in favor of consumers' rights.

*Brian Keith Faulkner*

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90. *Id.*

91. *Id.*