

Obtaining a Credit Report During Litigation

See also the doc attached FCRA FATAL FLAW

Keeping in mind that the FCRA cites very LIMITED parameters for the acquisition of a credit report and among the possible “permissible purposes” listed there is an obvious absence of any language allowing the credit report to be obtained for the purpose of LITIGATION (or preparation for..), attorneys ALWAYS use the defense of claiming the permissible purpose of “legitimate business need”. (Section 1681b(3)(E) of the FCRA allows a credit reporting agency to furnish a consumer report to persons having a "legitimate business need for the information in connection with a business transaction involving the consumer." 15 U.S.C. § 1681b(3)(E).) However the following case contains a whole lot of language to firmly establish that “legitimate business need” applies only if an existing business relationship exists between the consumer and the entity requesting the report. In your case it would be impossible to establish any existing business relationship because;

1. Litigation between two parties is not a “business transaction”
2. Your wife is not a “client” of the law firm or an employee which would establish a business relationship
3. The law firm, (just like the association in the case cited below) had someone else obtain the report under false pretenses by failing to disclose their true identity to the CRA or the real purpose of obtaining the report.
4. The report was not obtained in connection with a proven contractual existence of an account or business transaction between her and any “client” represented by the law firm. That MUST be established first.

EXCERPTS FROM:

943 F.Supp. 464

United States District Court,

D. New Jersey.

Joseph DALEY, Plaintiff,

v.

HADDONFIELD LUMBER INC., Bay Club Condominium Association, Thomas Baird, and Robert Zegley, Defendants.

Civil Docket No. 96-cv-1200.

Nov. 7, 1996.

GLEANED FROM OPINION POSTED ON:

<http://myfaircredit.com/forum/viewtopic.php?f=3&t=1721&sid=54aad1c06962266c686b54573039f242>

Congress enacted the FCRA to "insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681(a)(4). For example, the FCRA permits consumer reporting agencies to provide subscribers with consumer credit reports only for particular purposes, including credit, licensing, employment, or insurance purposes. § 1681b(3)(A-D). **Additionally, a credit reporting agency may issue a report to a person the agency believes "has a legitimate business need for the information in connection with a business transaction involving the consumer."** § 1681b(3)(E). Thus, an agency's reasonable belief as to the report's purpose determines whether the agency may lawfully issue the report to the requesting party. See *Popik v. American Int'l Mortgage Co.*, 936 F.Supp. 173, 176 (S.D.N.Y.1996) (agency provides report based on expectation that requesting party will use report for purpose permitted by FCRA). In addition to regulating the conduct of credit reporting agencies, the FCRA provides a mechanism to monitor and limit the actions of parties who request credit information from credit reporting agencies. **To that end, the statute imposes criminal and civil penalties on persons who violate specific provisions of the Act. See §§ 1681n-q. In particular, sections 1681n and 1681o establish civil liability for willful and negligent noncompliance with any requirement of section 1681. §§ 1681n-o. Section 1681q, in turn, provides for criminal penalties for obtaining consumer information under false pretenses. § 1681q.**

[3] Section 1681b, which lists the permissible purposes for which an agency may release *467 a credit report, expressly circumscribes the actions of consumer reporting agencies. However, this section has been applied also to users of consumer reports in the context of false pretenses allegations pursuant to section 1681q. [FN6] See *Korotki v. Attorney Servs. Corp.*, 931 F.Supp. 1269, 1276 (D.Md.1996) (citing *Yohay v. City of Alexandria Employees Credit Union*, 827 F.2d 967, 972 (4th Cir.1987) (quoting *Hansen v. Morgan*, 582 F.2d 1214, 1216 (9th Cir.1978))). As a result, section 1681q provides the basis for imputing to users of consumer reports civil liability for willful violations of section 1681. [FN7] *Kennedy v. Border City Sav. & Loan Ass'n*, 747 F.2d 367, 367-68 (6th Cir.1984). With this backdrop, this court will address plaintiff's allegation that defendants lacked a permissible purpose in obtaining the credit report in light of the related claim that defendants requested the report under false pretenses.

IMPORTANT TO TAKE NOTE OF:

This court rejects the proposition that one can negligently violate section 1681q and, instead, adopts the reasoning stated by the Sixth Circuit in *Kennedy v. Border City Sav. & Loan Ass'n*: "Since violation of section 1681q occurs only when an individual acts knowingly and willfully, section 1681n rather than 1681o is the proper vehicle for civil liability for violation of [section] 1681q."

