

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

SHELBY ROBERTS,)	
)	
Plaintiff,)	Civil Action File No.
vs.)	1:22-CV-01114-UA-LPA
)	
CARTER-YOUNG, INC.,)	
)	
Defendant.)	
_____)	

**BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

COMES NOW Defendant Carter-Young, Inc. (“Defendant” and/or “Carter-Young”) and shows this Court that Plaintiff’s Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) as follows:

Statement of the Nature of the Matter

Plaintiff Shelby Roberts (“Roberts”) alleges that Carter-Young violated the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, in failing to conduct a reasonable investigation of her disputes.

Statement of Facts¹

At issue in this case is a dispute between Roberts and Ansley at Robert Lake Apartments (“Ansley”) about unpaid rent obligations. Prior to vacating the apartment, the oven door came loose and fell off. Doc. 1, ¶ 16. This was not repaired before Roberts vacated the apartment. Doc. 1, ¶ 16. After vacating the apartment, Roberts received an invoice for \$791.14 for damages to the apartment, which, in part, included the cost of a new stove. Doc 1, ¶ 15.² Roberts contends that she does not owe this sum because those charges are for retaliation for Ansley renting the apartment to another tenant prior to her vacating the apartment and Ansley losing a potential new tenant. Doc. 1, ¶¶11, 12, 13, 14, 17, 19 and 20. Robert specifically alleges that the “claim for the cost of the new stove was completely fraudulent and retaliatory...[Ansley] simply used the detached over door handle as an excuse to retaliate against Plaintiff for having exercised her rights under the lease agreement.” Doc. 1, ¶ 17. In Roberts’ words, Ansley’s claim was “bogus, fraudulent and retaliatory” and she refused to pay Ansley anything.

¹ Roberts’ allegations are treated as true for the purpose of this Motion and Brief only.

² The Complaint does not allege the specific cost of the stove, other than it was in excess of \$500. Nowhere in the Complaint does allege what made up the remainder of the \$791.14 balance and whether those charges were inaccurate.

Doc. 1, ¶ 20. Noticeably absent, Roberts does not allege that prior to or after vacating the apartment, that she paid all other sums that were due to Ansley.

After Roberts refused to pay Ansley, the debt was placed with Carter-Young to collect. Doc. 1, ¶ 21. Carter-Young sent Roberts and the guarantor on the lease notice of the debt on March 5, 2021. Doc. 1, ¶ 24. Roberts' guarantor³ sent a dispute to Carter-Young on March 30, 2021, stating that the charges were retaliatory. Doc. 1, ¶ 25. In July/August 2022, Roberts became aware that the debt had been reported to Experian, Equifax and Trans Union (the "CRAs"), but decided to ignore it. Doc. 1, ¶ 26 and 27. After ignoring the reporting for some time, Roberts disputed the debt with CRAs "alleging that the Ansley debt was fraudulent and retaliatory." Doc. 1, ¶ 30. Roberts alleges that Carter-Young conducted a "biased" investigation relying on what its client, Ansley, said about the debt and confirmed that its reporting was accurate. Doc. 1, ¶ 32. Roberts contends that had Carter-Young conducted any investigation whatsoever it would have discovered that Ansley's claim was "preposterous, fraudulent, and very likely retaliatory." Doc. 1, ¶ 33. Roberts then disputed the debt in August and September

³ Roberts' guarantor was her father and her attorney, Charles Roberts. Mr. Roberts' letter to Carter-Young stated in part: "Please be advised that this claim is fraudulent, and has been asserted for retaliatory purposes."

2022 claiming the debt was fraudulent and again claimed that Carter-Young failed to conduct a reasonable investigation. Doc. 1, ¶¶ 35 and 36.

On September 20, 2022, Roberts filed a lawsuit against Ansley “hop[ing] to invalidate through legal process the Ansley claim....” Doc. 1, ¶ 39. Roberts sent a copy of that lawsuit to Experian on September 24, 2022. Doc. 1, ¶ 44. Again, Roberts alleges that Carter-Young failed to conduct a reasonable investigation. Doc. 1, ¶ 48. Roberts claims that Carter-Young obtained sufficient information showing that the debt was “false, fraudulent and retaliatory” but continued to rely on Ansley’s representations. Doc. 1, ¶ 50.

