STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0642

Joseph Anthony Favors,
Appellant,

vs.

Chase Bank USA, N.A.,
Respondent,

Alltran Financial LP, et al.,
Defendants.

Filed January 11, 2021
Affirmed
Gaïtas, Judge

Carlton County District Court
File No. 09-CV-19-2103

Joseph Anthony Favors, St. Peter, Minnesota (pro se appellant)

Christopher L. Lynch, Barnes & Thornburg LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant-debtor Joseph Anthony Favors challenges the district court's rule 12.02(e) dismissal of his Fair Debt Collection Practices Act (FDCPA) and breach-of-contract claims against respondent-creditor Chase Bank USA, N.A. (Chase Bank). Favors argues that the district court erred by determining, first, that Chase Bank is not a debt

collector subject to the FDCPA and, second, that the complaint does not allege that any contract was formed. Because the allegations in the complaint, even if true, are insufficient to establish that Chase Bank is a debt collector and not a creditor, and because Favors's own complaint asserts that there was no meeting of the minds, which is necessary for contract formation, we affirm.

FACTS

Favors, a self-represented litigant, commenced this lawsuit in regards to his delinquent credit card account with Chase Bank.[1] He asserts various FDCPA and breach-of-contract claims, and he requests monetary damages and a judgment ordering Chase Bank to allow him to reopen the credit card account; to deduct all fees, penalty costs, and interest from the amount owing on the account; and to "delete" any negative credit reporting reflecting a delinquency on his credit card account. In determining whether Favors's complaint sets forth a legally sufficient basis for relief, we assume the facts

[1] Favors previously sued Chase Bank regarding the same account in federal district court, asserting FDCPA, Fair Credit Reporting Act (FCRA), and breach-of-contract claims. Complaint at 3, 9, 36, *Favors v. Chase Bank*, No. 18-cv-3198 (D. Minn. Nov. 15, 2018). Public documents from the federal case are included in the record on appeal, so we may consider them in analyzing this matter. *See, e.g.*, *Greenpond S., LLC v. Gen. Elec. Capital Corp.*, 886 N.W.2d 649, 653 n.4 (Minn. App. 2016), *review denied* (Minn. Sept. 27, 2017) (explaining that the appellate record contained facts from a bankruptcy proceeding and including those facts when analyzing a rule 12.02(e) dismissal of a complaint). The federal district court dismissed Favors's claims under the FCRA with prejudice and dismissed his FDCPA and breach-of-contract claims without prejudice. R&R at 20, *Favors v. Chase Bank*, No. 18-cv-3198 (D. Minn. June 28, 2019); Order at 2, *Favors v. Chase Bank*, No. 18-cv-3198 (D. Minn. Aug. 9, 2019). The FDCPA claims were dismissed because Favors failed to sufficiently allege that Chase Bank is a "debt collector" subject to the FDCPA; Favors's complaint instead suggested that Chase Bank was a creditor seeking to collect its own debt. *Id.*

alleged in the complaint are true. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

Factual allegations in complaint

According to the complaint, Favors opened an account with Chase Bank at an unspecified time. Sometime thereafter, he "allegedly became delinquent on said account." Chase Bank engaged Alltran Financial LP (Alltran) and ARS National Services (ARS) to collect the debt owed by Favors.

On March 8, 2018, Alltran sent Favors what the complaint characterizes as a "Settlement Offer."[2] Alltran offered to settle Favors's $4,790.66 debt owed to Chase Bank "for a discount amount" of "3 equal payments of $239.53." A few weeks later, Favors mailed Alltran one $239.53 payment. He believed that the act of mailing the payment reduced his debt to an outstanding balance of $479.06.

On March 25, 2018, Favors sent a letter to Chase Bank disputing his debt. Favors requested that Chase Bank provide "validation" in the form of "competent evidence bearing [his] signature" showing that he had a contractual obligation to pay Chase Bank. He also expressed that he believed Chase Bank would violate his rights under the FDCRA and FCRA if Chase Bank reported his debt to third parties in a way that negatively affected his credit reports.

Sometime thereafter, Chase Bank reported to at least three consumer reporting agencies that Favors was behind on payments and that he owed $4,790.66. Additionally,

[2] While Favors's complaint refers to attached exhibits, purportedly containing the "Settlement Offer," he did not file any attachments with the complaint. The alleged offer itself is accordingly not part of the record.

according to Favors, either Chase Bank, Alltran, or ARS contacted his employer about the debt. Favors sent Chase Bank another letter near the end of April 2018, again stating that he disputed the amount that he owed.

