IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RUVYE COWLEY Plaintiff, v. EQUIFAX INFORMATION SERVICES, LLC, TRANS UNION, LLC, ROYAL FURNITURE COMPANY, AND UNITED CONSUMER FINANCIAL SERVICES COMPANY, Defendants.	)	No. 2:18-cv-02846-TLP-cgc JURY DEMAND

ORDER GRANTING DEFENDANT ROYAL FURNITURE COMPANY'S MOTION FOR SUMMARY JUDGMENT

Defendant Royal Furniture Company ("RFC") moves for summary judgment. (ECF No. 35.) Because there are no genuine issues of material fact and RFC is entitled to judgment under the Fair Credit Reporting Act (FCRA), the Court GRANTS summary judgment in its favor. The parties raised additional issues that the Court addresses below.

BACKGROUND

Plaintiff obtained an Equifax credit disclosure that was reporting an RFC trade line with a scheduled monthly payment of $32.00. (ECF No. 1 at PageID 3–4.) She then sent Equifax a dispute letter claiming that she had paid the balance. (*Id.*) Equifax forwarded Plaintiff's dispute to RFC, who did not make any changes to its reporting. (*Id.* at PageID 4–5.) Plaintiff then filed this lawsuit claiming the report was misleading and inaccurate. (*Id.*)

Plaintiff alleges that RFC violated the Fair Credit Reporting Act ("FCRA") by reporting a scheduled monthly payment when the account was, in fact, paid and closed. (ECF No. 1 at PageID 3.) Plaintiff also argues that RFC did not adequately investigate his dispute notice. (ECF No. 58 at PageID 305.)

Plaintiff claims these violations caused him credit and emotional damages, undue stress, and anxiety, mental anguish, suffering, and embarrassment. (*Id.* at PageID 6–8.) Plaintiff also argues there is no documentation showing how RFC investigated Plaintiff's dispute. (ECF No. 58 at PageID 306.)

LEGAL STANDARD

A party is entitled to summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "In considering a motion for summary judgment, [a] court construes all reasonable inferences in favor of the nonmoving party." *Robertson v. Lucas*, 753 F.3d 606, 614 (6th Cir. 2014) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). As for the burden of proof, "[t]he moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact." *Mosholder v. Barnhardt*, 679 F.3d 443, 448 (6th Cir. 2012)(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). A moving party can support its burden by showing "that there is an absence of evidence to support the nonmoving party's case." *Mosholder v. Barnhardt*, 679 F.3d at 448(quoting *Celotex*, 477 U.S. at 325).

"A fact is 'material' for purposes of summary judgment if proof of that fact would establish or refute an essential element of the cause of action or defense." *Bruederle v. Louisville Metro Gov't*, 687 F.3d 771, 776 (6th Cir. 2012). "A *genuine* issue for trial exists

where reasonable minds could differ on a material fact." *Henschel v. Clare Cty. Rd. Comm'n*, 737 F.3d 1017, 1022 (6th Cir. 2013)(emphasis added). There must be more than "some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Scott v. Harris*, 550 U.S. 372, 380 (2007)(quoting *Matsushita*, 475 U.S. at 586–87).

To show that a fact "cannot be or is genuinely disputed," each party must cite "particular parts of materials in the record" or show that the materials cited by the other party do not establish the presence or absence of a genuine factual dispute. Fed. R. Civ. P. 56(c)(1); *see also Bruederle*, 687 F.3d at 776. Simply put, "[t]he court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). In other words, "the district court has no 'duty to search the entire record to establish that it is bereft of a genuine issue of material fact.'" *Pharos Capital Partners, L.P. v. Deloitte & Touche*, 535 F. App'x 522, 523 (6th Cir. 2013)(per curiam)(quoting *Tucker v. Tennessee*, 539 F.3d 526, 531 (6th Cir. 2008), *abrogation recognized by Anderson v. City of Blue Ash*, 798 F.3d 338 (6th Cir. 2015)).

"Once the moving party satisfies its initial burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue of material fact." *Mosholder*, 679 F.3d at 448–49; *see also* Fed. R. Civ. P. 56(e); *Matsushita*, 475 U.S. at 587. Rule 56(e) "requires the nonmoving party [who will bear the burden of proof at trial] to go beyond the pleadings" to show the existence of a genuine dispute of material fact. *Celotex Corp.*, 477 U.S. at 324. Conclusory allegations, unsupported by specific evidence, cannot establish a genuine factual dispute enough to defeat a motion for summary judgment. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 902 (1990); *see also* Fed. R. Civ. P. 56(e).

ANALYSIS

I. Standing

RFC argues the Court lacks subject matter jurisdiction because Cowley lacks standing to sue. (ECF No. 35-1 at PageID 162.) "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), as revised (May 24, 2016). To have standing, Cowley "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id*.

RFC claims that Plaintiff's "conclusory generalities" are not proper allegations of actual or concrete injury. (ECF No. 35–1 at PageID 162.) Apparently, RFC does not believe emotional harm is enough under the FCRA. (*Id*. at PageID 6–8.)

