Unpublished Disposition
210 F.3d 371
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United States Court of Appeals, Sixth Circuit.

Clyde BUTLER; Faye Butler, Plaintiffs-Appellants,
v.
STERLING, INC.; Sterling Jewelers, Inc., Defendants-Appellees.

No. 98-3223. | March 31, 2000.

On Appeal from the United States District Court for the Northern District of Ohio.
Before RYAN and SUHRHEINRICH, Circuit Judges; and BELL, District Judge.*

Opinion

RYAN, Circuit Judge.

***1** Clyde (a/k/a Gary) and Faye Butler, husband and wife, claim to have been duped into purchasing "credit insurance" when they bought some jewelry at one of the defendants' stores. They sued and lost. They now appeal from several district court orders, claiming that the Racketeer Influenced and Corrupt Organizations Act (RICO), the Truth in Lending Act (TILA), the Ohio Consumer Sales Practices Act (OCSPA), and Ohio common law fraud provided redress to them for the defendants' misdeeds.

Specifically, the plaintiffs raise three issues for our review. They argue, first, that summary judgment on the plaintiffs' common law fraud and OCSPA claims was improper; second, that the district court abused its discretion by refusing to certify two plaintiff classes alleged to qualify for certification under Federal Rule of Civil Procedure 23(b)(2) or (3); and third, that the district court erred in holding that "emotional damages" are not recoverable under TILA.

We conclude that the district court committed no reversible errors and, consequently, affirm all orders appealed.

I.

The defendants are the owners of a large chain of retail jewelry stores. The plaintiffs purchased jewelry on several occasions in one of the defendants' stores in Ohio. They claim they were charged for credit insurance they did not order and that the insurance charges were hidden within the sales slip for purchases using the defendants' in-store credit card. The plaintiffs claim that the defendants' sales people did not explain or even mention the fact that credit insurance could be purchased as part of the credit transaction. They argue that the sales people are encouraged by the defendants to "push" credit insurance on customers using half-truths, innuendo, and prophecies of financial ruin. The plaintiffs next maintain that charges for credit insurance are hidden at the bottom of the monthly bill, apart from other charges listed in the body of the document. Finally, although admittedly not relevant to their personal causes of action (they originally asked the district court to certify a class of fellow customers), the plaintiffs assert that, if a customer would not affirmatively indicate that he or she did not want credit insurance, the defendants would charge the customer for credit insurance anyway. The contention that many of the defendants' customers, although not necessarily the plaintiffs, paid for an unwanted or unrequested product is not wholly spurious as there is substantial evidence, in the form of letters from disgruntled customers, that many people were charged for the unwanted credit insurance.

The allegedly offensive sales slips contain the following provision located below the itemized list of a customer's jewelry purchases:

> PAYMENT PROTECTION PLAN-YES
>
> CUSTOMER INITIALS _______ D.O.B. _______
>
> PLEASE PROVIDE ME WITH PAYMENT PROTECTION AT S _______ PER S100 OF MY AVERAGE DAILY BALANCE EACH MONTH, THE PURCHASE OF CREDIT INSURANCE IS OPTIONAL AND NOT REQUIRED TO OBTAIN CREDIT. THE PLAN PROVIDES CREDIT LIFE, DISABILITY, PROPERTY AND UNEMPLOYMENT COVERAGE. INDIVIDUAL COVERAGES ARE AVAILABLE IN PA. I UNDERSTAND THAT THE AVAILABILITY OF THESE COVERAGES MAY VARY BY STATE, MY CERTIFICATE OF INSURANCE WILL CONTAIN ALL THE DETAILS ABOUT THE PLAN.

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***2** NO CUSTOMER INITIALS _______ _________________ AUTHORIZATION CODES _________

THE BALANCE DUE ON THIS PURCHASE IS PAYABLE IN INSTALLMENTS UNDER MY CREDIT PLAN CONTRACT AND SECURITY AGREEMENT WHICH IS INCORPORATED HEREIN BY REFERENCE. I AGREE THAT SELLER SHALL RETAIN OWNERSHIP OF THE ITEMS SO PURCHASED UNTIL ENTIRE BALANCE IS FULLY PAID AND THAT I HAVE THE RISK OF LOSS OR DAMAGE TO SUCH ITEMS.