In July 2018, Favors received a copy of the "Chase Slate Card Member Agreement" from Chase Bank. Favors alleges that he was "previously unaware such a document existed," and that he never signed a card member agreement in connection with his account.

In addition to the above allegations about his account, Favors's complaint makes a number of general allegations about Chase Bank's relationship with Alltran and ARS. He asserts that Chase Bank has a longstanding relationship with both Alltran and ARS, which are debt-collection services, but that their arrangement "has never been reduced to writing." Under the arrangement, when Chase Bank is unsuccessful in obtaining payment from its customers, it "sends the name and address of the customer to [Alltran] and/or [ARS], which writes the customer demanding payment of the sum that Chase Bank" has stated is due. The letters threaten that further collection efforts may follow if the demand is ignored. Favors's complaint alleges that, before Alltran or ARS send demand letters, they "run[] a computer check on the customer's name in order to eliminate debtors who it would be futile to dun." The complaint also alleges that the contents of the letters "are a collaborative product" of Alltran, ARS, and Chase Bank, and that the letters direct the customer to pay Chase Bank directly.

Favors's complaint further alleges that although the letters from Alltran and ARS list phone numbers for those entities, Chase Bank ultimately handles any correspondence. He states that if Chase Bank receives no payment from a customer, it may direct Alltran or

ARS to send another letter. Favors alleges that Chase Bank pays Alltran or ARS a flat fee for each letter sent. If the letters "fail to elicit payment of the debt," Chase Bank "retransmits the customer's name and address" to the debt-collection service providers, who then decide whether to make additional efforts to collect the debt. The complaint asserts that the debt-collection service providers "probably [do] nothing further in most cases, although the record is barren of data," but that, if they do collect money from the debtor, they retain 35% of the "take" as compensation and transmit the rest to Chase Bank.

Procedural history of this action

Favors filed his complaint in October 2019, along with a certificate of service stating that he served the complaint on Chase Bank via mail. In November 2019, after the district court entered a notice of noncompliance with Minnesota General Rule of Practice 11.04, Favors refiled the complaint, again with a certificate of service stating he mailed the complaint to Chase Bank. The following month, the district court, acting on its own initiative, dismissed the complaint without prejudice for invalid service of process. At the end of January 2020, Chase Bank moved to dismiss the complaint with prejudice for failure to state a claim under Minnesota Rule of Civil Procedure 12.02(e).

The district court held a motion hearing on March 5, 2020. But Favors did not appear, and the district court granted Chase Bank's request to decide the motion to dismiss based on the written filings. A few weeks later, Favors filed a motion for summary judgment, which Chase Bank opposed as substantively and procedurally flawed.

On April 13, 2020, the district court issued an order granting Chase Bank's motion to dismiss Favors's claims with prejudice, denying Favors's motion for summary

judgment, and directing entry of judgment for Chase Bank. The district court concluded that Favors failed to state viable FDCPA claims because Chase Bank is not a debt collector under the act, and he failed to state valid breach-of-contract claims because the complaint does not allege formation of a contract between Favors and Chase Bank.

This appeal follows.

DECISION

When a case is dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim for which relief can be granted, the appellate court reviews the legal sufficiency of the claim de novo and determines whether the complaint sets forth a legally sufficient claim for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). In doing so, we "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh*, 851 N.W.2d at 606. But we need not accept a plaintiff's legal conclusions as true; a sufficient complaint "must provide more than labels and conclusions." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

I. The district court properly concluded that the FDCPA does not apply to Chase Bank.

The FDCPA—enacted to prevent abusive debt collection practices—"imposes civil liability on debt collectors for certain prohibited" conduct. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 576-77, 130 S. Ct. 1605, 1608 (2010) (quotation omitted); 15 U.S.C. § 1692(e) (2016) (FDCPA purpose statement). A plaintiff may sue a debt collector for FDCPA violations in federal or state court and recover actual damages, statutory damages, attorney fees, and costs. 15 U.S.C. § 1692k(a), (d) (2016); *see, e.g.*, *McIvor v. Credit Control Servs., Inc.*, 773 F.3d 909, 913 (8th Cir. 2014). Various courts

have liberally construed the FDCPA to achieve its broad remedial purpose. *See Hart v. FCI Lender Servs., Inc.*, 797 F.3d 219, 225 (2d Cir. 2015); *Picht v. Hawks*, 77 F. Supp. 2d 1041, 1043 (D. Minn. 1999), *aff'd*, 236 F.3d 446 (8th Cir. 2001).

