

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 19-10204

CONSTANCE DANIELS,

Plaintiff-Appellant,

versus

SELECT PORTFOLIO SERVICING, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:18-cv-01652-JSM-CPT

Before JORDAN, LAGOA, and BRASHER, Circuit Judges.

JORDAN, Circuit Judge:

Constance Daniels sued Select Portfolio Servicing under the Fair Debt Collections Practices Act, 15 U.S.C. §§ 1692 et seq., and the Florida Consumer Collection Practices Act, Fla. Stat. § 559.72, alleging that a series of monthly mortgage statements misstated a number of items, including the principal amount due. She claimed that, by sending her the incorrect mortgage statements, Select Portfolio violated the FDCPA's prohibitions on harassment or abuse, false or misleading representations, and unfair practices. *See* 15 U.S.C. §§ 1692d, 1692e(2)(A), 1692e(10), 1692f(1). She also claimed that the statements violated the FCCPA's prohibitions on harassment and on attempts to collect on debt that is not legitimate. *See* Fla. Stat. §§ 559.72(7), 559.72(9). The district court dismissed Ms. Daniels' complaint with prejudice, agreeing with Select Portfolio that the mortgage statements in question were not communications in connection with the collection of a debt and therefore not covered by the FDCPA and the FCCPA.

The question presented in this appeal—one of first impression in our circuit—is whether monthly mortgage statements required by the Truth in Lending Act, 15 U.S.C. § 1638, and its regulations can constitute communications in connection with the collection of a debt under the FDCPA and the FCCPA. We hold that they may, at least when—as here—they contain debt-collection language that is not required by the TILA or its regulations and

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the context suggests that they are attempts to collect or induce payment on a debt. In such circumstances, coverage under the FDCPA and the FCCPA is plausible.

I

In reviewing the district court's Rule 12(b)(6) dismissal order, we accept as true the facts set out by Ms. Daniels in her complaint and its attached exhibits. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). The complaint and the exhibits tell the following story.

In 2005, Ms. Daniels executed a promissory note with Countrywide Home Loans, secured by a mortgage on her home in Florida. In March of 2009, after falling behind on her payments, she entered into a mortgage modification agreement with Countrywide. She agreed to make interest-only monthly payments (plus escrow amounts) for 10 years, with the principal balance remaining at \$189,911.00 for that period. The interest-only monthly payments for the first year were \$813.12, but for each succeeding year during the 10-year period the interest rate (and the payments) would increase pursuant to a schedule in the modification agreement. After the 10-year period, the monthly payments would include both principal and interest, again pursuant to a schedule set forth in the agreement. *See* D.E. 23 at 3 & Ex. A.

For over a year, Ms. Daniels made her interest-only monthly payments on time. Then Countrywide sold, transferred, or assigned the mortgage to Wells Fargo Bank. In June of 2010, Wells

Fargo refused to accept the interest-only payments from Ms. Daniels. Claiming that Ms. Daniels had defaulted on the note and mortgage, Wells Fargo filed a foreclosure action in state court. Select Portfolio was the mortgage servicer at this time. *See id.* at 3–4.

In December of 2015, the state court granted Ms. Daniels’ motion to enforce the earlier mortgage modification agreement, ordered Ms. Daniels to resume making payments according to the terms of the agreement, and sanctioned Wells Fargo for improperly bringing the foreclosure action. The sanctions included requiring Wells Fargo to waive interest on the mortgage debt for certain periods of time and to pay Ms. Daniels’ attorney’s fees. *See id.* at 4–5 & Exs. B, C.

Because the dispute between Wells Fargo and Ms. Daniels had lasted for years, certain interest and escrow payments had either not been made or had not been accepted. The state court ruled in May of 2016 that these sums, totaling \$60,808.83, would be added “to the end of” the loan modification agreement. *See id.* at 5–8 & Ex. C. At that time, Ms. Daniels’ interest-only monthly payments (not including escrow amounts) were \$928.25 pursuant to the schedule set out in the modification agreement. *See id.* at 9.

Following the conclusion of the foreclosure action, Select Portfolio sent Ms. Daniels a number of monthly mortgage statements. Not all the statements were the same in terms of format,

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language, and amounts, so we summarize the November 2016 statement, which Ms. Daniels claims was the most problematic.

The November 2016 statement listed Select Portfolio's address and phone number, and had entries for "loan due date," "amount due," "transaction activity," "past payments breakdown," "past due payments," "total amount due," "interest-bearing principal," "deferred principal," "outstanding principal," and "late fee." It included a "delinquency notice" box, which listed overdue payments and the amount needed to bring the account current. And it had a "monthly payment coupon" at the bottom of the first page. The coupon listed the late fee that would be charged if the payment was not made by the due date, and it contained the following instructions: "Please detach bottom portion and return with your payment," and "Make checks payable to Select Portfolio Servicing." *See id.* at Ex. E.

The November 2016 statement also contained the following language:

- ◆ This is an attempt to collect a debt. All information obtained will be used for that purpose.
- ◆ You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure – the loss of your home.
- ◆ [Select Portfolio] has completed the first notice or filing required to start a foreclosure.

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