

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EUNICE MURPHY,)
)
 Plaintiffs,)
)
 v.) Case No. 4:05CV1545 RWS
)
 MIDLAND CREDIT MANAGEMENT,)
 INC., et al.)
)
 Defendant,)

MEMORANDUM AND ORDER

This matter is before me on Defendant’s Partial Motion to Reconsider [#83]. Defendant Experian Information Solutions Inc. requests that I reverse part of my ruling of October 11, 2006, denying Experian’s motion for summary judgment on the issue of willfulness. The motion will be denied.

Rule 59(e) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence. Capitol Indemnity Corp. v. Russellville Steel Co., Inc., 367 F.3d 831, 834 (8th Cir. 2004) (citations and quotations omitted).

The motion will be denied because Experian has neither identified any manifest error of law nor fact in my analysis nor identified any newly discovered evidence.

Legal Standard

15 U.S.C. § 1681n provides the statutory authority for civil liability for willful noncompliance with the Fair Credit Reporting Act. Eunice Murphy’s remaining willful noncompliance claim arises out of Experian’s alleged failure to meet the requirements of 15 U.S.C. § 1681i(a).

“[W]illful noncompliance under section 1681n requires knowing and intentional commission of an act the defendant knows to violate the law.” Phillips v. Grendahl, 312 F.3d 357, 370 (8th Cir. 2002). Plaintiff need not show malice or evil motive. Bruce v. First U.S.A. Bank, N.A., 103 F. Supp. 2d 1135, 1144 (D. Mo. 2000) (citing Bakker v. McKinnon, 152 F.3d 1007, 1013 (8th Cir. 1998); Cushman v. Trans Union Corp., 115 F.3d 220, 226 (3d Cir. 1997)).

Analysis

Experian argues that Murphy admitted that Experian did not act willfully when she stated in her deposition that Experian did not intentionally “target” her or treat her differently from other consumers. This argument falls short. As discussed above, the legal standard does not require Murphy to show malice or evil motive to prove willfulness. Bruce, 103 F. Supp. 2d at 1144. The violation of the Fair Credit Reporting Act alleged by Murphy was not that she was intentionally “targeted” or treated differently from other customers, but rather that Experian knowingly and intentionally failed to reasonably reinvestigate her disputes of ownership of the Midland account. Therefore, it is not clear from the record whether Murphy intended her statement to mean that she admitted that Experian did not act willfully or whether she just admitted that Experian did not intentionally target her individually. This can be distinguished from Murphy’s admission in her response to Defendant Trans Union’s motion for summary judgment, in which she specifically stated “that the willfulness case against Trans Union cannot be proved.” Accordingly, I will not reconsider my denial of summary judgment on the basis of Murphy’s deposition testimony.

The only issue before me now is whether there is sufficient evidence of Experian’s willfulness to survive summary judgment. Experian is a credit reporting agency. Experian is

aware that its actions are governed by the Fair Credit Reporting Act and that failing to reasonably reinvestigate any disputes made by consumer is a violation of that Act.

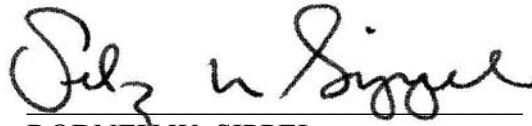
In my order denying summary judgment for Experian on Murphy's 15 U.S.C. § 1681n claim, I also held that Experian was not entitled to summary judgment on Murphy's 15 U.S.C. § 1681i(a) claim because there is a material dispute as to the reasonableness of Experian's reinvestigation procedures. The undisputed evidence in this case establishes the following facts: Murphy repeatedly insisted through telephone conversations that she did not own the Midland account; Experian's investigation consisted *solely* of Automatic Consumer Dispute Verification forms ("ACDV") sent to Midland. No one from Experian either requested or received any documents other than the ACDV. Experian did not ask for or receive a contract signed by Murphy establishing her ownership of this credit card account. Experian did not ask for or receive charge slips signed by Murphy. Experian did not ask for or receive a credit card application signed by Murphy. The only information Experian received from Midland was Murphy's name, current address and social security number. Additionally, Experian had notice that the Providian account, which was the same account reported under a different name, had been previously removed from Murphy's credit report as a result of her earlier dispute.

This was not merely a case of repeated investigations and prompt responses, as alleged by Experian. With the history of confusion regarding the Providian account, combined with Murphy's repeated disputes regarding the Midland account and Experian's failure to do anything more than send ACDVs to Midland, a jury considering this evidence could conclude that Experian knowingly and intentionally failed to take *reasonable* steps to verify the accuracy of the information it reported to third parties.

When the facts are disputed, “reasonableness” is uniquely a question for a jury. Bruce, 103 F. Supp. 2d at 1143. Based upon the evidence described above, I am unable say as a matter of law that no reasonable jury could find that Experian willfully failed to reasonably investigate plaintiff’s disputes.

Accordingly,

IT IS HEREBY ORDERED that Experian’s Partial Motion to Reconsider [#83] is **DENIED**.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 31st day of October, 2006.