The FDCPA defines "debt collectors" to include anyone who "regularly collects . . . debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6) (2016). A business that collects a debt for its own account is not a debt collector under the FDCPA. *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721-22 (2017); *see* 15 U.S.C. § 1692a(6)(F) (specifically excluding from the definition of "debt collector" "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . concerns a debt which was originated by such person"). A "creditor," on the other hand, is "any person who offers or extends credit creating a debt or to whom a debt is owed." 15 U.S.C. § 1692a(4) (2016). The FDCPA does not regulate the activities of creditors. *Schmitt v. FMA All.*, 398 F.3d 995, 998 (8th Cir. 2005) ("[A] distinction between creditors and debt collectors is fundamental to the FDCPA, which does not regulate creditors' activities at all." (quotation omitted)).

Favors's complaint makes clear that his debt originated with Chase Bank and that Chase Bank sought to collect the debt for its own account. Accordingly, Chase Bank is a creditor and does not qualify as a debt collector under the FDCPA. Favors therefore cannot invoke the act's protections against Chase Bank unless an exception applies. *See Henson*, 137 S. Ct. at 1721-22.

Favors asserts that an exception does apply, claiming that Chase Bank can still be held liable under the FDCPA if Chase Bank acted as "flat-rater." He refers to two

provisions of the FDCPA in support of his argument: 15 U.S.C. § 1692j(a) (2016) and 15 U.S.C. § 1692a(6) (2016).

The first statutory provision, 15 U.S.C. § 1692j(a), provides that:

> It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

The term "flat-rater" describes the person furnishing the form to the creditor under this statutory provision. *See, e.g.*, *Hartley v. Suburban Radiologic Consultants, Ltd.*, 295 F.R.D. 357, 369-71 (D. Minn. 2013); *Gutierrez v. AT&T Broadband, LLC*, 382 F.3d 725, 734 (7th Cir. 2004) ("The classic 'flat-rater' effectively sells his letterhead to the creditor . . . so that the creditor can prepare its own delinquency letters on that letterhead." (quotation omitted)). But section 1692j(a) only imposes liability on the party that supplies the form, not on the creditor who uses it. *Hartley*, 295 F.R.D. at 370. Favors alleges that Alltran and ARS write letters to debtors in an effort to collect debts on Chase Bank's behalf. He does not allege that Chase Bank supplies any deceptive letters. Thus, Favors cannot rely on this provision to hold creditor Chase Bank liable under the FDCPA.

A creditor participating in a flat-rating scheme may, however, "be liable under the provision of the FDCPA prohibiting a creditor from using a name to create the false impression that a third party is involved in the collection of the creditor's debt." *Id.* at 370 (quotation omitted). The second statutory provision that Favors invokes, *see* 15 U.S.C. § 1692a(6), is this "false-name exception." *See Medica Self-Insured v. Tenet Healthcare Corp.*, No. 06-4747, 2007 WL 1385589, at *3 (D. Minn. May 4, 2007). Under the false-

name exception, a creditor may qualify as "debt collector" for the purposes of the act if the creditor "in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. § 1692a(6).

Chase Bank argues that Favors's complaint fails to allege sufficient facts regarding its participation in any flat-rating scheme. According to Chase Bank, federal courts apply various standards to review flat-rating claims, but, under any standard, Favors's claim fails.

As Chase Bank notes, some courts have held that creditors can only be liable as debt collectors under the false-name exception when the creditor "actually pretends to be someone else or uses a pseudonym or alias." *Hartley*, 295 F.R.D. at 371 (quotation omitted). Under this approach, "so long as a creditor hires a debt collector to send out letters, the creditor cannot itself be deemed a debt collector, no matter how minimal the role of the letter sender in the collection scheme." *Id.* The United States District Court for the District of Minnesota has rejected this approach as being inflexible, though, and has instead applied a multifactor test to determine whether the creditor has "merely implie[d] that a third party is collecting a debt[,] when in fact it is the creditor that is attempting to do so." *Id.* at 371-72. Regardless of the appropriate standard, we conclude that Favors failed to adequately allege a flat-rating scheme.