As stated below, Roberts fails to state a claim for relief and her Complaint must be dismissed.

Question Presented

Whether Roberts has stated a FCRA claim for failure to conduct a reasonable investigation where her dispute is a legal dispute instead of a factual inaccuracy.

Argument and Citation of Authority

Standard of Review

Fed. R. Civ. P. 12(b)(6) provides this Court the authority to dismiss a complaint for failure to state a claim upon which relief may be granted. The

Supreme Court has held that “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); see also, *Ashcroft v. Iqbal*, 550 U.S. 662, 129 S. Ct. 1937, 1949 (2009)(“[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”) To state a viable claim, the pleader must provide “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 550 U.S. 662, 667 (2009). A plaintiff must allege more than the “unadorned, the-defendant-unlawfully harmed me accusation.” *Shamberger v. First Point Collection Serv.*, 1:12-cv-876, 2013 U.S. Dist. LEXIS 120034, * 7 (M.D. N.C. Aug. 23, 2013); citing *Twombly*, 550 U.S. at 570. Lastly, the court does not have to accept as true allegations couched as legal conclusions. *Id.*, at 7-8.

I. Fair Credit Reporting Act

Roberts alleges that Carter-Young violated 15 U.S.C. § 1681s-2(b) by failing to conduct a reasonable investigation of her disputes. A data furnisher’s obligation to conduct a reasonable investigation is triggered when they receive a dispute from a

consumer reporting agency about the “completeness or accuracy” of a report. 15 U.S.C. § 1681s-2(b)(1). At issue in this case is the “accuracy” requirement. The FCRA only applies to factual inaccuracies, not disputed legal questions. *Chiang v. Verizon New Eng., Inc.*, 595 F. 3d 26, 38 (1st Cir. 2010); *DeAndrade v. Trans Union LLC*, 523 F. 3d 61, 68 (1st Cir. 2008); *Wilson v. Chrysler Capital*, 19-CV-975, 2019 U.S. Dist. LEXIS 237999, * 6 (M.D. N.C. Nov. 14, 2019)(“A legal dispute on the underlying debt is a collateral attack on the credit report and is insufficient to sustain a FCRA claim.”); *Jones v. City Plaza, LLC*, 1:19CV924, 2020 U.S. Dist. LEXIS 75140, * 13 (M.D. N.C. Apr. 209, 2020); *Dauster v. Household Credit Servs.*, 396 F. Supp. 2d 663, 665 (E.D. Va. 2005)(whether the product was defective was a legal dispute). Initially, this theory only applied to consumer reporting agencies but has been applied to data furnishers as well. *Chiang*, 595 F. 3d at 38, (“Like CRAs, furnishers are ‘neither qualified nor obligated to resolve’ matters that ‘turn[] on questions that can only be resolved by a court of law.”); *Perry v. Toyota Motor Credit Corp.*, 1:18CV00034, 2019 U.S. Dist. LEXIS 12125, * 20-21 (W.D. Va. Jan. 25, 2019)(impact of bankruptcy on the debt was a legal dispute); *Alston v. Wells Fargo Home Mortg.*, TDC-13-3147, 2016 U.S. Dist. LEXIS 24147, * 31 (D. Md. Feb. 26, 2016)(whether endorsements on checks created legally valid payment); *Shulman v. Lendmark Fin.*, 3:21-1887-

CMC-SVH, 2022 U.S. Dist. LEXIS 188957, * 15-16 (D. S.C. Sept. 6, 2022), adopted by *Shulman v. Lendmark Fin.*, 3:21-1887-CMC, 2022 U.S. Dist. LEXIS 188962 (D. S.C. Oct. 14, 2022)(terms of loan modification is a legal dispute); *Esperance v. Resorts*, 1:18-cv-10248, 2022 U.S. Dist. LEXIS 95453, * 14-15 (D. N.J. May 27, 2022)(“[C]ourts have routinely held that furnishers are not required to investigate the legal validity of the underlying debts they report.”)

To determine if the dispute is a factual inaccuracy or a legal dispute, the question is *why* the plaintiff claims they don’t owe the debt. *Hopkins v. I.C. Sys.*, 18-2063, 2020 U.S. Dist. LEXIS 88905, *18-19 (E.D. Pa. May 20, 2020). For example, if a plaintiff claims they previously paid the debt that is a factual inaccuracy because the defendant could have called the creditor to determine if payment had been made. *Id.* On the other hand, if the plaintiff claims they don’t owe the debt because the creditor breached the lease, then that is a legal dispute for a court to answer. *Id.* Furthermore, if the basis of the dispute presents a legal defense to a debt, such is a legal dispute, not a factual inaccuracy, and it fails to state a FCRA claim. *Perry*, 2019 U.S. DIST LEXIS at 12-13.

Roberts disputes to the CRAs were legal disputes - that Ansley retaliated against her - not about factual inaccuracies. To determine if there is a legal dispute vs. factual inaccuracy, we look to “why” the debtor doesn’t owe the debt. Here, the

“why” is that Ansley retaliated against her. The basis of her CRA disputes was that she was being retaliated against and the claims were fraudulent. Doc. 1, ¶¶ 30, 35 and 44. In order to investigate these disputes, Carter-Young would have to make legal conclusions that Ansley retaliated against Roberts or committed fraud. This is a collateral attack on the validity of the debt and is “not meant as a route for debtors to challenge the legal validity of their debts.” *Perry*, 2019 U.S. Dist. LEXIS at 20. Furthermore, this is not the type of error that a furnisher could discover in conducting a reasonable investigation. *Id.* at 20-21. Roberts own Complaint confirms that this was a legal dispute because she filed suit against Ansley “hop[ing] to invalidate through legal process the Ansley claim.” Doc. 1, ¶ 39. Since her disputes were legal in nature, not factual, a court would have to resolve it, not Carter-Young.

To the extent that Roberts contends that her dispute was that the debt wasn’t owed because neither the lease nor North Carolina law allows for such recovery, that too is a legal dispute. Roberts admits that when she vacated the apartment the stove was broken and had not been repaired. Doc. 1, ¶ 16. She alleges that pursuant to the lease and North Carolina law that this was ordinary maintenance that Ansley should have fixed; therefore, she is not responsible for the debt. Doc. 1, ¶ 16. This Court has already held that such a dispute is a legal dispute, not a

factual inaccuracy. In *Jones v. City Plaza, LLC*, the plaintiff vacated an apartment and, thereafter, the apartment claimed that plaintiff owed for unpaid rent and repairs. *Jones*, 2020 U.S Dist. LEXIS at * 2. Plaintiff claimed that he did not owe money for unpaid rent or repairs based on North Carolina law and disputed the debt as being “false” and “bogus.” *Id.* at 3. This Court held that plaintiff’s dispute “laying out in detail why the \$454.60 was bogus under North Carolina law” challenged the validity of the debt, not its factual accuracy. *Id.* at 17-18. The Court reasoned that there was no amount of investigation that the defendant could have done to uncover any inaccuracy in the report because there was never any factual deficiency to the defendant’s report and the court ultimately granted the defendant’s motion to dismiss. *Id.* at 18.

Here, to determine if the lease covered the charges or were permitted under North Carolina law Carter-Young would have been required to make a legal determination as to the lease terms and applicability of state law. Furthermore, this dispute would be a legal defense to a lawsuit brought by Ansley excusing Roberts non-payment of the debt. For these reasons, such a dispute is a legal dispute and not a factual inaccuracy. For these reasons, Roberts has failed to state a claim.

CONCLUSION

Roberts does not allege a factual inaccuracy that Carter-Young could have uncovered by conducting a reasonable investigation. She does not allege that she made full payment of all lease obligations, such as rent or utilities. Instead, she is asking Carter-Young to make a legal determination on if Ansley committed fraud or retaliated against her. That is outside the purview of the FCRA. At best, she claims that she does not owe any money because neither the lease nor North Carolina law permits its recovery. However, that too is a legal dispute, not a factual inaccuracy, and the FCRA claim fails. For the reasons stated above, Roberts fails to state a claim and this Motion must be granted.

Word Count Certification

The undersigned certifies that this Brief complies with this Court's word count requirement identified in Local Rule 7.3(d)(1). This Brief's word count, pursuant to Local Rule 7.3(d)(1) is 2,173.

Respectfully submitted this 21st day of February 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Brief in Support of Defendant’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) using the CM/ECF system which will automatically send email notification of such filing to the following attorney of record:

Charles P. Roberts, III
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Respectfully submitted this 21st day of February 2023.

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