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YOU'VE GOT MAIL: How the Eleventh Circuit Will Now Allow Debt-Collectors to Collect Time-Barred Debts

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I. INTRODUCTION

Lending, borrowing, and collecting money is one of the most essential aspects of a capitalist society. Lenders often take risks when lending money to borrowers under the known risk that the lenders may not get their money back. As such, it should come to no surprise that, at times, borrowers may not pay the money they have borrowed. Consequently, debt-collectors' practices in the United States, at one point in time, became abusive, which led to the passing of the Fair Debt Collection Practices Act[1] ("FDCPA") in 1977.[2] The FDCPA serves as a shield of protection from abusive practices from debt-collectors. The FDCPA's language, however, has created some confusion regarding the requirements which would allow a plaintiff to have standing in front of a court of law, specifically, Article III standing of the United States Constitution.

Article III of the Constitution of the United States[3] sets the foundation of the American judiciary. Section 2 of Article III further provides the basis under which a plaintiff can stand in front of an American court. As its most basic principle, Article III states that the courts may hear cases and controversies. Though this requirement extends to most aspects of American Jurisprudence, the FDCPA has created its own type of controversy and confusion among the different

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[1] 15 U.S.C. § 1692.

[2] 104 Am. Jur. Proof of Facts 3d 1 (originally published in 2008).

[3] U.S. CONST. art. III.

Federal Circuits in the United States. The United States Court of Appeals for the Eleventh Circuit analyzed this controversy in the case *Trichell v. Midland Credit Mgmt., Inc.*[4] *Trichell* discussed in depth the topics of standing under both the FDCPA and Article III of the Constitution with its ultimate holding now allowing debt-collectors to collect on debts that are time-barred while, at the same time, preventing plaintiffs from bringing lawsuits for injuries that are not concrete nor particularized.

II. FACTUAL BACKGROUND

Midland Credit sent several collection letters to John Trichell, an Alabama resident. Trichell had defaulted on his credit card debt more than six years prior to the mailing of this collection letter. In the letter, Midland offered Trichell a settlement of the debt which would reduce the amount owed from $43,000 to $13,000. Although this offer seemed generous, Midland had no right to collect on this debt as it was beyond Alabama's statute of limitations. Midland was aware of this limitation and at the bottom of each letter sent, Midland included a disclaimer which advised Trichell that due to the age of the debt, Midland could not bring suit against Trichell or report it against his credit. Trichell brought suit against Midland under the FDCPA, stating that the letters were misleading. The district court dismissed the complaint for failure to state a claim. The district court concluded that the letters sent to Trichell were not misleading. [5]

Similarly, Keith Cooper, a Georgia resident, received collection letters from Midland. Just like Trichell, Cooper defaulted on a credit card six years prior and Midland attempted to collect the debt through collection letters. The letter received by Cooper also offered Cooper a "generous" offer to settle the credit card debt. Cooper's debt, however, was also time barred in accordance to Georgia's statute of limitations. The collection letter received by Cooper contained a similar disclosure as the Trichell letter which stated that Midland would not be able to file suit against Cooper nor report such debt on his credit. Cooper also filed suit against Midland. Cooper's complaint was slightly different than Trichell's. In his complaint, Cooper alleged that Midland failed to warn Cooper that making a payment on the time-barred debt would constitute a new promise, and thus would revive his old debt. The district court also dismissed Cooper's case for failure to state a claim. Just like in Trichell's

[4] 964 F.3d 990, 994 (11th Cir. 2020).

[5] *Id.* at 995.

original suit, the district court found that the collection letters were not misleading.[6]

III. LEGAL BACKGROUND

To properly understand the decision in *Trichell*, we must first analyze the Federal Debt Collection Practices Act, and Article III Section 2 of the Constitution. These two legal concepts provide a foundation to understand when a Plaintiff can stand in front of an American court. The FDCPA and Article III are not mutually exclusive as courts must rationalize (1) whether a Plaintiff has standing solely based on an alleged statutory procedural violation, or (2) whether the Plaintiff must prove an injury-in-fact in accordance with Article III.

