

22-431-cv

Felberbaum v. Mandarich Law Group, LLP

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of February, two thousand twenty-three.

PRESENT: RAYMOND J. LOHIER, JR.,
STEVEN J. MENASHI,
BETH ROBINSON,
Circuit Judges.

RAIZY FELBERBAUM, individually
and on behalf of all others similarly
situated,

Plaintiff-Appellant,

v.

No. 22-431-cv

MANDARICH LAW GROUP, LLP,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:

CRAIG B. SANDERS, Sanders
Law Group, Garden City, NY

1 FOR DEFENDANT-APPELLEE: NICOLE M. STRICKLER, Messer
2 Strickler Burnette, Ltd.,
3 Barrington, IL
4

5 Appeal from a judgment entered in the United States District Court for the
6 Eastern District of New York (Kiyoo A. Matsumoto, *Judge*).

7 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
8 AND DECREED that the judgment of the District Court is AFFIRMED.

9 In this case brought under the Fair Debt Collection Practices Act (FDCPA),
10 15 U.S.C. § 1692 et seq., Raizy Felberbaum appeals from a January 31, 2022
11 judgment of the United States District Court for the Eastern District of New York
12 (Matsumoto, J.) granting summary judgment in favor of Mandarin Law Group,
13 LLP (“Mandarich”). We assume the parties’ familiarity with the underlying facts
14 and the record of prior proceedings, to which we refer only as necessary to
15 explain our decision to affirm.

16 As relevant here, the FDCPA prohibits debt collectors from making the
17 “false representation or implication that any individual is an attorney or that any
18 communication is from an attorney,” id. § 1692e(3), where an attorney has not
19 conducted a “meaningful review” of the individual’s account, Miller v. Wolpoff
20 & Abramson, L.L.P., 321 F.3d 292, 295 (2d Cir. 2003). We have declined to

1 establish a bright-line test for determining whether an attorney’s review is
2 sufficiently “meaningful,” and have instead directed courts to consider “what
3 information the [attorney] reviewed, how much time was spent reviewing [the]
4 plaintiff’s file, and whether any legal judgment was involved with the decision to
5 send the [collection] letters.” Id. at 307. “[M]erely being told by a client that a
6 debt is overdue is not enough.” Id. at 304. An attorney who does not engage in a
7 meaningful review of the account must include with any collection letter a
8 disclaimer that “make[s] clear even to the least sophisticated consumer that the
9 law firm or attorney sending the letter is not, at the time of the letter’s
10 transmission, acting as an attorney.” Greco v. Trauner, Cohen & Thomas, L.L.P.,
11 412 F.3d 360, 364 (2d Cir. 2005) (quotation marks omitted).

12 “We review de novo a district court’s decision to grant summary
13 judgment.” Bey v. City of New York, 999 F.3d 157, 164 (2d Cir. 2021). Here, the
14 summary judgment record demonstrates that Matthew Salyer, an attorney for
15 Mandarich, conducted a meaningful review of Felderbaum’s account. Salyer’s
16 sworn affidavit stated that he followed Mandarich’s “Attorney Meaningful
17 Involvement Procedure,” which requires its attorneys to “perform a professional
18 review of each file prior to each stage in the legal collection process” using a



1 specialized computer platform. App'x 116–17. He also described the various
2 documents that he reviewed pertaining to Felberbaum's account, as well as the
3 legal conclusions that he reached following his analysis. App'x 118–20. Among
4 other things, Salyer concluded that his client owned Felberbaum's account, that
5 Felberbaum had incurred a debt on that account, that the balance on that account
6 was due and owing, and that no circumstances (such as a bankruptcy filing or
7 fraud) prevented his client from collecting on the account. App'x 119–20.

8 Felberbaum responds by observing that several steps in the “Attorney
9 Meaningful Involvement Procedure” that Salyer followed were either performed
10 by non-attorneys or automated. She further points out that Salyer could have
11 spent less than one minute reviewing her account. But these facts, even if true,
12 do not refute Salyer's statement that he conducted a meaningful legal analysis of
13 Felberbaum's account and “formed an opinion about how to manage
14 [Felberbaum's] case.” Clomon v. Jackson, 988 F.2d 1314, 1321 (2d Cir. 1993). We
15 have never established a specific minimum period of review time to qualify as
16 meaningful attorney involvement, and the only function that Felberbaum has
17 identified that Salyer did not perform before approving the letter was
18 establishing a specific plan to sue in the event of non-payment. In fact,

1 Felberbaum took the position at oral argument that “at the collection letter phase
2 . . . there’s almost never meaningful involvement at the time a letter was sent.”
3 Oral Argument at 23:59–24:08, Felberbaum v. Mandarich Law Group, LLP (No.
4 22-431), ca2.uscourts.gov/decisions. That is not our law. See, e.g., Miller, 321
5 F.3d at 305–306 (explaining that if it became clear after discovery that before
6 sending collection letters lawyer-defendants reviewed information “reasonably
7 calculated” to permit them to determine whether the debtor was in bankruptcy,
8 whether the information in the record was inconsistent or incomplete, whether
9 the debtor was obligated to pay the debt, and whether the correct debtor had
10 been identified, then the letters would be in compliance with the FDCPA). We
11 thus conclude that the FDCPA did not require Mandarich to provide a disclaimer
12 in its initial collection letter to Felberbaum.

13 We have considered Felberbaum’s remaining arguments and conclude that
14 they are without merit. For the foregoing reasons, the judgment of the District
15 Court is AFFIRMED.

16 FOR THE COURT:
17 Catherine O’Hagan Wolfe, Clerk of Court

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: February 13, 2023

Docket #: 22-431cv

Short Title: Felberbaum v. Mandarich Law Group, LLP

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 19-cv-4249

DC Court: EDNY (BROOKLYN)

DC Judge: Scanlon

DC Judge: Matsumoto

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
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New York, NY 10007**

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VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature