

County Civil Court: CONSUMER LAW—Florida Consumer Collection Practices Act—Trial court did not err in finding that, as a matter of law, the communication at issue did not violate §559.72(7), Fla. Stat. Trial court did not err in finding that because there is not a private right of action for a violation of §559.715, Fla. Stat., consumer could not state a claim for a violation of the FCCPA based on that section - Order Affirmed. Ward v. D.A.N. Joint Venture, III, LP, et al., No. 12-000045AP-88B (Fla. 6th Cir. App. Ct. September 20, 2013).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

EFFIE WARD,
Appellant,

vs.

**Ref. No.: 12000045AP-88B
UCN: 522012AP000045XXXXCV**

**D.A.N. JOINT VENTURE, III, LP,
AND CADLE COMPANY**
Appellees.

_____ /

ORDER AND OPINION

Appellant, Effie Ward (Ward) filed suit alleging that Appellees, D.A.N. Joint Venture, III, LP, and Cadle Company (D.A.N.) violated §§ 559.72(7) and 559.72(9) of the Florida Consumer Collection Practices Act (FCCPA). The trial court entered an order granting summary judgment in favor of D.A.N, and Ward appealed. Upon review of the record, and otherwise being fully advised, we AFFIRM.

STANDARD OF REVIEW

Appellate courts review a ruling on summary judgment de novo. *Wells v. City of St. Petersburg*, 958 So. 2d 1076 (Fla. 2d DCA 2007). A motion for summary judgment shall be rendered forthwith if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fla. R. Civ. P. Rule 1.510(c). The evidence and factual inferences from the evidence are viewed most favorably to the party opposing summary judgment. *Staniszeski v. Walker*, 550 So. 2d 19 (Fla. 2d DCA 1989).

ANALYSIS

Section 559.72(7) Claim

In the proceedings below, Ward alleged that D.A.N. violated § 559.72(7), Fla. Stat., by continuing to contact Ward after being requested to stop. Section 559.72(7) provides that, in collecting consumer debts, no person shall:

Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.

The record shows that Ward had a telephone conversation with D.A.N. which lasted “maybe a couple of seconds.” During that conversation, Ward stated: “Please do not call me. Leave me alone.” Ward then gave the phone to her husband and had no further conversations with D.A.N. When Ward’s husband was handed the phone, he told the caller: “Don’t call here no more. Don’t ever call here no more.” Mr. Ward had no other conversations with D.A.N. The only other time D.A.N. attempted to contact Ward was in a voicemail which Mr. Ward deleted without listening to. Granting D.A.N.’s motion for summary judgment, the trial court held that this communication was innocuous, and as a matter of law was neither harassing, nor frequent enough to violate section 559.72(7).

On appeal, Ward claims that the trial court improperly invaded the province of the jury when it held, as a matter of law, that the single phone conversation between Ward and her husband and D.A.N. did not violate section 559.72(7). However, Florida’s District Courts of Appeal have consistently held that a court can determine, as a matter of law, that a communication does not violate section 559.72(7). See *Schauer v. Morse Operations, Inc.*, 5 So.3d 2, (Fla. 4th DCA 2009) (holding as a matter of law that seven debt collection calls over a six-month period were neither frequent nor so harassing as to violate section 559.72(7)); and *Desmond v. Accounts Receivable Management, Inc.*, 72 So.3d 179, (Fla. 2d DCA 2011) (holding that a minimum of eighteen calls, leaving a recorded message each time, was not harassing nor frequent enough to rise to the magnitude necessary to violate section 559.72(7)).

Viewed in the light most favorable to Ward, the communication in the instant case, a single telephone call and one voicemail, did not constitute harassment under section 559.72(7), and D.A.N. was entitled to a judgment as a matter of law on this claim.

Section 559.72(9) Claim

Ward also attempted to plead a violation of § 559.72(9), Fla. Stat., claiming that D.A.N. attempted to enforce a debt which it knew was not legitimate. Ward argued that since D.A.N. did not provide a notice of assignment as required under section 559.715, D.A.N. lost any legal interest in the debt, and therefore violated section 559.72(9), when they attempted to collect the debt. Relying on *Read v. MFP, Inc.*, 85 So. 3d 1151 (Fla. 2d DCA 2012), the trial court granted D.A.N. summary judgment, finding that Ward could not state a cause of action under the FCCPA for a violation of section 559.715.

Section 559.715 does not create a private right of action. *See Thomas v. Commercial Recovery Systems, Inc.*, 2008 WL 5246296 (M.D.Fla.) “In general, a statute that does not purport to establish civil liability...will not be construed as establishing a civil liability.” *Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 986 (Fla. 1994). Because the FCCPA creates a civil remedy only for a violation of section 559.72, a party cannot circumvent the statutory scheme by bootstrapping a violation of section 559.715 into a section 559.72 claim. *See Thomas* at 4. (“Absent an indication of legislative intent to create a private cause of action for a violation of section 559.715, such a remedy may not be judicially engrafted onto the FCCPA.”) *See also Pack v. Unifund CCR Partners, G.P.*, 2008 WL 686800, 2 n.2 (M.D. Fla. 2008) (recognizing that the FCCPA does not provide a separate cause of action for a violation of section 559.715). Because there is no private right of action for a section 559.715 violation, Ward could not state a claim for a violation of the FCCPA based on that section, and thus the trial court’s granting of summary judgment on this claim was proper as well.

Accordingly, it is

ORDERED AND ADJUDGED that the order granting summary judgment is
AFFIRMED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, on
this _____ day of _____ 2013.

Original order entered on September 20, 2013, by Circuit Judges Amy M. Williams, Jack Day, and Peter Ramsberger.

Copies furnished to:

RICHARD K. PECK, ESQUIRE
THE TISCHHAUSER LAW GROUP
2005 PAN AM CIRCLE DR., #200
TAMPA, FL 33607

DALE T. GOLDEN, ESQUIRE
GOLDEN & SCAZ, PLLC
201 N. ARMENIA AVENUE
TAMPA, FL 33609-2303