A. The Federal Debt Collection Practices Act

Before the passing of the FDCPA, Congress recognized that debt-collectors were conducting abusive practices towards debtors. The FDCPA starts by stating Congress's concerns at the time of the passing of the Act. In section (a) of the Act, Congress provides its findings by stating that "there is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices."[7] Section (a) shows that one of the purposes of the Act is to shield consumers from abusive practices by debt-collectors. The Act also indicates that its purpose is to create an even playing field for debt-collectors that follow the rules.[8] As a whole, the FDCPA intends to ensure consumers are protected from abusive practices such as misrepresentation. Further, the Act intends to eliminate any disadvantages that lawful debt-collectors may incur as a cause of abusive practices by other debt-collectors.

The common test used by courts to determine whether a collection letter has deceived a consumer is the "least sophisticated consumer" standard.[9] The purpose of this test is to ensure the protection of all types of consumers from "the gullible as well as the shrewd."[10] As such, the courts follow the rule that a clearly false statement does not take away the power of deception to a collection letter.[11]

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[6] *Id.*

[7] 15 U.S.C. § 1692(a).

[8] *Id.* at (e).

[9] *See, e.g.*, Jeter v. Credit Bureaut, Inc., 760 F.2d 1168, 1174–75 (11th Cir. 1985); Clomon v. Jackson, 988 F.2d 1314, 1318 (2nd Cir. 1993).

[10] *Clomon*, 988 F.2d at 1318.

[11] *Id.*

B. Article III Standing

Article III of the United States Constitution sets the jurisdictional guidelines for a federal court to hear cases. Section 2 of Article III provides that federal courts shall have jurisdiction over cases and controversies.[12] The broad language of Section 2 has led to litigation regarding the definition of cases and controversies. Through years of analysis, the Supreme Court has held that in order to meet the cases and controversies requirement, the Plaintiff must suffer (1) an injury-in-fact; (2) which is has a causal connection to the Defendant's challenged action; and (3) a favorable decision of the court is likely to redress the injury.[13] These three requirements are essential for a Plaintiff to have standing in federal court.

The creation of the Article III Standing test was clarified in *Lujan v. Defenders of Wildlife*.[14] In this case, several environmentalist groups brought an action against the Secretary of the Interior after the Secretary of the Interior reduced the geographical scope of the Endangered Species Act.[15] As part of their argument, the environmentalist argued that the geographical scope of the statute will have a direct effect on endangered species which were of interest to the environmentalists.[16] The environmentalist groups prevailed through the district court and the court of appeals.[17] The Supreme Court of the United States granted certiorari and ultimately reversed the lower court's decision, stating that the environmentalist groups lacked standing because they did not establish an injury-in-fact.[18] In its analysis, the Supreme Court held that for a plaintiff to establish the injury-in-fact requirement, a plaintiff's injury must be concrete and particularized.[19] This means that a plaintiff's injuries cannot be hypothetical and the injuries must be particular to the plaintiff.[20] Furthermore, the Court stated that even though the reduction of the geographical scope of the statue may have a direct effect on endangered animals, these effects were only mental and psychological injuries to the Plaintiffs and the Court does not recognize these injuries as sufficiently

[12] U.S. CONST. art. III, § 2, cl. 1.

[13] Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

[14] *Id.*

[15] 16 U.S.C. § 1536.

[16] *Lujan*, 504 U.S. at 562-63.

[17] *See* Defenders of Wildlife v. Hodel, 707 F. Supp. 1082 (Minn. 1989); Defenders of Wildlife v. Lujan, 911 F.2d. 117 (1990).

[18] *Lujan*, 504 U.S. at 562.

[19] *Id.* at 560.

[20] *Id.*

concrete.[21] The holding in *Lujan* creates the foundation that a party cannot stand in front of a federal court for injuries of a person's interest.[22] Instead, a party must have a concrete, personal injury.[23]

In recent years, the issue of standing appeared again in front of the Supreme Court in the case *Spokeo, Inc. v. Robins*.[24] Spokeo was a search engine agency which, upon request, would provide information about specific individuals. Through its search engine, Spokeo provided incorrect information about Robins. Upon learning about the inaccuracies, Robins sued Spokeo under the Federal Credit Reporting Act (FCRA).[25] In his claim, Robins claimed that Spokeo violated Robins' statutory right and that Robins' injury was particularized. Thus, the Court of Appeals for the Ninth Circuit held that Robins proved an injury-in-fact.[26] The Supreme Court reviewed the case and held that the Ninth Circuits analysis was incomplete.[27] The Court stated that for a party to be able to have standing in court, the injury to Plaintiff must be both concrete and particularized.[28] Although Robins was able to show that Spokeo's error created an injury that was particular to Robins, the Ninth Circuit did not determine whether Robins' injuries were concrete.[29] In its opinion, the Court explained that it would be difficult to find that a minor portion of misinformation, such as an incorrect zip code, could create a concrete harm.[30] Accordingly, the Court vacated and remanded the case for further proceedings to determine whether the incorrect information by the search engine created any actual harm for Robins.[31]

The Court in *Spokeo* also explained the distinction between statutory standing and constitutional standing. In its opinion, the Court held that a statute cannot grant a Plaintiff standing without first meeting Article III standing.[32] Under the FCRA, any person who willfully fails to comply with the act is liable for actual damages or statutory damages.[33] The Court of Appeals for the Ninth Circuit held that a Spokeo's violation of

[21] *Id.* at 564.
[22] *Id.* at 562–63.
[23] *Id.* at 578.
[24] 136 S. Ct. 1540 (2016).
[25] 15 U.S.C. § 1681.
[26] *Spokeo*, 136 S. Ct. at 1544–45.
[27] *Id.*
[28] *Id.* at 1548.
[29] *Id.* at 1550.
[30] *Id.*
[31] *Id.*
[32] *Id.* at 1549.
[33] 15 U.S.C. § 1681n(a).

Robins' statutory right was sufficient to have standing in federal court.[34] The Supreme Court disagreed.[35] As part of its analysis, the Court stated that Congress' judgment is important when defining the type of injuries a Plaintiff must suffer in order to have standing.[36] The Court, however, determined that, although Congress may define the type of injury required under a statute, a plaintiff does not automatically satisfy the constitutional standing requirement when he or she suffers that injury.[37] The Court reiterated the decision in *Lujan*, stating that based on case precedent and the Constitution, proving injury in fact, traceability to the Defendant, and the court's ability to redress the injury, are the irreducible minimum standard for constitutional standing.[38] This does not mean that alleging only a statutory violation does not meet the requirement of constitutional standing.[39] The Court stated that there may be instances in which a statutory violation alone sometimes may be sufficient to establish standing.[40] The Court, however, provided little guidance for when a statutory violation alone would satisfy the constitutional standing requirement. This decision by the Court provides that a statute cannot impose a lower threshold than the Constitution for a Plaintiff to have standing.[41]

Following the *Spokeo* decision, the Court of Appeals for the Eleventh Circuit heard several cases dealing with the issue of standing. In *Perry v. CNN, Inc.*,[42] Perry brought suit against CNN under the Video Privacy Protection Act[43] (VPPA) after Perry downloaded the CNN Application on his phone. CNN then transferred Perry's information to a third party for analysis purposes. In his pleading, Perry claimed that he did not give CNN permission to provide his information to any third parties, thus, claiming CNN violated the VPPA.[44] Perry's only claim was a violation of a provision within the VPPA; no additional harm was listed in Perry's pleadings. The United States Court of Appeals for the Eleventh Circuit held that because the initial purpose of the VPPA was to prohibit the wrongful distribution of personal information, Perry showed

[34] *Spokeo*, 136 S. Ct. at 1546.
[35] *Id.* at 1550.
[36] *Id.* at 1549.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *See Id.*
[42] 854 F.3d 1336 (11th Cir. 2017).
[43] 18 U.S.C. § 2710.
[44] *Perry*, 854 F.3d at 1338–39.

concreteness in his injury by claiming a violation of the statute.[45] Further, the court stated that any harm beyond the distribution of Perry's information without Perry's permission pursuant to the statutory provision was not required.[46] The court, however, did not make a distinction between the harm in *Perry* and the harm in *Spokeo*.

The Eleventh Circuit also dealt with the issue of standing in *Pedro v. Equifax, Inc.*[47] Pedro was an authorized user on her parent's credit card. Because her parents were sick, Pedro used the credit card to make purchases for her parents. After their death, the credit card went into default, negatively affecting Pedro's credit. Pedro contacted the credit card company to advise them about the issue. Subsequently, the credit card company contacted the credit reporting agencies to remove the credit card from her credit report. The credit reporting agencies did not remove the credit card from Pedro's credit. Instead, the credit reporting agencies listed the defaulted debt with the notation "relationship terminated." After further requests from Pedro and the credit card company, the credit reporting agencies removed the defaulted debt from Pedro's credit. Pedro brought suit against the credit reporting agencies for violations of the FCRA.[48] The court of appeals held that Pedro, indeed, suffered an injury-in-fact.[49] Thus, Pedro had standing.[50] In its analysis, the court noted that the credit agencies' violations of the FCRA "has a close relationship to the harm caused by the publication of defamatory information, which has long provided the basis for a lawsuit in English and American courts."[51] The court further stated that because Pedro's credit score dropped over 100 points, she alleged an injury that was concrete and personally affected her.[52] The decision in *Pedro* provided a more clear understanding than the decision in *Perry*. The court in *Pedro* defined in a clearer manner how the defaulted debt by Pedro negatively affected her credit score, thus, making her injury concrete and particularized in comparison to *Perry* where Perry did not allege any damages but only a statutory violation.

[45] *Id.* at 1340.

[46] *Id.*

[47] 868 F.3d 1275 (11th Cir. 2017).

[48] *Id.* at 1278.

[49] *Id.* at 1279.

[50] *Id.*

[51] *Id.* at 1280.

[52] *Id.*

C. FDCP and Article III Standing

After *Lujan* and *Spokeo*, district courts seemed to provide more confusion than certainty regarding the application of the rules created by the Supreme Court. In a continuous fight with consumers and debt-collectors, district courts seemed to disagree over what constitutes an injury-in-fact within the bounds of the FDCPA. The Seventh Circuit has sided with debt-collectors, stating that a procedural violation within the FDCP does not rise to the level of Article III standing. In contrast, the Sixth and DC Circuit disagreed with the Seventh Circuit and held that a Plaintiff did not need to allege any additional injury besides the injury specified within the FDCP.

In the Seventh Circuit, the court of appeals held that a procedural violation of the FDCPA was not enough to have Article III standing.[53] Judge Barret, in his opinion in *Casillas v. Madison Avenue Associates, Inc.*, [54] stated that the bottom line is: "no harm, no foul."[55] In *Casillas*, Madison Avenue, a debt-collector, sent a collection to letter to Casillas. Within that letter, Madison Avenue failed to notify Casillas with the statutory process to verify the debt as required by the FDCPA. Consequently, Casillas filed suit against Madison Avenue for the omission.[56] The court held that the receipt of an incomplete letter was insufficient to establish standing under Article III. [57] The court emphasized the decision in *Spokeo* by stating that Congress cannot lower the threshold for standing through a statute.[58] This decision served as a win for debt-collectors within the Seventh Circuit since it is clear now that the receipt of a deficient letter is not a concrete injury and thus, does not provide the Plaintiff with Article III standing even if the FDCPA authorizes the Plaintiff to sue a debt-collector.

The Sixth Circuit took a different approach regarding deficient collection letters and Article III standing in *Macy v. GC Services Limited Partnership*.[59] The facts are very similar to *Casillas.* The Plaintiff received a collection letter from GC Services which did not include several disclosures that were required under the FDCPA. GC Services filed a motion to dismiss, which the district court denied. Upon review, the court of appeals affirmed the district court's decision to deny the

[53] Casillas v. Madison Ave. Assocs. Inc., 926 F.3d 329, 339 (7th Cir. 2019).

[54] *Id.*

[55] *Id.* at 331.

[56] *Id.* at 332.

[57] *Id.* at 331–32.

[58] *Id.* at 333.

[59] 897 F.3d 747 (6th Cir. 2018).

motion to dismiss.[60] In its decision, the court reiterated all the points in *Spokeo*, stating that a statutory violation may not be enough to having standing. The court, however, focused on the fact that the Supreme Court stated that, in some instances, simply alleging a statutory violation is enough to have standing and alleging further injury is not necessary.[61] The lack of specificity in *Spokeo* as to when statutory procedural violation is enough to have standing, allowed the Sixth Circuit to determine that an allegation of the receipt of a deficient collection letter is enough to establish a concrete injury and thus, have standing.

In a more recent decision, the DC Circuit also dealt with the issue of standing under the FDCPA in *Frank v. Autovest, LLC*.[62] In *Frank*, First Investors Financial Services financed a vehicle for Frank. Frank eventually defaulted on the debt which resulted in the debt being transferred several times to separate debt-collectors. Autovest ultimately received Frank's debt, at which point Autovest transferred the debt to Michael Andrews & Associates (Andrews), who served as Autovest's collections agent. Autovest sued Franks for the remaining balance. During the lawsuit, several members of Andrews signed several affidavits stating that they served as representatives of Autovest. Frank eventually retained counsel which led Autovest to dismiss the collection suit. Subsequently, Frank filed a lawsuit against Autovest alleging "false, deceptive, or misleading representation[s]" under the FDCPA based on the Andrew's affidavits claiming that its officers represented Autovest. Frank stated that she felt scammed because she did not know who Autovest was.[63] The court of appeals accepted the view of the Seventh Circuit and held that Frank did not have standing.[64] The court reasoned that Frank was not misled by Autovest's actions because Frank testified that at no point did she feel confused, misled, or harmed by the affidavits provided by Andrews.[65] In an attempt to establish a more concrete injury, Frank argued that her incurred court costs should be enough to establish a concrete injury.[66] The court, however, held that Frank's litigation costs were not more expensive because she contested Andrew's affidavits.[67] Lastly, Frank argued that the type of behavior conducted by Autovest and Andrews is likely to confuse an

[60] *Id.* at 751.

[61] *Id.* at 753.

[62] 961 F.3d 1185 (D.C. Cir. 2020).

[63] *Id.* at 1186–87.

[64] *Id.* at 1190.

[65] *Id.* at 1188.

[66] *Id.*

[67] *Id.*

unsophisticated debtor.[68] The court agreed that the FDCPA's purpose is to prevent debt-collectors from preying on unsophisticated debtors, thus creating a statutory right for debtors to seek remedies.[69] The court, however, held once again that Congress cannot bypass the Article III requirements by creating its own cause of action within the statute; the Plaintiff must still provide proof that he or she suffered an injury-in-fact.[70]

Before the decision in *Trichell*, the Eleventh Circuit seemed to side with the Sixth Circuit regarding incomplete collection letters in *Church v. Accretive Health, Inc.*[71] In *Church*, the Plaintiff received a collection letter from Accretive Health, Inc., (Accretive). The letter from Accretive lacked the proper disclosures as required under the FDCPA.[72] The court held that, even though the Plaintiff did not allege any actual damages, the lack of disclosures alleged within the complaint established a sufficient injury to have standing.[73] The court, relying on the reasoning from *Spokeo*, held that an injury need not result in a tangible physical or economic harm.[74] As such, Accretive's failure to provide the Plaintiff with the appropriate information regarding her debt was an intangible injury suffered by the Plaintiff that reached the level of intangible harm allowed within Article III.[75]

The split between the Circuits occurs as a direct reflection of the *Spokeo* decision. The Supreme Court's vague description created an instrumental confusion between the Circuits when dealing with standing. It is unclear whether the Supreme Court created this vagueness intentionally. By stating that there are instances in which a simple procedural violation is enough to have standing, yet providing very little guidance as to which situations are valid to claim no further injury, the Court opened the door for Circuit judges to determine those instances on their own.

The understanding of the FDCPA, and Article III standing under the United States Constitution are essential to understand the Eleventh Circuit's rationale in *Trichell's* decision. From the complaint to the

[68] *Id.* at 1189.

[69] *Id.*

[70] *Id.*

[71] 654 Fed. App'x. 990 (2016). It is important to note that the opinion in *Church* is an unpublished opinion and that the Eleventh Circuit is not obligated to follow this precedent. This opinion, however, provides an understanding as to how this issue has evolved over time.

[72] *Id.* at 991.

[73] *Id.* at 994–95.

[74] *Id.* at 995

[75] *Id.*

ultimate holding, the court explores these two elements to reach its ultimate holding.

IV. COURT'S RATIONALE

The court in *Trichell* held that when analyzing an injury-in-fact, the court must give some deference to the statutory provisions implemented by Congress.[76] Additionally, the court held that a statute only allows a plaintiff to receive additional damages once the plaintiff can first show actual damages in accordance with Article III.[77] This means that the damages mentioned in a statute should be construed as additional damages that should be added on top of the actual damages shown by the plaintiff.[78] The court referred to *Spokeo* and held that a statutory violation does not automatically grant the Plaintiff Article III standing.[79] In this case, the Plaintiff's allegations stating that a deficient debt collection letter caused harm to the Plaintiff, do not rise to the level of damages that congress intended to create with the FDCPA.[80] Additionally, simply alleging a statutory violation without proving the existence of actual injuries, does not automatically allow the Plaintiffs to seek damages from Midland. The court determined that the letters sent to the Plaintiffs could be offensive. The Plaintiff, however, can solve this issue by simply throwing the letters in the trash can.[81] As such, the injuries alleged by the Plaintiffs were abstract as opposed to concrete.[82]

The court also determined that the allegation stating that the letters received by the Plaintiffs would have deceived an unsophisticated consumer had no merit because the letter did not place the Plaintiffs in any risk.[83] The court disregarded the unsophisticated consumer test. Instead, it focused on the *Spokeo* and *Lujan* decision, holding that the injury suffered by the Plaintiff must be more than an injury to a cognizable interest.[84] Further, the court held that, instead, the injury must be particularized and for an injury to be particularized, the Plaintiff must be among the persons who are injured by the wrongdoings of the debt-collector.[85] In this case, the court held, the Plaintiffs simply alleged

[76] *Trichell*, 964 F.3d at 998.
[77] *Id.* at 1000.
[78] *Id.*
[79] *Id.* at 999.
[80] *Id.*
[81] *Id.* at 999–1000.
[82] *Id.*
[83] *Id.* at 1000.
[84] *Id.*
[85] *Id.* at 1000–01.

that the letters could have led a consumer to make a payment on a time-barred debt.[86] The Plaintiffs, however, did not make a payment on the debt. Thereby, the court held that the Plaintiffs injury was not particularized.[87] The court reinforced its decision by relying on the holdings of *Casillas* and *Frank*, in which the courts held that a simple procedural violation of the FDCPA did not increase the risk for the Plaintiff to suffer an injury. [88] Additionally, the court determined that the "unsophisticated consumer" test can only be applied when the Plaintiff belongs to the group that has been injured.[89] Thus, the court finally held that the alleged injuries by the Plaintiff were not injuries-in-fact.[90]

The court also recognized the circuit split regarding this decision. The court mentioned the *Macy* case in which the similar provisions to the *Casillas* case were in question.[91] The court held that the view in *Casillas* was more faithful to Article III.[92] Siding with the decision in *Casillas*, the court reiterated that a Plaintiff cannot allege an injury for consumers in general without being part of the group injured.[93]

