



FCRA § 604 – [15 U.S.C. § 1681b(a)(3)(A)]

PERMISSIBLE PURPOSE... WHERE IS THE FATAL FLAW?

Anyone who has sued a debt collector for an impermissible pull knows the collectors claim of permissible purpose always includes their claim that 15 U.S.C. § 1681b(a)(3)(A) clearly defines their right to the credit pull and provides them with permissible purpose. But does it? The truth always lies in the clear intent of Congress when writing and enacting the statute expressed by the clear language therein. So what is the language of that section in the FCRA?

FCRA § 604 – [15 U.S.C. § 1681b]

(a) In general. Subject to subsection (c), any **consumer reporting agency** may furnish a consumer report under the **following circumstances and no other**:

(1). In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2). In accordance with the written instructions of the consumer to whom it relates.

(3). To a person which **it** has reason to believe

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer, or

It doesn't take a rocket scientist to clearly see that 15 U.S.C. § 1681b(a)(3)(A) pertains to the "Credit Reporting Agency" and not to the collector or furnisher of information. The language quite clearly outlines the responsibility of the CRA to determine that they are furnishing a credit report to an entity or individual who the CRA has "reason to believe" has a legitimate purpose. This is established by one of the smallest and seemingly insignificant words in the English language. The word IT in number (3) indicates reference to the entity identified in (a), the **consumer reporting agency** and only to that entity.

So ok now we know the section only applies to the CRA and **its reason to believe** that the entity they are supplying with your personal info has a legal and legitimate purpose for having it and that they can be trusted to use it for no other purpose. Obviously the collector cannot rely on a section of the statute that clearly does not apply to them but thus far they have been getting away with it ever since the language was written. Why? Because the courts have "assumed" that first they have certified to the CRA that they do indeed have a permissible purpose, that there is

indeed an “account” belonging to you that they have somehow acquired the authority to collect on and the CRA would not give them your credit report if this were not true. And there ladies and gentlemen is where the fatal flaw lies.

How so you say? Well the answer lies in HOW they get your credit report in the first place. Does a human being call up the CRA and request it? No. Does a human being fill out an application for it containing not only the justification for the request but some kind of documentation proving that the alleged account in fact does belong to you? No. The law clearly defines the procedure for certification to the CRA that they have a permissible purpose to obtain your credit report;

- **§ 1681e defines the procedures for certification. “These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.” 15 U.S.C. § 1681e(a)**

The problem arises right there. The CRA’s do not require that an entity identify themselves and certify the purpose and intent each time they ELECTRONICALLY request a consumer report. Instead they fill out an application for “an account number” with the respective CRA when first they begin doing business with them making a “promise not to use any information acquired for any purpose not allowed under the FCRA”. The CRA is not even asking on an individual basis (meaning you) if the “transaction connected to an account” is legitimate, belongs to you or even exists. They are simply accepting that the collector or furnisher making the request must be telling the truth because when they got their account number they “promised” to behave. Yeah well, if they get nothing but second hand digital information to an automated system which makes an automated decision and automatically requests a credit report, how can anything in that chain of information be CERTIFIED as accurate? And how do we know that it’s all second hand digital information? That too is well documented;

- *Rosenau v Unifund Corp* U.S.D. 3rd Cir., No. 07-3019 June 30, 2008 the Court stated;
“Unifund purchases old consumer debt. It buys the debt from credit card companies in the form of data files that contain information on thousands of consumer accounts. Unifund’s **proprietary software** then runs queries to determine which accounts Unifund will pursue for collection and which it will resell. Once the system has flagged the accounts that will be collected, another automated process generates letters that are

mailed to consumers to begin the collection efforts. Unifund mails about 2,000 of these collection letters each day.”

All the debt buyers use the same process and once the computer determines who to go after and which accounts to dump or ignore the collection process begins. The letters are sent automatically and the computer will generate a request for credit reports as well into the digital data system of the CRA by using the name of the company and the account number assigned to it by the CRA. So where is the individual certification? There is none. Where is the human intervention? There is none. Where is the permissible purpose? There is none!

