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See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Seventh Circuit Rule 32.1. (Find CTA7 Rule 32.1)

United States Court of Appeals,
Seventh Circuit.

Steven LANG, Plaintiff–Appellant,

v.

TCF NATIONAL BANK & JP Morgan Chase Bank,
Defendants–Appellees.

No. 08–4295. | Submitted July 15, 2009. | Decided July 24, 2009.

Synopsis

Background: Former customer filed suit claiming that banks violated Fair Credit Reporting Act (FCRA) by failing to correct allegedly inaccurate credit information regarding customer's prior accounts that were closed due to overdrafts and non-sufficient funds activities. The United States District Court for the Northern District of Illinois, [Matthew F. Kennelly, J., 2008 WL 5111223](#), granted banks summary judgment. Customer appealed.

Holdings: The Court of Appeals held that:

[1] banks met FCRA obligations to investigate disputed credit information;

[2] FCRA did not provide private right of action to customer; and

[3] breach of contract argument raised only in reply brief would not be considered.

Affirmed.

West Headnotes (3)

[1] **Credit Reporting Agencies**

🔑 Liability for false information

Although customer allegedly owed no current debt to banks that had closed his accounts due to overdrafts and non-sufficient fund activities, banks' obligations to investigate credit information disputed by customer were satisfied, under FCRA, limiting banks' investigation obligations only to disputed information provided by credit reporting agency, since agency provided banks only customer's disputes as to historical information regarding previous overdrafts and account closures for insufficient funds, but not as to customer's subsequent lack of indebtedness to banks. Fair Credit Reporting Act, § 623(b), [15 U.S.C.A. § 1681s–2\(b\)](#).

[4 Cases that cite this headnote](#)

[2]

Action

🔑 Statutory rights of action

Credit Reporting Agencies

🔑 Actions by or against agency; injunction

Customer was afforded no private right of action, under FCRA, to enforce banks' duties to furnish accurate information to credit reporting agency. Fair Credit Reporting Act, § 623(a, c), [15 U.S.C.A. § 1681s–2\(a, c\)](#).

[10 Cases that cite this headnote](#)

[3]

Federal Courts

🔑 Briefs

Customer's argument that bank breached contract by considering his payment on debt from overdrafts and non-sufficient funds activities as partial payment as opposed to settlement of outstanding debt would not be considered, where customer raised issue only in his reply brief.

[Cases that cite this headnote](#)

*542 Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 06 C 1058. [Matthew F. Kennelly](#), Judge.

Attorneys and Law Firms

Steven Lang, Fall River, MA, pro se.

[Glenn E. Heilizer](#), [David J. Frankel](#), Sorman & Frankel, [Jeremy S. Unruh](#), Polsinelli, Shalton, Flanigan & Suelthaus, Chicago, IL, for Defendants–Appellees.

Before [RICHARD D. CUDAHY](#), Circuit Judge, [DIANE P. WOOD](#), Circuit Judge and [JOHN DANIEL TINDER](#), Circuit Judge.

ORDER

**1 Steven Lang sued TCF National Bank and Washington Mutual Bank (now JP Morgan Chase Bank) for violating the Fair Credit Reporting Act by failing to correct credit information that he deemed inaccurate. See [15 U.S.C. §§ 1681n](#), [1681o](#), & [1681s–2](#). The district court granted the *543 defendants’ motions for summary judgment, and we affirm.

Lang once had personal checking accounts at both banks. In October 2003 Lang opened an account at Washington Mutual Bank. The bank closed that account one year later when Lang had an overdraft balance of \$1,224.97. The next day, Washington Mutual reported Lang to ChexSystems, a consumer reporting agency, for “overdrafts,” but it did not report any outstanding debt. Washington Mutual then hired a collection agency to recover the outstanding debt, and in September 2005 Lang settled that debt. Lang also had a checking account at TCF, and in 2003 he incurred forty overdraft fees for non-sufficient funds and wrote eight checks that were returned unpaid. In December 2003, TCF closed that account—which was overdrawn by \$124—and absorbed the loss. TCF reported the account to ChexSystems for “Non–Sufficient funds (NSF) activity” without mentioning any current debt.

In September 2005, Lang submitted a “Request for Reinvestigation” to ChexSystems. He disputed a report from ChexSystems in which the two banks describe him

as having had “overdrafts” and “Non–Sufficient funds.” Lang complained to ChexSystems, “The information on your report is inaccurate and should be removed. I owe no monies to any of the institutions listed above. Please correct your information.” ChexSystems sent a “Request for Reinvestigation” to both banks. The request from ChexSystems did not include Lang’s denial of outstanding debt. Instead, the request stated only that the banks had reported overdraft or non-sufficient fund activities, and that Lang disputed these reports as “inaccurate.” Washington Mutual responded to ChexSystems and confirmed Lang’s overdrafts, stating also that “the report is correct.” TCF confirmed the information as well, advising that when Lang’s account was closed, it was reported for non-sufficient funds activity.

Lang sued TCF, Washington Mutual, and ChexSystems (with whom he later settled). He alleged that because he owed no money to the banks, they provided inaccurate information to ChexSystems and failed to correct their errors, in violation of the Fair Credit Reporting Act. After extensive discovery, the district judge granted the defendants’ motions for summary judgment. The judge analyzed two provisions of the FCRA: [§ 1681s–2\(b\)](#) (obligating banks to investigate requests from credit reporting agencies) and [§ 1681s–2\(a\)](#) (obligating banks to furnish accurate information). The district court found that Washington Mutual and TCF met their obligations under [§ 1681s–2\(b\)](#) to conduct an investigation and report to ChexSystems any discovered inaccuracies. The court also concluded that Lang could not sue the banks under [§ 1681s–2\(a\)](#) because that provision allows for no private right of action. See [15 U.S.C. § 1681s–2\(c\)](#).

**2 On appeal Lang argues that the district court erred in concluding that the defendants had met their obligations to investigate the disputed credit information. Lang maintains that had the defendants displayed due diligence, they would have discovered that all debts had been paid. We review the district court’s grant of summary judgment *de novo*, construing the evidence in Lang’s favor. [Autozone, Inc. v. Strick](#), 543 F.3d 923, 929 (7th Cir.2008).

^[1] As relevant here, under [15 U.S.C. § 1681s–2\(b\)](#) once the banks received notice of a dispute from ChexSystems, they were required to (a) investigate the disputed information; (b) review the relevant information “provided by” ChexSystems; and (c) report the results to ChexSystems. *544 TCF and Washington Mutual’s obligations to investigate were thus limited to the disputed information “provided by” ChexSystems. And, according to that information, Lang disputed only historical information: that he previously had “overdrafts” and

account closures for “insufficient funds.” The defendants investigated these disputes and confirmed to ChexSystems that these historical reports were accurate. Even Lang acknowledges that he had had overdraft and insufficient fund activities at the banks, and this concession demonstrates that the reports were accurate. The banks are not liable for the failure to address Lang’s other dispute (that he had no *current* debt to the banks) because ChexSystems did not provide that dispute to the banks in its request for investigation. See *Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir.2005). Lang counters that he communicated the true nature of his dispute with the ChexSystems report—that the report misrepresented him as having outstanding debt to the banks—directly to the banks, and they ignored it. But as the district court correctly pointed out, Lang presents no evidence to support this contention. And even if the banks had become aware of Lang’s dispute by other means, they were required to investigate only the information reported by ChexSystems. See *id.* § 1681s–2(b).

^[2] Lang next argues that the district court erred in concluding that there was no private right of action to enforce the banks’ duties under § 1681s–2(a) to furnish accurate information to the reporting agency. Lang argues that the statute is silent on whether there is a private right

of action, but he is wrong. Section 1681s–2(c) specifically exempts violations of § 1681s–2(a) from private civil liability; only the Federal Trade Commission can initiate a suit under that section. See *Perry v. First Nat. Bank*, 459 F.3d 816, 822 (7th Cir.2006); see also *Gorman v. Wolpoff & Abramson, LLP*, 552 F.3d 1008, 1020 n. 13 (9th Cir.2009); *Saunders v. Branch Banking And Trust Co. Of VA*, 526 F.3d 142, 149 (4th Cir.2008).

^[3] Finally, Lang argues that Washington Mutual breached its contract with him by considering his payment on his debt as a partial payment as opposed to a settlement of an outstanding debt. Because Lang raises this issue only in his reply brief, we do not consider the issue here. See *Simpson v. Office of Chief Judge of Circuit Court of Will County*, 559 F.3d 706, 719 (7th Cir.2009).

****3 AFFIRMED.**

All Citations

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Footnotes

- * After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See *FED. R.APP. P. 34(a)(2)*.