The court further held that a Plaintiff's risk of injury dissipates the moment a plaintiff files a complaint.[94] The court reasoned that when a complaint is drafted in manner which makes the errors by the debt-collector clear, the plaintiff cannot allege that he or she were misled because the complaint shows that the plaintiff understood the errors made by the debt-collector.[95] The court distinguished the Plaintiff's cases with *Spokeo*, where the Defendant's risk was ongoing at the time the complaint was filed because of the risk of continuous disclosure of false information.[96] Because the Plaintiff's injury never materialized in this case, the complaint was well drafted, and the risk could not possibly create any future risk, the Plaintiffs could not show Article III standing.[97]

[86] *Id.* at 1001.
[87] *Id.*
[88] *Id.* at 1002.
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.* at 1002–03.
[96] *Id.* at 1003.
[97] *Id.*

V. IMPLICATIONS

A basic reading of *Trichell* creates the implication that within the Eleventh Circuit, the sending of a collection letter for a debt that is time-barred is not grounds for a plaintiff to sue a debt-collector because of a lack of standing. The lack of standing arises out of the plaintiff's lack of ability to show that he or she has suffered an injury-in-fact. The implications, however, go beyond the holding.

Before looking at the underlying implications of *Trichell*, it is important to recognize the purpose for Midland sending a collection letter to Trichell and Cooper knowing that the debt was time-barred. The letter in this case was clearly sent for the purpose of hoping that either Trichell or Cooper would respond by making a payment on the debt, therefore reviving the debts in accordance with Alabama's and Georgia's revival statutes. Furthermore, the motives of Trichell and Cooper are important to point out as they did not actually make payments on the debts, they never intended to make payments on the debts, and they suffered no injuries from receiving the letters.

This decision serves as a huge victory for debt-collectors. Now, debt-collectors have liberty to send debt collection letters to debtors past the statute of limitations without the worry that a lawsuit may arise out of a debtor simply receiving that letter. Debt-collectors have an opportunity to dictate their risk as debtors would have to contact the debt-collector to either inquire about or make a payment on the debt. This allows the debt-collector to assess the risks of having debtors make payments on time-barred debts. The court was not clear regarding what would have happened if Trichell or Cooper would have made a payment on those debts. The court made no indication that the revival of the debt itself could be alleged as an injury-in-fact. Furthermore, allowing debt-collectors to collect on time-barred debts disregards the purpose of the FDCPA, which intends to create an even-playing field for all debt-collectors. Now debt-collectors who blatantly violate the statute will have an upper hand against deb-collectors who refrain from sending time-barred collection letters. What the court made clear, however, is that debt-collectors have a free pass to send out collection letters for time-barred debts with the hope to collect on these debts.

On the other side, *Trichell* will stop an influx of cases which have no merits. It is true that a debt collection letter should be viewed based on the unsophisticated consumer standard. This, however, may allow consumers who are above that standard to file suit for injuries which would inconceivably apply to them. The decision in *Trichell* prevents these types of lawsuits from being presented in front of the court. *Trichell* has already influenced recent decisions. Judge Tilman E. Self from the United Stated States District Court for the Middle District of Georgia,

citing *Trichell*, analogized this inconceivable harm to sports where, although some violations of the rules may occur, that violation does not warrant the stoppage of the game altogether.[98]

Lastly, the court in *Trichell*, by stating that Trichell and Cooper's risk dissipated when they thoroughly explained why the collection letters were misleading in their respective complaints, completely disregarded the purpose of legal representation. This reasoning could lead to complaints by unsophisticated consumers to be dismissed on the basis that their well-drafted complaints, prepared by legal counsel, dissipates the consumer's risk. Consequently, a plaintiff who obtains legal counsel for debt-collection suits may lose their ability to claim they are an unsophisticated consumer because of a lawyer's expertise in the subject.

In conclusion, *Trichell* opens one door to debt-collectors who may attempt to use abusive collection practices. At the same time, *Trichell* closes the door to meritless suits that may be brought by plaintiffs seeking monetary compensation without suffering actual damages. Consequently, the effect of this case will certainly have an effect on debt-collectors and consumers alike.

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[98] Daniels v. Aldridge Pite Haan, LLP, No. 5:20-CV-00089-TES, 2020 WL 3866649, at *1 (M.D. Ga. July 8, 2020)