

Moore v Direct Loans
2010 NY Slip Op 30671(U)
March 24, 2010
Supreme Court, New York County
Docket Number: 111355/2009
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

JANE S. SOLOMON

Index Number : 111355/2009

PART SS

MOORE, BRIAN

vs

DIRECT LOANS

Sequence Number : 002

RENEWAL

INDEX NO. _____

MOTION DATE 2/18/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion ~~is granted~~ ~~is denied~~

is decided by the annexed memorandum decision and order

FILED

MAR 26 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: 3/24/10

J.S.
JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----x
BRIAN MOORE,

Plaintiff,

-against-

DIRECT LOANS

Defendants.

-----x
JANE S. SOLOMON, J.:

Index No.: 111355/2009
DECISION and ORDER

FILED

MAR 26 2010

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COUNTY CLERK'S OFFICE

Plaintiff, pro se, Brian Moore (Moore) sues Defendant Direct Loans Servicing Center (Direct) for damages resulting from Direct's submission of a negative credit report on him to credit reporting agencies. He moves to renew his earlier motion to "direct the defendant to pay the damages." Direct did not respond to Moore's initial motion, and Moore failed to submit proof of service of a complaint. As a result, the motion was denied by a decision dated December 22, 2009, with leave to renew on proper papers.

On January 12, 2010, Moore filed this motion to renew, attaching copies of the missing papers. Once again, Direct fails to respond. Having cured the defect in the original motion, renewal is granted and the papers are reviewed on the merits.¹

Direct collects payment for the lender of Moore's student loans. Moore alleges that Direct failed to give him

¹ The original papers were retrieved from the county clerk's file.

notice of the expiration of his grace period and of his failure to make timely payments. Moore states that because he failed to make timely payments for three months, this information appeared on his record with the national credit reporting services, such as Equifax and Experian. The appearance of this information caused his credit score to drop. The copy he provides of their report also show other debts. Nevertheless, he contends that it is the appearance of the information from Direct which caused his bank to foreclose on his house, and caused him to lose a prospective job.

Moore's submission contains the following exhibits: (A) correspondence between Moore and Direct, including Direct's explanation of its standard reporting practices and Moore's obligations to Direct, and Moore's invoices to Direct for damages; (B) correspondence related to his job search; (C) correspondence related to his mortgage refinancing, including a copy of his credit report, which reflects that he was past due on five occasions on his mortgage; (D) a separate credit report; (E) correspondence with the credit reporting services; (F) Moore's statement of tax liability; and (G) a notice of pendency of foreclosure.

Moore first argues that Direct's alleged failure to send him any documentation regarding the end of his grace period or his bills caused him damages. However, his Direct Loan

Borrower's Rights and Responsibilities Statement provides:

"You must make payments on your loan even if you do not receive a bill or repayment notice. Billing information is sent to you as a convenience, and you are obligated to make payments even if you do not receive a notice or bill" (Direct Loans Letter, dated September 30, 2008, attached to Motion, Ex. A).

Next, Moore contends that Direct "negligently failed to comply with the requirements imposed under the Fair Credit Reporting Act (FCRA)," 15 U.S.C. § 1681, et seq., by not giving him notice of its report. Specifically, it appears that Moore contends that Direct has violated 15 U.S.C. § 1681s-2(a)(7)(A)(i) (see, Letter dated November 27, 2008, attached to Motion, Ex. A). That section, entitled "Responsibilities of furnishers of information to consumer reporting agencies" states:

(a) Duty of furnishers of information to provide accurate information (7) Negative information (A) Notice to consumer required (i) In general: If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 1681a(p) of this title furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer (15 U.S.C. § 1681s-2[a][7][A][i]).

It is unclear whether Direct is a "financial institution" as defined in the statute; however, assuming arguendo that it does fulfill the definition, Moore cannot recover. While the FCRA allows civil recovery for certain violations, such recovery is not available for a violation of §

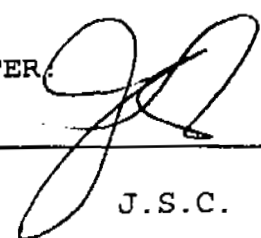
1682s-2(a). Section 1681s-2(c) limits liability to state actors, and provides:

"Limitation on Liability: Except as provided in section 1681s(c)(1)(B) of this title, sections 1681n and 1681o of this title do not apply to any violation of (1) subsection (a) of this section, including any regulations issued thereunder" (Id.)

Accordingly, Moore fails to state a claim against Direct; and it hereby is

ORDERED that Plaintiff's motion to renew is granted, and upon review, the motion is denied and the case is dismissed; the Clerk of the Court is directed to enter judgment accordingly.

Dated: March 24, 2010

ENTER. 

J.S.C.

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