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.	)	
	)	

REPLY 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 submits this Reply Brief in support of its Rule 12(b)(6) Motion to Dismiss as follows:

Plaintiff Shelby Roberts ("Roberts") contends that *Saunders v. Branch Banking and Trust Co*., 526 F. 3d 142 (4th Cir. 2008), rejects the proposition that the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681*et seq.,* only applies to factual inaccuracies, not disputed legal questions. For the following reasons, Roberts' reliance on *Saunders* is misplaced.

First, the issue in *Saunders,* was the interplay between different sections of the FCRA. Saunders alleged that Branch Banking & Trust ("BB&T") violated 15 U.S.C. § 1681s-2(b)(1) for by failing to report that he disputed the debt. *Id.,* at

147. 15 U.S.C. § 1681s-2(a)(3) requires that if a consumer disputes the debt, then the data furnisher must report that the debt is disputed. Saunders did not allege that BB&T's reporting was inaccurate/incomplete because he didn't owe the debt based on some legal defense. Instead, Saunders alleged that his credit report was inaccurate/incomplete because BB&T knew he disputed the debt but failed to report that he disputed the debt, as required by § 1681s-2(a)(3). This not the type of legal dispute argued in Carter-Young's motion. Carter-Young argued that legal disputes, such as impact of bankruptcy, loan modification terms and whether check endorsements created valid payment of a debt, were not factual inaccuracies and therefore, not subject to the FCRA. Although *Saunders* mentions "affirmative defenses" that is not a "disputed legal question" which was argued in Carter-Young's motion. To Carter-Young's knowledge, the only case that cited *Saunders* regarding the issue of "disputed legal questions" was *Hrebal v. Seterus, Inc*., 598 B.R. 252 (D. Minn. 2019). That case, like *Saunders*, dealt with whether the debt was marked as disputed. Again, that is not the issue alleged by Roberts.

Saunders does not apply as broadly as Roberts contends. This is evidenced by several post-*Saunders* decisions within this Circuit that have held that disputed legal questions are outside the FCRA's purview. *Perry v. Toyota Motor Credit Corp.,* 1:18CV00034, 2019 U.S. Dist. LEXIS 12125, * 20-21 (W.D. Va. Jan. 25,

2019); *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); *Alston v. Wells Fargo Home Mortg.,* TDC-13-3147, 2016 U.S. Dist. LEXIS 24147, * 31 (D. Md. Feb. 26, 2016). To accept Robert's argument, would mean that each of those courts was wrong. Roberts does not make such an argument, instead, contends that each court "wholly ignored binding decision…." *Saunders* was not ignored; it just didn't apply to those cases or this case.

Second, *Saunders* only applies to creditor data furnishers, not third-party data furnishers. Roberts relies on the following from *Saunders*:

> Claims brought against CRAs based on a legal dispute of an underlying debt raise concerns about 'collateral attacks' because the creditor is not a party to the suit, while claims against furnishers such as BB&T do not raise this consideration because the furnisher *is* the creditor on the underlying debt.

Id. (Emphasis in original). Roberts argues that Carter-Young, a third-party, should be considered the creditor since she alleged that Carter-Young has a close relationship with the actual creditor Ansley at Robert Lakes Apartments ("Ansley"). Doc. 5, fn. 4. However, this ignores her own allegations that Carter-Young is *not* the creditor. She alleges that Carter-Young's "primary business consists of collecting debts for **third-party clients**" and that Carter-Young "views **Ansley as its 'client.'**" Doc. 1, ¶¶ 4 and 22. (emphasis added). The distinction

between a creditor and its third-party agent is important in FCRA cases. Courts have held that the reasonableness of an investigation differs based on whether the data furnisher is a creditor, or a third party hired to collect the debt. *Hinkle v. Midland Credit Mgmt., Inc.,* 827 F. 3d 1295, 1302 (11th Cir. 2016)("Whether a furnisher's investigation is reasonable will depend, in part on the status of the furnisher – as an original creditor, a collection agency collecting on behalf of the original creditor, a debt buyer, or a down-the-line buyer…."); *Gross v. Citimortgage Inc*., 33 F. 4th 1246, 1253 (9th Cir. 2022)("Courts have also identified several factors that inform the reasonableness analysis including: the furnisher's relationship to the debt and to the consumer…").[1] The complaint is clear, Carter-Young is *not* the creditor. Since it is not the creditor, *Saunders* does not apply.

For these reasons, *Saunders* does not apply to this case.

CONCLUSION

For the reasons stated above and its Motion, Roberts fails to state a claim and this Motion must be granted.

[1] Roberts relies on both cases in her brief.

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 771.

Respectfully submitted this 27th day of March 2023.

BEDARD LAW GROUP, P.C.

/s/ Jonathan K. Aust
Jonathan K. Aust
N.C. Bar No. 39507

4855 River Green Parkway
Suite 310
Duluth, Georgia 30096
Telephone: (678) 253-1871
jaust@bedardlawgroup.com

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Reply 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
cprobertsiii@protonmail.com

Respectfully submitted this 27th day of March 2023.

BEDARD LAW GROUP, P.C.

/s/ Jonathan K. Aust
Jonathan K. Aust
N.C. Bar No. 39507
Counsel for Defendant

4855 River Green Parkway
Suite 310
Duluth, Georgia 30096
Telephone: (678) 253-1871
jaust@bedardlawgroup.com