Several aspects of Favors's complaint support our determination. First, his complaint alleges that Chase Bank has a longstanding relationship with debt-collection agencies Alltran and ARS. He alleges that, once Chase Bank engages their services, Alltran and ARS—*not Chase Bank*—send demand letters to customers. Favors does not

allege that Chase Bank controls the content of the letters. Instead, he claims that these letters are a "collaborative product" between Chase Bank and the debt-collection agencies. He admits that the letters contain phone numbers for Alltran and ARS. And although Favors alleges that the debt-collection agencies are paid a "flat rate" to send these letters, he also alleges that, if the letters prove futile, the debt-collection agencies have discretion as to whether to take further collection action. Moreover, he alleges that if the debt-collection agencies do collect money, they retain a percentage of the recovered sum.

Assuming that all of Favors's asserted facts[3] are true, his complaint fails to adequately plead that Chase Bank acted as a debt collector by using a different name to deceptively suggest that another party was involved in collecting the debt. Thus, the limited false-name exception cannot apply. *See* 15 U.S.C. § 1692a(6). Instead, Favors's complaint effectively alleges that Alltran and ARS are separate entities that are attempting to collect the debt. The district court accordingly did not err when it dismissed Favors's complaint for failure to state a claim under the FDCPA because Chase Bank does not qualify as a debt collector under the act.

[3] Chase Bank contends that Favors's complaint does not actually allege any *facts* regarding its involvement in a supposed false-name scheme, but merely asserts unsupported *conclusions and speculation* that this court need not take as true. This is because the complaint concedes that Favors has no personal knowledge of Chase Bank's relationship with Alltran and ARS. For instance, Favors asserts that the entities' arrangement has "never been reduced to writing" and that, after nonpayment by customers, Alltran and ARS "probably [do] nothing further in most cases, though the record is barren of data." Chase Bank is correct that unsupported conclusions need not be taken as true in the course of our review. *See Bahr*, 788 N.W.2d at 80. But here, we need not decide which assertions to reject because, even if all are taken as true, Favors's FDCPA claims still fail.

II. The district court properly concluded that the complaint fails to state a claim for breach of contract.

"A contract consists of a binding promise or set of promises. A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Ill. Pater & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (citation omitted). To prevail on a breach-of-contract claim, the plaintiff must show (1) the formation of a contract, (2) the plaintiff's performance of any conditions precedent to its right to demand performance from the defendant, and (3) the defendant's breach of the contract. *Id.* Contract formation requires a "meeting of the minds" as to its essential terms. *Malevich v. Hakola*, 278 N.W.2d 541, 544 (Minn. 1979).

Favors's complaint asserts that Chase Bank breached a contract with him by attempting to hold him liable under the "Chase Slate Cardmember Agreement" when Favors never saw or signed the agreement. He contends that he is "not subject to any of the written terms," including fees, interest, and other rates, because he never assented to them.[4]

The district court concluded that the complaint fails to state a breach-of-contract claim because Favors affirmatively alleges that no contract formation occurred. Specifically, Favors alleges that "Chase Bank . . . prevented him from any 'mutual assent'

[4] In his appellate briefing, Favors argues that he also alleged that a contract was formed when Chase Bank offered, through Alltran, to reduce his debt and Favors accepted the offer by mailing a payment of $239.53. He asserts that Chase Bank breached this "settlement contract" by contacting Favors's employer. Favors did not allege a breach of contract on this basis in the complaint though, and the district court did not address this argument. We therefore decline to reach the issue of an alleged contract formation for debt reduction, as it is not properly before us.

or 'meeting of the minds' regarding the 'Chase Slate Cardmember Agreement' terms and conditions."

We agree with the district court. Because Favors's complaint asserts that there was no meeting of the minds as to the terms of the "Cardmember Agreement," he cannot prove contract formation and accordingly has no breach-of-contract claim. *See Malevich*, 278 N.W.2d at 544. As Chase Bank notes, while Favors could potentially make this argument in defense to a breach-of-contract claim brought against him by Chase Bank, the argument does not, on its own, support a breach of contract *by Chase Bank*. We also note that, even if Favors had sufficiently pleaded contract formation, he does not assert any facts showing his performance under the contract or Chase Bank's breach of a particular term of the contract. We accordingly conclude that the district court properly dismissed Favors's claim for breach of contract.

Affirmed.