And there is little case law on this issue. But there is a recent Sixth Circuit decision, published after the Parties briefed this motion, signaling emotional damages can confer Article III standing. *Huff v. TeleCheck Servs., Inc.*, 923 F.3d 548, (6th Cir. 2019). In *Huff*, the Sixth Circuit held that petitioner lacked standing to pursue an FCRA claim where he did "not suggest that he wasted time or suffered emotional distress while looking for his linked information." *Id*. This seems to imply that if the petitioner did allege emotional harm, then he would have had standing to sue. The Court therefore finds that Cowley has standing to sue and RFC's Motion to Dismiss claiming lack of standing is therefore DENIED.

II. Fair Credit Reporting Act Claim under 15 U.S.C. § 1681s-2(b)

Plaintiff brings his claims against RFC under 15 U.S.C. § 1681s-2(b). "The FCRA imposes "five statutory duties . . . on furnishers of consumer information." *Boggio v. USAA*

Fed. Sav. Bank, 696 F.3d 611, 616 (6th Cir. 2012). But before suing, a plaintiff must notify the CRA that he disagrees with how they reported the account. *Id.* at 615–16. Under § 1681s-2(b), upon notice of dispute about the completeness or accuracy of any information provided by a person to a Credit Reporting Agency (CRA), the furnisher must (1) conduct an investigation; (2) review all relevant information provided by the CRA; (3) report the results of the investigation to the CRA; (4) report any inaccuracies, if found, to all CRAs who may have received the inaccurate information; and (5) correct any inaccuracies in the information. *See* 15 U.S.C. § 1681s-2(b)(1)(A)–(E).

Cowley claims Royal violated this statute by negligently or willfully failing to both properly investigate her dispute and "review all relevant information available to it and provided by Equifax and Trans Union . . . ." (ECF No. 1 at PageID 8–10.)

A. Accuracy of RFC's Report

A plaintiff must show a report was inaccurate to establish an FCRA violation. *See Shaw v. Equifax Info. Sols.*, Inc., 204 F.Supp.3d 956, 959 (E.D. Mich. 2016); *Spence v. TRW*, 92 F.3d 380, 382 (6th Cir. 1996). Defendant argues there is no violation if "the information contained in a challenged credit report was accurate on its face, or, put somewhat differently, 'technically accurate.'" (ECF No. 35-1 at PageID 161.) *See Dickens v Transunion Corp*., 18 F. App'x 315, 318 (6th Cir. 2001). Although *Dickens* applies directly to consumer reporting agencies under § 1681e(b), the "technically accurate" standard remains the same in cases involving furnishers of information as well. *See Shaw v. Equifax Info. Sols., Inc*., 204 F. Supp. 3d 956, 960 (E.D. Mich. 2016). Plaintiff argues the report is inaccurate if "the information provided is false or . . . contains a material omission or creates a materially misleading impression." *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 630 (6th Cir. 2018).

Either way, there is no triable issue of fact. The report was accurate because the $32.00 was the correct scheduled monthly payment amount while the account was active.

The report was not materially misleading because Plaintiff submitted no proof that the report misled a creditor. Plaintiff provides only her opinion as evidence that she suffered "credit and emotional damages." (ECF No. 1 at PageID 5.) And the Sixth Circuit has repeatedly found that a personal opinion, by itself, cannot support an inaccuracy claim under the FCRA. *See, e.g.*, *Dickens v. Trans Union Corp.*, 18 F. App'x 315, 318 (6th Cir. 2001)("mere speculation . . . without more, is insufficient"); *Bailey v. Equifax Info. Servs.*, LLC, No. 13-cv-10377, 2013 WL 3305710 (E.D. Mich. July 1, 2013)(conclusory allegations that the report is inaccurate and misleading is insufficient); *Elsady v. Rapid Global Bus. Sols., Inc*., No. 09-cv-11659, 2010 WL 2740154 (E.D. Mich. July 12, 2010)(plaintiff must at least show that the defendant misled a creditor). Plaintiff has therefore showed no inaccuracy.

B. Alleged Failure to Conduct an Adequate Investigation

Plaintiff also argues that Defendant failed to conduct an adequate investigation following the receipt of a dispute letter as required by 15 U.S.C. § 1681s-2(b)(1). (ECF. No. 1 at PageID 6–7.) But a threshold showing of inaccuracy or incompleteness is necessary for a successful 1681s-2(b) claim. *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 630 (6th Cir. 2018).

Since Plaintiff did not do that here, the FCRA claim fails as a matter of law. The Court therefore GRANTS summary judgment as to this claim.

III. Attorney's Fees

Defendant asserts that Plaintiff intentionally tried to create the false impression that RFC had filed an inaccurate report in violation of the FCRA. (ECF No. 35-1 at PageID 163.) RFC

claims this amounts to bad faith or harassment and should be grounds for an award of attorney's fees. (*Id.*)

The FCRA states: "[o]n a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper." 15 U.S.C.A. § 1681o(b). The Court does not find that Plaintiff here pursued the suit in bad faith or to harass Defendant. Plaintiff disputed one item on the trade line she believed was inaccurate. While Plaintiff is incorrect, there is no indication that Plaintiff sued in bad faith with the intent to harass. The Court DENIES Defendant's request for attorney's fees.

CONCLUSION

Since there is no genuine dispute as to any material fact this Court GRANTS Defendant's Motion for Summary Judgment under the FCRA but DENIES its request for attorney fees.

SO ORDERED this 12th day of August, 2019.

s/Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE