

FILED
Clerk
District Court

DEC 31 2003

For The Northern Mariana Islands
By JF
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

RAY T. TENORIO,

Plaintiff

v.

RELIABLE COLLECTION
AGENCY, INC.; HELEN
SAMBRANO; and, DOES 1
THROUGH 5,

Defendants

Civil Action No.02-0038

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AFTER BENCH TRIAL

THIS MATTER came before the court on Monday, November 10, 2003,
for a bench trial. Plaintiff appeared personally and by and through his attorney,
Perry B. Inos; defendants Reliable Collection Agency, Inc. and Helen Sambrano
appeared personally and by and through their attorney, G. Anthony Long.

1 THE COURT, having considered the testimony of the witnesses and the
2 documents entered into evidence, previously granted defendants' Fed.R.Civ.P.
3 52(c) motion at the conclusion of plaintiff's case as to counts 8 (violation of
4 right to privacy by publication of debt) and 9 (intentional infliction of
5 emotional distress).¹ Plaintiff conceded he had failed to prove count 3
6 (violation of 15 U.S.C. § 1692c(b) - communication with third parties about
7 debt) and withdrew it from the court's consideration and that count was
8 dismissed with prejudice. The court took the remaining counts under
9 advisement and allowed the parties to submit proposed findings of fact and
10 conclusions of law. Those were received from the parties on December 16,
11 2003.

12 The court, having fully considered the evidence adduced at trial and the
13 proposed findings and conclusions submitted by the parties, makes the
14 following findings of fact and conclusions of law.
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25 The court previously granted defendants' motion to dismiss count 4. *See*
26 "Order Granting Defendants' Motion for Partial Summary Judgment" (June 5,
2003).

Findings of Fact

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3 1. Reliable Collection Agency, Inc. ("RCA"), is a corporation organized
4 under the laws of the Commonwealth of the Northern Mariana Islands, with its
5 principal office and place of business on Saipan, Commonwealth of the
6 Northern Mariana Islands.
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8 2. Defendant RCA operates a debt collection agency subject to the Fair
9 Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*
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11 3. Defendant RCA is a "debt collector" within the meaning of the
12 FDCPA. 15 U.S.C. § 1692(a)(6).
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14 4. Defendant Helen Sambrano ("Sambrano") was at all relevant times
15 employed as a collector for RCA.
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17 5. Plaintiff Ray T. Tenorio ("Tenorio") is a consumer within the
18 coverage of the FDCPA and, at all times relevant herein, was employed at
19 Pacific Island Aviation ("PIA").
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21 6. Defendant Sambrano has worked as a collector for RCA for four years
22 and prior to that she worked as a collector for another collection agency.
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24 7. Between May 24, 2001, and June 15, 2001, plaintiff wrote personal
25 checks for food and other items for personal use to L&Y Corporation, doing
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1 business as Happy Market II. On July 1, 2001, Tenorio also wrote a personal
2 check to purchase an airline ticket from Continental Airlines.
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4 8. Tenorio's checks were presented for payment at his bank but were
5 returned due to insufficient funds in his checking account.
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7 9. Happy Market II and Continental Airlines engaged RCA to collect the
8 insufficient funds checks written by Tenorio.
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10 10. Defendants RCA and Sambrano knew Tenorio's mailing address,
11 cellular telephone number, and work telephone number, but not his home
12 phone number. In their reports, Sambrano and other RCA collectors referred
13 to plaintiff's cell phone number as his residence number. Sambrano and other
14 collectors telephoned Tenorio on his cell phone and his work telephone. If
15 Tenorio was not in, the collector would leave his or her name and telephone
16 number and eventually call back to see if Tenorio was in. If the collector
17 succeeded in speaking with Tenorio, no additional call was made to him about
18 the debt unless plaintiff Tenorio failed to keep his promise or commitment to
19 the collector in the previous conversation. In addition to the telephone calls,
20 Sambrano or other collectors would travel to Tenorio's work to serve him with
21 communications required by the Commonwealth bad check collection law,
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1 Title 7 N.Mar.I. Code § 2441.

2 11. On August 21, 2001, RCA made demand for payment of the
3 insufficient funds check to Continental Airlines. On September 4, 2001,
4 plaintiff Tenorio went to the RCA office to make partial payment on some of
5 his debts being serviced by RCA. While Tenorio was at RCA's payment
6 counter, he prepared to make a \$25.00 payment. Sambrano asked Tenorio why
7 he was only paying \$25.00, when he had promised to make a \$50.00 payment.
8 Other RCA employees were present at the time but there was no persuasive
9 proof that other, non-employees were present or heard Sambrano's question.
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11 12. On October 3, 2001, Sambrano and RCA employee John Santos
12 hand-delivered two letters dated September 21, 2001, to Tenorio at PIA, his
13 workplace. The two letters were "bad check" notices issued in compliance with
14 Commonwealth law. Plaintiff did not want to accept service of the letters and
15 tried to return them to Sambrano. She refused to take them and the letters
16 dropped to the ground. Sambrano and Santos started to return to their car in
17 the airport parking lot but plaintiff called the Commonwealth Ports Authority
18 ("CPA") police and then ran after Sambrano and Santos to prevent them from
19 leaving prior to arrival of the police. CPA Police Officer Joseph Muna
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1 responded to Tenorio's call. Tenorio lodged a complaint with Muna and
2 produced a letter dated September 5, 2001, which said that he had advised
3 defendants not to contact him. The letter did not specify any particular debt to
4 which it applied. Sambrano denied knowledge of the letter. Subsequently,
5 Tenorio agreed to accept the letters and Sambrano and Santos left.
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8 13. Lawsuits were later filed by RCA against plaintiff Tenorio in the
9 Commonwealth courts in connection with both the Happy Market II and
10 Continental Airlines debts. Shortly thereafter, plaintiff Tenorio filed this
11 lawsuit.
12

13 14 Conclusions of Law

15 1. Plaintiff Tenorio's first claim for relief alleges a violation of 15 U.S.C.
16 § 1692b(3), which provides in relevant part that "[a]ny debt collector
17 communicating with any person other than the consumer for the purpose of
18 acquiring location information about the consumer shall--(1) identify himself,
19 state that he is confirming or correcting location information concerning the
20 consumer, and, only if expressly requested, identify his employer; (2) not state
21 that such consumer owes any debt; (3) not communicate with any such person
22 more than once unless requested to do so by such person or unless the debt
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1 collector reasonably believes that the earlier response of such person is
2 erroneous or incomplete and that such person now has correct or complete
3 location information.”
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5 The term “location information” as used in § 1692b(3) means the debtor’s
6 place of abode, telephone number at such place, or the debtor’s place of
7 employment. 15 U.S.C. § 1692a(7).
8

9 Defendants did not violate 15 U.S.C. § 1692b(3). The evidence presented
10 during trial did not show that Sambrano or RCA contacted anyone about
11 location information concerning plaintiff Tenorio. Indeed, the evidence showed
12 that Sambrano and RCA knew Tenorio was employed with PIA and they had
13 his cell telephone number and work telephone number. There was no evidence
14 that Sambrano or any other RCA collector called any third person more than
15 once in an effort to obtain information about Tenorio’s place of abode,
16 telephone number at such place, or his place of employment. There was no
17 evidence that Sambrano or any other RCA collector called a third person
18 seeking to garner any information about Tenorio.
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24 The evidence showed that calls were placed to Tenorio’s cell phone and
25 work phone in an effort to speak with him. Such calls do not violate 15 U.S.C.
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1 § 1692b(3).

2 2. Plaintiff's second claim for relief alleges a violation of 15 U.S.C. §
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4 1692c(a)(1). That section provides in relevant part that:

5 [w]ithout the prior consent of the consumer given directly to the
6 debt collector or the express permission of a court of competent
7 jurisdiction, a debt collector may not communicate with a
8 consumer in connection with the collection of any debt—

9 (1) at any unusual time or place or a time or place known or
10 which should be known to be inconvenient to the consumer. In
11 the absence of knowledge of circumstances to the contrary, a
12 debt collector shall assume that the convenient time for
13 communicating with a consumer is after 8 o'clock antemeridian
14 and before 9 o'clock postmeridian, local time at the consumer's
15 location.

16 There was no evidence that Sambrano or any other RCA collector
17 communicated with Tenorio before 8:00 a.m. or after 9:00 p.m., so the only
18 issue was whether defendants contacted plaintiff at work, knowing or having
19 reason to know that his employer prohibited such calls.

20 The was no evidence that Sambrano or any other RCA collector knew or
21 should have known that it was inconvenient to communicate with Tenorio at
22 his place of employment. The evidence was insufficient to establish a violation
23 of 15 U.S.C. § 1692c(a)(1).
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26 3. Plaintiff's fifth claim for relief alleged harassment in violation of 15

1 U.S.C. §1692d. That statute provides that:

2 [a] debt collector may not engage in any conduct the natural
3 consequence of which is to harass, oppress, or abuse any person
4 in connection with the collection of a debt. Without limiting the
5 general application of the foregoing, the following conduct is a
6 violation of this section:

7 (1) The use or threat of use of violence or other criminal means
8 to harm the physical person, reputation, or property of any
9 person.

10 (2) The use of obscene or profane language or language the
11 natural consequence of which is to abuse the hearer or reader.

12 (3) The publication of a list of consumers who allegedly refuse to
13 pay debts, except to a consumer reporting agency or to persons
14 meeting the requirements of section 1681a(f) or 1681b(3) of this
15 title.

16 (4) The advertisement for sale of any debt to coerce payment of
17 the debt.

18 (5) Causing a telephone to ring or engaging any person in
19 telephone conversation repeatedly or continuously with intent to
20 annoy, abuse, or harass any person at the called number.

21 (6) Except as provided in section 1692b of this title, the
22 placement of telephone calls without meaningful disclosure of
23 the caller's identity.

24 The evidence at trial failed to show harassment in violation of 15 U.S.C. §
25 1692d.

26 Section 1692(d) is not intended to shield recipients of debt collection

1 activities from the inconvenience and embarrassment that are the natural
2 consequences of debt collection. Beattie v. D.M. Collections, Inc., 754 F.Supp.
3 383, 394 (D.Del. 1991); Bieber v. Associated Collection Service, Inc., 631
4 F.Supp. 1410, 1417 (D.Kan. 1986). The statute prohibits only oppressive and
5 outrageous conduct, *id.*, but there was no evidence of such conduct.
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8 4. Plaintiff's sixth claim for relief alleged that defendants failed to comply
9 with 15 U.S.C. § 1692e(11). Section 1692e(11) makes it a violation of the
10 FDCPA if a debt collector fails to disclose to the debtor that "the debt collector
11 is attempting to collect a debt and that any information obtained will be used
12 for that purpose, and the failure to disclose in subsequent communications that
13 the communication is from a debt collector, except that this paragraph shall not
14 apply to a formal pleading made in connection with a legal action."
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18 Plaintiff claimed that a written communication to him dated September
19 21, 2001, failed to disclose that "defendants were attempting to collect a debt and
20 that any information obtained would be used for that purpose." The evidence
21 did not establish a violation.
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24 In the Ninth Circuit, § 1692e(11) applies only to the initial
25 communication from a debt collector. Pressley v. Capital Credit & Collection
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1 Service Inc., 760 F.2d 922 , 923-925 (9th Cir. 1985); Newman v. Checkrite
2 California, Inc., 912 F.Supp. 1354, 1381 (E.D.Cal.1995). Subsequent
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4 communications by a debt collector with a debtor do not need to contain the 15
5 U.S.C. § 1692e(11) advisory. *Id.*

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7 The evidence showed that the communications complained of, Exhibits 3
8 and 5, were "bad check" letters concerning the check written to Happy Market
9 II in the amount of \$375.00 and the check written to Continental Airlines in the
10 amount of \$356.00. To prove a violation of § 1692e(11), plaintiff had to show
11 that each letter was the initial communication from RCA with respect to each
12 debt. Pressley, 760 F.2d at 923-925. There was no testimony that each letter
13 was the initial communication for each debt and, thus, plaintiff failed to
14 establish a fact necessary to prove a § 1692e(11) violation.
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18 5. The seventh claim for relief alleged common law harassment and
19 invasion of the right to privacy. Tenorio claimed that his privacy was invaded
20 and that he was harassed (1) on September 4, 2001, when defendant Sambrano
21 questioned him at the RCA office about the amount he was paying on a debt,
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23 (2) on October 3, 2001, when defendant Sambrano hand-delivered the two
24 letters, Exhibits 3 and 5, and (3) by defendants telephoning him at work. The
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1 evidence failed to make out an invasion of privacy or any cognizable instance of
2 harassment.

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4 In the absence of statutory law, Commonwealth courts look to the law
5 “as expressed in the restatements of the law approved by the American Law
6 Institute and, to the extent not so expressed as generally understood and applied
7 in the United States....” 7 N.Mar.I. Code § 3401. The Commonwealth has not
8 enacted any statute providing for a tort of invasion of privacy, so the court
9 looks to the Restatements. Restatement (Second) of Torts § 652A defines the
10 tort of invasion of privacy. Such an invasion occurs when a person: a)
11 unreasonably intrudes upon the seclusion of another, or (b) appropriates the
12 name or likeness of another, or (c) gives unreasonable publicity to the private
13 life of another, or (d) places another in a false light before the public.

14 Tenorio claimed his privacy was violated by defendants Sambrano and
15 RCA by giving unreasonable publicity to his private life. To prove a privacy
16 violation under § 652D, a debtor must show that the matter publicized is of a
17 kind that (a) would be highly offensive to a reasonable person, and (b) is not of
18 legitimate concern to the public. A privacy invasion does not occur simply
19 because of communication of a private fact “concerning the plaintiff's private
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1 life to a single person or even to a small group of persons.” Restatement
2 (Second) Torts § 652D, comment a. *See also Hickson v. Home Federal of*
3 *Atlanta*, 805 F.Supp. 1567, 1573-1575 (N.D.Ga. 1992) *aff’d* 14 F.3d 59 (11th Cir.
4 1994).

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7 There was no evidence that Sambrano or RCA publicly circulated any
8 information about plaintiff Tenorio’s debts. Tenorio claims his privacy was
9 violated when on September 4, 2001, he went to RCA’s office to pay on a debt
10 and Sambrano asked him as to why he was paying only \$25.00 when he had
11 promised to pay \$50.00. Defendant Sambrano testified that only RCA
12 employees were present when she asked Tenorio about the amount of his
13 payment. While Tenorio argued that other people were in the room at the time
14 of Sambrano’s inquiry, he did not know whether or not they were RCA
15 employees. Tenorio failed to prove that Sambrano’s September 4, 2001,
16 statement was heard by a person who was not an RCA employee and he thus
17 failed to prove a violation of his privacy. Even assuming that the people who
18 heard Sambrano’s September 4, 2001, inquiry were not RCA employees, the
19 statement was not an invasion of privacy because only a few people heard the
20 inquiry. As noted in Hart v. Seven Resorts, Inc., 947 P.2d 846, 854
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1 (Ariz.Ct.App. 1997):

2 [p]ublicity ... means that the matter is made public, by
3 communicating it to the public at large, or to so many persons that
4 the matter must be regarded substantially certain to become one of
5 public knowledge.

6 *quoting* Restatement (Second) of Torts § 652D comment a.

7 Further, Sambrano's question did not reveal any private fact. Since
8 plaintiff Tenorio was in RCA's office making a payment, the people who saw
9 him there could reasonable assume he owed a debt. Defendant Sambrano's
10 inquiry only concerned the amount of the payment. An inquiry into the
11 amount of a debt payment which was made in the debt collector's office is not a
12 public disclosure of a private fact within the scope of § 652D. *See e.g. Tureen v.*
13 *Equifax, Inc.*, 571 F.2d 411, 419 (8th Cir.1978).
14

15 The October 3, 2001, incident at the plaintiff's place of employment at
16 the airport also did not give rise to an invasion of privacy. According to the
17 evidence, the only person who learned of Tenorio's debt on October 3, 2001,
18 was CPA Police Officer Joseph C. Muna, who was called by plaintiff and to
19 whom plaintiff spoke of the debt collection efforts. Because it was Tenorio who
20 made or otherwise initiated the disclosure to Muna, he is precluded from
21 claiming an invasion of privacy.
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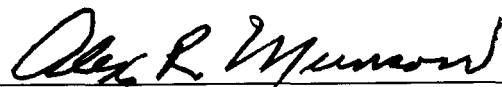
1 The Commonwealth does not have a statute addressing harassment and
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3 the Restatement does not recognize a tort of harassment. Rather, conduct
4 which would amount to harassment is generally covered by other torts, such as
5 intentional infliction of emotion distress or invasion of privacy. The court has
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7 previously determined that the “harassment” complained of by Tenorio did not
8 rise to an infliction of emotional distress or an invasion of privacy. See Tenorio
9 v. RCA et al., Civil Action No. 02-0038, Order (Nov. 12, 2003). Simply put,
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11 none of the conduct by defendants complained of here bore any of the indicia of
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13 harassment; it was not sufficiently willful, wanton, malicious, or intended to
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15 inflict mental anguish and bodily harm.

16 6. Finally because the court has determined that there was no violation of
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18 the Fair Debt Collection Practices Act, it does not need to consider the issue of
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20 statutory damages.
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1 FOR THE REASONS STATED ABOVE, the court finds against
2 plaintiff and in favor of defendants on all claims for relief.
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4 IT IS SO ORDERED.

5 DATED this 31st day of December, 2003.
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10 ALEX R. MUNSON

11 Judge
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