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Court Rejects Defendant's Attempt to Recover Attorneys' Fees Under "Bad Faith" Provision of the FCRA

By [Gabriel Ozel](#), [Tim J. St. George](#) & [David N. Anthony](#) on January 11, 2019


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A recent case out of the U.S. District Court in Arizona has shown that it is not easy for a defendant to recover attorneys' fees under the "bad faith" provision of the Fair Credit Reporting Act.

In *Perri v. Diversified Adjustment Serv.*, 2018 U.S. Dist. LEXIS 213612 (D. Ariz. Dec. 19, 2018), a district court denied the defendant's motion for attorneys' fees under the FCRA after the pro se plaintiff's case was dismissed. The plaintiff, Joshua Perri, filed a complaint against Diversified Adjustment Services, a debt collector, alleging defamation, negligent enablement of identity theft, and violation of the FCRA. However, Perri failed to comply with the district court's orders and failed to prosecute the claims. The district court dismissed the case as a result.

Diversified moved for attorneys' fees under the FCRA. § 1681n(c) provides that "[u]pon 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." In bringing the motion, Diversified argued that Perri was acting in bad faith because he disobeyed several court orders, including failing to attend the Rule 16 conference. Diversified also argued that the action was frivolous because

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Perri never prosecuted the claims. Finally, Diversified argued that because the complaint contained no facts coupled with an email he sent calling the defense counsel “dishonest dirt bags,” it was evident that the complaint was filed for the purpose of harassment.

The Court found Diversified’s arguments unpersuasive, stating that the debt collector had not shown that Perri filed any document in the case in bad faith or for harassment purposes as required for an award of attorneys’ fees under the FCRA. The Court pointed out that Perri’s actions in disobeying several court orders coupled with his failure to prosecute the case was the reason why the Court terminated the case as a sanction. The Court reasoned that attorneys’ fees under § 1681n(c) may be awarded based on an action filed in bad faith, not for misconduct of the parties during the pendency of the action. The Court also noted in its opinion that it could not infer bad faith or harassment from the lack of factual allegations in the complaint because it did not know enough about the allegations to know whether they were frivolous.

Ultimately, the *Perri* Court held that to be awarded attorneys’ fees under § 1681n(c) of the FCRA, a defendant must show that the motion or complaint was filed in bad faith or for purposes of harassment. It is not enough that a pleading or motion in question later turned out to be baseless.



Gabriel Ozel

Gabriel Ozel is an attorney in the Financial Services Litigation practice, whose practice includes the representation of clients in consumer law, business disputes, and commercial litigation in both federal and state court.



Tim J. St. George

Tim’s practice includes the representation of clients in federal and state court, both at the trial and appellate level. Tim focuses his practice on the areas of complex litigation and business disputes, financial services litigation, and consumer litigation.



David N. Anthony

David is an experienced trial attorney with a concentration in litigating financial services and business disputes, including class actions related to the FCRA, FDCPA, TCPA and other consumer protection statutes.



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