Seventh Circuit Awards Legal Costs and Implements a Major Reduction in Plaintiff's Requested Attorneys' Fees in a FCRA and FDCPA Claim

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In *Paz v. Portfolio Recovery Associates*, a debtor sued for violations of the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. Within a month of filing suit, the creditor invoked Rule 68 in making a formal offer to settle, and subsequently made two additional Rule 68 offers of judgment. The debtor never responded to these settlement offers, and later rejected a final offer to settle all claims, costs and attorneys' fees for $25,000. At trial, the debtor prevailed on both of his claims, but because the jury determined he had sustained no actual damages, his total recovery was limited to $1,000 in statutory damages.

Debtor's counsel then sought to recover $187,410 in attorneys' fees, plus costs. First, the trial court awarded the creditor $3,064 for expenses incurred after its final Rule 68 offer, since the debtor obtained a judgment less than the final Rule 68 offer of judgment. Then, turning to the reasonableness of the debtor's requested attorneys' fees, the court cited the debtor's decision to reject creditor's final Rule 68 offer, which was more than three times the amount of the debtor's eventual recovery. The court determined that only the hours worked by debtor's counsel prior to the creditor's final Rule 68 offer were reasonable. It rejected as unreasonable all subsequent hours worked, including those spent preparing for and conducting the trial, and awarded $10,875 using the lodestar method. The debtor appealed to the Seventh Circuit.

Noting that "sometimes settling a case is the only course that makes sense" and that "this case provides a good example," the panel held that the trial court did not abuse its discretion in rejecting the plaintiff's request for

$187,410 in fees and instead awarding $10,875. In rejecting Paz's attacks on the offers, the court stated that plaintiff's position "inheres with an air of unreality," and that while he claimed he did not know what the offer meant, his counsel had previously accepted offers with identical terms and managed to negotiate fees.

The Seventh Circuit's affirmation of the trial court's ruling with regard to costs and attorneys' fees is an excellent example of the usefulness of strategic FRCP Rule 68 offers of judgment when defending against such claims. This case illustrates how a well-calculated Rule 68 offer can place significant litigation risks on a plaintiff. It was a risk the plaintiff was willing to take in this case, and the Seventh Circuit's ruling is the result.

Hinshaw's David Schultz represented PRA at trial and on appeal, with assistance from Raven Burke Mackey, myself and Steve Swofford.

Topics

Federal Rules Of Civil Procedure, FDCPA, FCRA, Federal Rules Of Civil Procedure 68