1. A good explanation of the required procedures under Section 607, [15 U.S.C. § 1681e, and the reason they are so often violated can be found here;

a. <http://fcralawyer.blogspot.com/2009/11/part-1-of-explanation-of-15-usc-1681e.html>

[This section requires the credit bureaus to have reasonable procedures to prevent impermissible accesses to consumers' credit reports. Unfortunately, the CRAs procedures are not that good. Other than the initial investigation of a new user before the CRA will start selling reports to it, the CRAs only require a "certification" that the user is getting the credit report for a permissible purpose. The problem is that the user can "certify" any reason it wants that is permissible whether it's really the reason why it's getting the credit report or not. Only after the user gets caught will the CRA be on notice that the user is not on the up and up, which then causes the last sentence of 1681e(a) to kick in.]

b. This would certainly explain why, when consumers dispute inquiries found on their credit reports to the credit reporting agencies the inquiries suddenly disappear from the credit report in question without explanation.

Since there is no individual certification and no human intervention and 15 U.S.C. § 1681b(a)(3)(A clearly applies only to the CRA, we are left with but one issue and that is; on just exactly what does the CRA base its “reason to believe”? Nothing but a onetime promise from one of THEIR CLIENTS that's what.

The United States Supreme Court has stated very clearly that the judiciary must look to the “plain language of the statutes” to determine the intent of the legislators. “We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain* 503 U.S. 249 (1992); “the legislative purpose is expressed by the ordinary meaning of the words used.” *Richards et al. v. United States et al.* 369 U.S. 1 (1962).

The collectors rest their entire defense on the premise of “*reason to believe*”. The language of the FCRA does not explicitly define that term however upon a close analysis one can discover its meaning and thus the intent of Congress in using it by consulting the definitions within Blacks Law 4th Edition which fit the situation;

- a. **REASON**: “an inducement, motive, or ground for action as in the phrase “reasons for an appeal.” *Miller v Miller*, 8 Johns. (N.Y.) 77.
- b. **REASONABLE**: “Thinking, speaking, or acting according to the dictates of reason; not immoderate or excessive, being synonymous with rational; honest; equitable; fair; suitable; moderate; tolerable. *Cass v State*, 124 Tex.Cr.R. 208, 61 S.W.2d 500.
- c. **REASONABLE AND PROBABLE CAUSE**: “It is a suspicion founded upon circumstances sufficiently strong to warrant reasonable man in belief that charge is true. *Murphy v Murray*, 74 Cal.App. 726, 241 P. 938, 940
- d. **REASONABLE ACT**: Such as may fairly, justly, and reasonably be required of a party.
- e. **BELIEF**: A conviction of the truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion or proof addressed to the judgment. *Keller v. State*, 102 Ga. 506, 31 S.E. 92. “Knowledge is an assurance of a fact or proposition founded on perception by the senses, or intuition; while “**belief**” is an **assurance gained by evidence, and from other persons**. *Brooks v. Sessoms*, 47 Ga. App. 554, 171 S.E. 222, 224
- f. **BREACH OF DUTY**: In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment. Every violation by a trustee of a duty which equity lays upon him, **whether willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness, is a breach of duty**. *Hivick v. Hemme*, 118 Okl. 167, 247 P. 692, 693.

The following cases are often cited by collectors attorneys in an effort to support the doctrine of “*reason to believe*” to establish the existence of their claim to a “*permissible purpose*”. None of these cases establish the existence of a “*reasonable belief*”:

- a. **Huertas v Galaxy Asset Management, 641 F. 3d 28, (3rd Cir. 2011) (section 1681 b(3)(A) Defendant makes the statement; “NCO had a permissible purpose regardless of whether the debt is later disputed or determined to be invalid.”** In the Huertas decision the court recognized that Huertas’ filings indicated that he had previously filed bankruptcy but that it

was unclear to the District Court whether Huertas was alleging that the defendants had attempted to collect a debt extinguished by bankruptcy proceedings. The District Court allowed Huertas to amend his complaint to assert such a theory however Huertas did not file an amended complaint within the time period given and explained later the debt had in fact not been discharged in bankruptcy. It is clear by the District Court's actions in allowing Huertas to assert the debt had been extinguished prior to the Defendants collection efforts that such a fact would have established an arguable theory to counter a Motion to Dismiss. Appellant, Huertas based his case on the question of "time barred debt" which was erroneous. The debt at issue had belonged to Huertas and he did not refute that point. **Nowhere in the Appellate Court's decision does the court state the collector would have had a permissible purpose regardless of whether the debt is later disputed or determined to be invalid. The duty to have procedures in place to avoid errors of collection efforts on invalid information was not addressed by the Court. Neither was the theory of "reason to believe".**

- b. **Miller v Wolpoff & Abramson, LLP, 309 Fed. Appx. 40, 2009 WL 270034, at *3 (7th Cir. Mar. 19, 2009)** "*obtaining a consumer report for use in collecting a debt owed by the consumer is a permissible purpose*" In this case Mr. Miller never stated he did not owe the debt nor did he show that there was no "*reason to believe*" on the part of W & A that there was in a legitimate account to collect or that the account was in fact connected to Miller.
- c. **Robinson v Greystone Alliance, LLC, 2011 WL 2601573, at *3 (D.Md. June 29, 2011)** "*Debt collection is a permissible purpose for obtaining a credit report under the FCRA... As long as the debt collector has "reason to believe" that the consumer owes the debt, the debt collector may permissibly obtain the consumer's credit report without violating the FCRA*" Plaintiff, Robinson, in that case, made no attempt to argue the Motion for Summary Judgment, no attempt to bring forth any evidence or argument to support his claim or that Greystone did not have "*reason to believe*" that the debt was valid. In the alternative, Greystone provided nothing to substantiate their claim of a "*reasonable belief*" either. The Court in fact, had nothing but Robinson's original pleading and Greystone's claim they had "*reason to believe*" to go on.
- d. **Smith v John P. Frye, P.C., 2011 WL 748363, at *3 N.D.Ill. Feb. 24, 2011,** "*obtaining a credit report in connection with collection of a debt is permissible under the FCRA*" Again this is a case like Robinson v Greystone where a pro se Plaintiff dropped the ball and failed to follow procedure or support his own position. The Court had no other choice but to grant the summary judgment.
- e. **Adams v LexisNexis Risk & Information Analytics Group, Inc., 2010 WL 1931135 at *8 (D.N.J. May 12, 2010),** "Courts recognize that collection is a permissible purpose for obtaining a consumer report under the FCRA." (emphasis and quotation marks omitted). "The essence of this case is not whether or not LexisNexis had a permissible purpose but if in fact their

actions fell under the definition of a Credit Reporting Agency (CRA). In the absence of that determination Plaintiff could not put forth a claim of impermissible purpose”.

- f. **Thomas v United States Bank, N.A.**, 325 Fed. Appx. 592 (9th Cir. May 19, 2009), “*requesting a credit report with the intent to collect on a debt is among the permissible purposes listed in the FCRA 15 U.S.C. § 1681b(a)(3)(A).*”
Once again this only states what the listed purposes are and omits the fact that the section only applies to the CRA’s belief and not to an entities’ legal authority.

In conclusion the “fatal flaw” begins with the failure of the CRA’s to interpret and comply with the plain language of the law but it continues with the collectors knowingly relying on that failure and “cashing in on it.” The courts too have failed to apply the “plain language of the law” but is it their responsibility to do so if a clear, coherent, assertive and equally strong argument on the issue is not presented? No, it just isn’t and that folks is where we come in. Apparently up to this point in time no attorney has taken the time to fully understand there is a fatal flaw let alone recognize and argue it. The responsibility to finally identify, establish and force the courts to recognize the fatal flaw is up to us.

So, let the games begin.

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