____

______ CUSTOMER SIGNATURE

A.

After purchasing some jewelry with his Sterling credit card on December 3, 1993, Gary Butler placed his initials below the line labeled "PAYMENT PROTECTION PLAN-YES," thereby purchasing the credit insurance, at least as far as the defendants were concerned. Faye Butler did the same after purchasing some jewelry from the defendants on June 16, 1994.

On December 24, 1993, before he received his first monthly statement, Gary Butler sent an additional form to the defendants explicitly requesting credit insurance for the jewelry he had purchased with the defendants' credit card. The plaintiffs tacitly concede the correctness of the district court's ruling that this action nullified Gary Butler's Ohio claims and TILA claim. Therefore we will consider only the plaintiffs' assertion that the district court erred in disposing of Faye Butler's claims. Any further use of the name "Butler" is in reference to Faye Butler.

B.

Bulter received her first monthly billing statement for purchases at the defendants' store on July 13, 1994. The statement included several categories for insurance charges listed as "CREDIT LIFE," "CREDIT DISABILITY," "CREDIT PROPERTY," and "CREDIT UNEMPLOYMENT." located at the bottom of the bill, apart from the list of other charges. In her deposition, Butler admitted that, on examining this bill, she recognized that she was being charged for credit insurance in addition to her jewelry purchases, but did nothing to correct the perceived discrepancy:

Q [When did you realize] you were being charged for credit insurance?

A I looked at it, the bill, and I saw it on my bill, but I thought that it was part of the agreement that you sign when you get your credit. And I never gave it a thought.

....

Q And how did you know that you were being charged for Insurance?

A It appeared on my bill.

Q Okay. And what, if anything, did you do about the fact that you realized you were being charged for insurance?

A Like I stated to you earlier, I thought that it was part of the agreement that I signed when they approved an account for me.

Q So you thought you had signed up for credit insurance?

A I thought it was part of the terms of the credit agreement.

Q So you thought you had signed up for credit insurance; is that right?

A I didn't say that I signed up for it, I thought it was part of the terms of the agreement.

Q Part of what terms?

A Of the credit agreement.

Q Why did you think that?

A I assumed that. It showed up on my bill: I thought that it was perhaps part of the credit agreement.

***3** Q Did you call the store?

A No, I didn't.

Q Why not?

A Because, like I told you, I thought it was part of the credit agreement.

During the same deposition, Butler acknowledged purchasing credit insurance as part of several previous transactions with different merchants, she also acknowledged that she was aware of the nature and purpose of credit insurance.

II.

On May 31, 1995, the plaintiffs filed their initial complaint, on behalf of all similarly situated customers of the defendants since 1980, alleging violations of TILA, RICO, the OCSPA, and numerous instances of common law fraud. The plaintiffs also moved for class certification on the same date.

After some discovery, the defendants moved to dismiss all of the plaintiffs' claims, aside from the alleged violation of TILA, and moved for summary judgment on the TILA claim. Following a hearing, the district court refused to certify the class proposed, concluding, in effect, that no jury should be forced to consider what would likely be such an overwhelming array of evidence. The court dismissed Clyde Butler's TILA claim as time-barred and the plaintiffs' RICO claims, but denied the remainder of the defendants' motion.

After additional discovery, including Butler's deposition, the defendants filed a second motion for summary judgment on the plaintiffs' OCSPA and common law fraud claims. The motion was granted by the district court for reasons discussed fully below. After this ruling and an order effectuating it, all that remained was Butler's TILA claim.

The plaintiffs then renewed their motion for class certification, now alleging only TILA violations and proposing a class of Ohio residents who had purchased credit insurance from January 1993 to May 1997. The district court refused to certify this class because the question of the defendants' liability to a substantial portion of the class turned on the individual question of when certain class members "discovered" or "should have discovered" the defendants' alleged misconduct, making class treatment inappropriate.

Finally, the defendants filed a motion *inlimine* to exclude any evidence of emotional distress Faye Butler allegedly suffered as a result of the defendants' sales practices. The district court granted the motion, ruling that consequential damages were not recoverable under TILA.

Following the district court's rulings on the plaintiffs' second motion for class certification and the defendants' motion *inlimine,* the parties signed a stipulation providing Faye Butler with $149.24 for her TILA claim, which was accepted by the district court. Accordingly, final judgment was entered on February 10, 1998, from which the plaintiffs timely filed notice of appeal on February 17, 1998.

III.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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." FED. R.CIV.P. 56. The moving party has the initial burden of showing the absence of a genuine issue of material fact as to an essential element of the non-moving party's case. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). Once the moving party satisfies its burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586-87 (1986). In ruling on a motion for summary judgment, the district court is required to resolve all ambiguities and draw all factual inferences in favor of the party against whom summary judgment is sought. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). We review *denovo* a district court's summary judgment order. *Moore v. Philip Morris Cos.,* 8 F.3d 335, 339 (6th Cir.1993).

IV.

***4** It is beyond argument that a plaintiff must prove both reliance and proximate causation to sustain an Ohio common law fraud claim. *See,e.g.,Kasuri v. St. Elizabeth Hosp. Med. Ctr.,* 897 F.2d 845, 851 (6th Cir.1990). Under Ohio law, proximate cause is that cause which contributes to produce the result in a natural and continued sequence, without which the asserted injury would not have happened. *Segal v. Horwitz Bros.,* 167 N.E. 406, 407 (Ohio Ct.App.1929).

In relevant part, the OCSPA provides:

> No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or

> deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

Ohio Rev.Code Ann. § 1345.02(A). Section 1345.02(B) lists a series of "deceptive" acts, the violation of which provides an aggrieved consumer a right to statutory damages. The state empowers the Ohio Attorney General to adopt rules and regulations defining deceptive, unfair, or unconscionable conduct; it also provides an appropriate case for an award of statutory damages. Ohio Rev.Code Ann. § 1345.05. Finally, under the OCSPA, a consumer has a right to statutory damages, where actual damages cannot be proved or are inadequate, if the conduct complained of was previously declared deceptive or unconscionable by an Ohio court. Ohio Rev.Code Ann. § 1345.09(B).

Despite this rather detailed statutory framework, Ohio courts have yet to precisely define the essential elements of an OCSPA claim where the alleged "deceptive" act is not one found in the statutory list and has not been declared deceptive by the Ohio Attorney General or an Ohio court. The Ohio Court of Appeals has stated:

> The [OCSPA] is designed to prohibit unfair, deceptive or unconscionable acts or practices by sellers engaged in consumer transactions. If a consumer alleges that a seller has engaged in deceptive practices, Ohio courts have consistently construed the applicable provisions of the Consumer Sales Practices Act as only requiring proof "that the conduct complained of 'has the likelihood of inducing in the mind of the consumer a belief which is not in accord with the facts." '

Shaver v. Standard Oil Co., 623 N.E.2d 602, 609 (Ohio Ct.App.1993) (citations omitted). As the plaintiffs suggest, one might construe this and like statements as establishing that a deceptive act, viewed objectively, is all that is required for a successful cause of action under the OCSPA. That is to say neither subjective reliance nor proximate causation are necessary to sustain an OCSPA claim. There is support for this proposition in the Ohio legislature's stated intent, in enacting the OCSPA, to provide a liberal supplement to common law fraud claims. *See,e.g.,Thomas v. Sun Furniture and Appliance Co.,* 399 N.E.2d 567, 569-70 (Ohio Ct.App.1978).

We agree with the plaintiffs that part of the relevant inquiry in an OCSPA case-whether a defendant's conduct was "likely to induce" a misperception in the consuming public-is an objective consideration and, therefore, a showing of subjective reliance is probably not necessary to prove a violation of the OCSPA. *SeeShaver,* 623 N.E.2d at 610. What we cannot accept, however, is that an OCSPA claim-a type of tort-does not require a plaintiff to demonstrate that damages were proximately caused by the "deceptive" act. We reach this conclusion because a tort claim, without some form of nexus between a defendant's conduct and a plaintiff's alleged injuries, would be a strange cause of action indeed. To illustrate, if we accept Butler's construction of the OCSPA and her claim that the defendants' conduct in this case was "deceptive," Butler would be entitled to compensation for a purported injury every time she purchased jewelry from the defendants after the incident here in question. The obligation to prove proximate cause precludes the possibility of such a potentially enormous and unearned reward and, for this reason, we think Ohio courts would agree that proximate cause is an essential element of an OCSPA claim. Consequently, we hold that, at least where a disgruntled customer is not entitled to statutory damages as provided in the OCSPA, to sustain an OCSPA claim he or she must prove damages were a proximate result of the defendant's deceptive act.

***5** The district court held as to Butler's common law fraud claim, that summary judgment for the defendants was appropriate because, upon receipt of her first bill, Butler, who admitted familiarity with credit insurance, noticed the charges for credit insurance, but did nothing to challenge them. Specifically, the district court concluded that Butler could not claim to have reasonably relied on the defendants' alleged fraudulent omissions or that her damages were proximately caused by the alleged fraud. As to the OCSPA claim, the district court stated that "a reasonable juror could not conclude that [Butler] ... incurred any injury as a *result* of [the defendants' allegedly deceptive] practices." (Emphasis added.) Thus, the district court relied again on a proximate causation analysis, amongst other grounds, to dispose of Butler's OCSPA claim.

While Butler admits that she noticed charges denoted as insurance on her first billing statement, she argues that summary judgment was inappropriate because she filed an affidavit after her deposition, which alleged that she did not understand the nature of the charges. This factual assertion, of course, is directly contradicted by Butler's earlier statements that she had purchased credit insurance in the past and understood the nature of that particular product. We hold that the district court ruled correctly that this latter-day affidavit contradicting Butler's deposition testimony was insufficient to create a factual issue for the jury. *See,e.g.,Aparicio v. Norfolk & Western Ry. Co.,* 84 F.3d 803, 814-15 (6th Cir.1996).

We also agree with the district court that there is no

genuine issue of material fact as to whether Butler's injuries were proximately caused by the defendants' alleged wrongdoing. Butler made no effort to challenge the credit insurance charges, despite her awareness that she was being charged for insurance. She has produced no evidence that the defendants would not, if asked to do so, have removed the charges. We do not think it unreasonable to expect a customer to report unexpected charges to a merchant and request that the charges be removed. Any damages that Butler suffered did not flow from the defendants' misdeeds, but her own neglect. *SeeSegal,* 167 N.E. at 407. Consequently, we hold that there is no genuine issue of fact whether Butler's damages (payments for the insurance product of which Butler was aware) resulted in a natural and continued sequence from the defendants' alleged misconduct. We, therefore, affirm the district court's grant of summary judgment to the defendants on Butler's fraud and OCSPA claims.

V.

A.

The decision to certify a class pursuant to Federal Rule of Civil Procedure 23 is left to the sound discretion of the district court. *United States Parole Comm'n v. Geraghty,* 445 U.S. 388, 408 (1980). Generally, a class may be an appropriate substitute for multiplicitous litigation if the members of the class are numerous, "there are questions of law or fact common to the class, ... the claims or defenses of the representative parties are typical of the claims or defenses of the class, and ... the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a). The Federal Rules provide for three general categories of classes certifiable, two of which are relevant in this case. Rule 23(b)(2) provides:

> ***6** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and in addition:
>
> ....
>
> ... the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

FED. R. CIV. P. 23(b)(2). Although the issue has not yet been squarely presented to the Supreme Court, the Court has expressed serious reservations about the propriety of certifying a 23(b)(2) class when compensatory or punitive damages are in issue, due to the lack of notice to class members or the opportunity for those members to "opt out" of the class action. *Ticor Title Ins. Co. v. Brown,* 511 U.S. 117, 120-21 (1994). Even accepting the proposition that, in some cases, compensatory and/or punitive damages may be recoverable by a 23(b)(2) class-an issue undecided in this circuit-all other circuits that have considered the issue have held that certification of a 23(b)(2) class turns on whether the injunctive and/or declaratory relief sought on behalf of the class "predominate[s]" relative to any incidental monetary damages requested. *See,e.g.,Allison v. Citgo Petroleum Corp.,* 151 F.3d 402, 410 (5th Cir.1998).

A 23(b)(3) class-the typical vehicle for a class action when compensatory damages are sought-is certifiable if, in addition to the requirements set forth in 23(a), the district court finds, to its satisfaction, that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to all other available methods for the fair and efficient adjudication of the controversy." FED. R. CIV. P. 23(b)(3). The Advisory Committee Notes to Rule 23(b)(3) advise against class certification where a defendant has a defense to liability that will vary with each individual class member. FED. R. CIV. P. 23(b)(3) (Advisory Committee Notes).

The first class presented to the district court on a motion for certification included all of the defendants' customers nationwide who had purchased jewelry since 1980. The plaintiffs assisted the district court in its deliberations by listing consumer protection statutes from all 50 states that could be relevant if the class were certified. The plaintiffs "concede that the trial court acted within its discretion [in] refus[ing] to certify a class dating back to 1980." We agree.

Undaunted, the plaintiffs later proposed the following class for certification under either Rule 23(b)(2) or (b)(3):

> All customers of any retail jewelry store owned by [the defendants] within the State of Ohio who were sold credit insurance at the point of opening up a charge account with such store from 1993 through the present and whose sales slip fails to disclose the cost per $100.00 for such insurance.

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After discussing relevant precedent applicable to the issue of the certifiability of a 23(b)(2) class, the district court stated:

> ***7** In the case sub judice, plaintiff seeks statutory damages in the amount of twice the credit insurance charges, actual damages and attorney's fees. Although plaintiff's prayer for relief also requests a declaration that customers are not obligated to pay for the credit insurance and an order requiring removal of all charges for the insurance, such requests simply lay a basis for a damage award and do not constitute the primary relief sought.... The Court finds that the realities of the litigation demonstrate that the primary relief sought by plaintiff is monetary relief, thus making certification under Rule 23(b)(2) inappropriate.

We believe the district court's analysis of the propriety of certification under 23(b)(2) to be sound and, having little to add, adopt it as our own.

B.

TILA provides for a one year statute of limitations. 15 U.S.C. § 1640(e). This circuit has held the one-year clock for a TILA cause of action begins to run when a plaintiff "discover[ed] or had reasonable opportunity to discover the fraud involving the complained of TILA violation." *Jones v. TransOhio Sav. Ass'n,* 747 F.2d 1037, 1041 (6th Cir.1984). As the plaintiffs had filed their complaint in May 1995 and the proposed class included the defendants' customers dating back to 1993, many of the unnamed plaintiffs' claims are unarguably stale. Given the significant probability that the extent of the defendants' liability would depend on when each class member, who purchased jewelry before May 1994, "discover[ed]" or "had reasonable opportunity to discover" the defendants' alleged misconduct, the district court held that class certification under 23(b)(3) was inappropriate as individualized liability questions would predominate over common questions of law or fact.

We hold that this ruling by the district court was not an abuse of discretion. The district court expressed doubt that the defendants could realistically be expected to argue the applicability of its statute of limitations defense to numerous class members individually at one trial. *See*FED. R. CIV. P. 23(b)(3) (Advisory Committee Notes). Similarly, the district court appears to have been concerned about whether any jury could be expected to assimilate such overwhelming information. Given these very real shortcomings in the second class proposed, the district court surely did not behave unreasonably in denying certification under Rule 23(b)(3) and, consequently, did not abuse its discretion.

C.

The plaintiffs argue, finally, that, even if the two classes they proposed were defective, the district court should have carved out an acceptable subclass to ameliorate any perceived problems in the previous classes proposed. The defendants respond that, while the district court certainly has the power to certify subclasses, the plaintiffs never requested that the district court do so. We think the defendants have the better of the argument. The Supreme Court has held that a district court may, in its discretion, but need not certify subclasses *suasponte.Geraghty,* 445 U.S. at 408. We, of course, cannot replicate the district court's intimate involvement with this case and, therefore, would rarely, if ever, conclude that a district court's "decision" to not certify a subclass, without any motion suggesting such action, was unreasonable. It certainly was not plainly unreasonable in this case. We, therefore, affirm the district court orders denying class certification to the plaintiffs.