In evaluating whether a person obtained a credit report under false pretenses, a court must examine the limited permissible purposes for which consumer reports may be released under

section 1681b of the FCRA. *Zamora v. Valley Fed. Sav. & Loan Ass'n of Grand Junction*, 811 F.2d 1368, 1370 (10th Cir.1987) (per curiam) (citations omitted). **Most courts agree that a person is liable for obtaining information under false pretenses when that person requests a report from an agency without disclosing the improper purpose for which the person in fact seeks the report.** See, e.g., *Hansen*, 582 F.2d at 1219-20; *Zamora*, 811 F.2d at 1370; *Zeller v. Samia*, 758 F.Supp. 775, 781 (D.Mass.1991). Cf. *Allen v. Calvo*, 832 F.Supp. 301, 303-04 (D.Or.1993) (citing *Houghton v. New Jersey Mfrs. Ins. Co.*, 795 F.2d 1144 (3d Cir.1986)) (user who discloses impermissible purpose not guilty of obtaining information under false pretenses).

THE FALLACY OF LEGITIMATE BUSINESS NEED:

Defendants argue, in error, that a consumer relationship existed between plaintiff and defendant *Bay Club*, which in turn created a legitimate business need for obtaining plaintiff's credit report pursuant to section 1681b(3)(E). This argument fails as a matter of law. As the Third Circuit stated in *Houghton*, a consumer relationship must exist between the person requesting the report and the subject of the report. *Houghton*, 795 F.2d at 1149. [FN9] See also *Greenway v. Info. Dynamics, Ltd.*, 399 F.Supp. 1092, 1096 (D.Ariz.1974) ("Information on a particular consumer may only be provided to a third party who requires it in connection with a specific transaction between that party and that particular consumer.") (emphasis added), aff'd, 524 F.2d 1145 (9th Cir.1975), cert. denied, 424 U.S. 936, 96 S.Ct. 1153, 47 L.Ed.2d 344 (1976). Because *Zegley* requested the report in the name of *Haddonfield Lumber*, the court considers *Haddonfield Lumber*--not *Zegley*--as the person requesting the report for purposes of section 1681b(3). [FN10] In light of *Houghton*, a consumer relationship must exist between *469 *Haddonfield Lumber* and *Joseph Daley*. However, such a relationship did not exist between *Haddonfield Lumber* and the plaintiff. Therefore, *Zegley* obtained the consumer report for an impermissible purpose.

The court notes that the Third Circuit admonished that section 1681b(3)(E) **should not be read broadly to include any report involving a business reaction.** Id. Rather, the business transaction "must relate to one of the other specifically enumerated transactions [listed] in §§ 1681a(d) and b(3) [of the FCRA], i.e., credit, insurance eligibility, employment or licensing." Id.

Under the law, when *Zegley* requested the plaintiff's credit report through *Haddonfield Lumber*, the credit reporting agency issued it to *Zegley* based on the representation that *Haddonfield Lumber* required the report for a permissible purpose. **It did not release the information generally to any potential user who may indeed maintain a permissible purpose for obtaining the report.**

See *Yohay*, 827 F.2d at 973 ("user" includes both ultimate destination of credit report and person who acquires report for another).

IV. CONCLUSION

For the reasons set forth above, the court finds that there are no genuine issues of material fact as to whether defendants *Zegley* and *Bay Club* obtained credit information about *Joseph Daley* under false pretenses. **The pleadings indicate that defendants violated section 1681n of the FCRA by willfully failing to comply with section 1681q, which proscribes accession of consumer information under false pretenses from a consumer reporting agency. Plaintiff's Motion For Judgment on the Pleadings as to Defendants *Zegley* and *Bay Club* is granted.** The court will enter an appropriate order.

http://classactiondefense.jmbm.com/2006/09/15_usc_1681q_and_1681r_obtaini.html

15 U.S.C. §§ 1681q and 1681r – Obtaining Information Under False Pretenses/ Unauthorized Disclosures by Officers or Employees: Statutory Provisions of the FCRA (Fair Credit Reporting Act) for the Class Action Defense Lawyer

As a resource for class action defense attorneys who must defend against actions brought under the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, we provide the text of the FCRA. The statutory provisions concerning obtaining information under false pretenses and concerning unauthorized disclosure by officers or employees are set forth in Sections 1681q and 1681r, respectively, as follows:

§ 1681q. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses **shall be fined** under Title 18, United States Code, **imprisoned for not more than 2 years, or both.**

§ 1681r. Unauthorized disclosures by officers or employees

Any **officer or employee of a consumer reporting agency** who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information **shall be fined** under title 18, United States Code, **imprisoned for not more than 2 years, or both.**

This report only scratches the surface, there is a great deal more in the way of case law and white papers on the topic.