

Recent Minnesota Court of Appeals Case Suggests FDCPA Compliance May be Required When Serving a Mechanic's Lien Statement under Minnesota Law

In *Bruce Randall, et al., v. William D. Paul*, the Minnesota Court of Appeals held that there was a genuine issue of material fact as to whether an attorney's service of a mechanic's lien statement was made in connection with the collection of a debt, requiring compliance with the Fair Debt Collection Practice Act's ("FDCPA") notice requirements. In *Randall*, Paul, an attorney, served two mechanic's lien statements on the Randalls for improvements his client made to the Randalls' home. The Randalls sued Paul for damages under the FDCPA, claiming the attorney failed to comply with the FDCPA's notice requirements when serving the mechanic's lien statements.

Paul moved for summary judgment arguing that the letters and service of the mechanic's lien statements were not subject to the FDCPA because they were not "communications" and he complied with the requirements of the Minnesota Mechanic's Lien Statutes to perfect the lien. The district court granted summary judgment to Paul, concluding Paul's communications with the Randalls did not trigger the protections afforded by the FDCPA.

The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e (2016). To avoid violating section 1692e, debt collectors must disclose in an initial written or oral communication with a debtor, "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose." Additionally, within 5 days of an initial communication, a debt collector must send the debtor a validation notice, informing the debtor of the amount of debt owed, the creditor to whom the debt is owed, and the timeframe within which the debtor may dispute the debt. 15 U.S.C. § 1692g. Minnesota has statutorily adopted the FDCPA requirements for debt collection activities occurring in Minnesota. Minn. Stat. § 332.37(12) (2016). In *Randall*, it was undisputed that the FDCPA notices were not included in the service letters or lien statements sent.

As Minnesota had not addressed this issue, the Court of Appeals looked to persuasive authority in other jurisdictions in concluding that a debt collector is not immune from the FDCPA solely by virtue of complying with Minnesota's Mechanic's Lien Statutes. Additionally, the Court determined that Paul's service of the mechanic's lien statements meet the broad definition of "communication" under the FDCPA – "conveying information regarding a debt directly or indirectly to any person through any medium."

Next, in determining whether the communication was “made in connection with the collection” of a debt, the Court of Appeals adopted the Eighth Circuit’s animating purpose test. In order for a communication to be made in connection with debt collection, an animating purpose of the communication must be to induce payment by the debtor. Because a reasonable fact-finder could conclude that Paul’s animating purpose in sending the lien statements was to induce payment, the Court concluded there was a genuine issue of material fact. Therefore, the Court of Appeals ruled the district court erred in granting summary judgment in favor of Paul and remanded the case back to the district court for a determination on the communication’s animating purpose.

Randall suggests that lienholders, and their attorneys, may need to comply with FDCPA notice requirements in addition to the Minnesota statutory requirements for perfecting a lien.