VI.

***8**Section 1640(a) provides that "any creditor who fails to comply with any requirement imposed under this part ... with respect to any person is liable to such person in an amount equal to the sum of ... any actual damage sustained by such person as a result of the failure." 15 U.S.C. § 1640(a)(1). In general, TILA is to be construed liberally in favor of the consumer. *SeeTransOhio,* 747 F.2d at 1040.

No federal court has decided whether an "actual damage" provided for in TILA includes consequential damages such as emotional distress and/or humiliation. The defendants have brought a series of cases to our attention which hold that a plaintiff must prove detrimental reliance

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before actual damages, as opposed to statutory or liquidated damages, may be recovered. *See,e.g.,Wiley v. Earl's Pawn & Jewelry, Inc.,* 950 F.Supp. 1108, 1114 (S.D.Ala.1997). While the district court opinions cited by the defendants, which, of course, we are not bound to follow, do present a formula for damage calculation in a typical TILA case, no federal court has foreclosed the recovery of damages for emotional distress in an extreme TILA case, if such cases actually exist.

The district court concluded that the primary purpose of TILA was to allow consumers to "comparison shop" between lenders required to disclose all relevant information to the consuming public. The district court reasoned that construing the term "actual damages" to include consequential damages would do little to serve this purpose and, therefore, the court held that such damages were not recoverable. The plaintiffs argue that this construction is contrary to the unqualified language of the TILA damages provision and the "consumer friendly" rule of construction adopted by this circuit in TILA cases.

Nothing in the plain language of section 1640(a)(1) precludes awarding consequential damages, including damages for severe emotional distress. Given the policy of construing TILA in favor of the consumer, compensation for "actual damages" could certainly encompass psychic trauma with accompanying physical manifestations in extreme cases. In addition, several federal courts that have construed an identical damages provision in the Fair Credit Reporting Act (15 U.S.C. § 1681***o***), a complement to TILA, have concluded that consequential damages, including those for emotional distress, are recoverable in extreme cases. *See,e.g.,Casella v. Equifax Credit Info. Servs.,* 56 F.3d 469, 474 (2d Cir.1995). In short, a persuasive argument exists that the "actual damages" recoverable under TILA include consequential damages.

To recover damages for emotional distress, however, an aggrieved borrower would need to demonstrate at a minimum, considerable embarrassment or humiliation. *Seeid.* at 474-75. In her deposition, Butler testified to the extent of the psychic trauma alleged to have resulted from the defendants' lending practices:

> ***9** Q ... How have you been damaged?
>
> A How have I been damaged? I put my trust in your company. When I send-when I get a bill, I trust your company that it's accurate and right, and it wasn't accurate and right. I was charged for things I never asked for. I was charged for things they never even talked to me about. That destroyed my trust with your company.
>
> Q All right. And can you-how were you damaged; were you damaged in any monetary way?
>
> A For the-well, yes, for the charges that they put on my bill that aren't-weren't supposed to be there that I did not authorize, that nobody talked to me about. And it wasn't just one person in the store, it was several employees in the store when I came in on different occasions
>
> ....
>
> Q Have you been damaged in any other way that you can think of?
>
> A Besides monetary, is that what you're asking?
>
> Q I'm just asking you other than what you have testified so far?
>
> A I don't trust your store; I don't trust your company. You know, I'm just one person, but I don't think that-no, I'll just leave it go."

Even under the most liberal formulation of consequential damages, trust lost would not be enough to sustain a request for damages due to emotional distress. Consequently, we affirm the district court's ruling, albeit for a different reason. Because Butler is not entitled to damages for her creative claim of emotional distress, we need not reach the propriety of the district court's construction of section 1640(a)(1).

VII.

For the reasons stated above, the numerous district court orders appealed by the plaintiffs are all AFFIRMED.

Parallel Citations

2000 WL 353502 (C.A.6 (Ohio))

Footnotes

* The Honorable Robert Holmes Bell, United States District Judge for the Western District of Michigan, sitting by designation.

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