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**THE UNITED STATES THIRD
CIRCUIT COURT OF APPEALS
REJECTS APPLICATION OF
DISCOVERY RULE TO ALLEGED
FDCPA VIOLATION**

In a break from two other circuit courts, the Third Circuit Court of Appeals affirmed a trial court's decision that a plaintiff's claim under the FDCPA was time barred because the case was brought more than one year after the violation occurred, despite the fact the plaintiff brought the action within one year of *discovering* the claim. Cited as *Rotkiske v. Klemm*, 2018 WL 2209120 (3d Cir. May 15, 2018). In that case, the creditor sued the plaintiff over an unpaid credit card debt in 2009. The creditor served the initial complaint at a previous address of the plaintiff, albeit the person served at the address was not the plaintiff but accepted service on behalf of the plaintiff. The creditor, thereafter, applied for a default judgment and was awarded a judgment against the plaintiff. Plaintiff claimed to have discovered the judgment years later when applying for a mortgage in September 2014 and, within a year of discovering the judgment, filed an action claiming the creditor's collection efforts violated the FDCPA.

The district court dismissed plaintiff's claim, holding that the FDCPA's one-year statute of limitations barred plaintiff's claims. Plaintiff appealed the district court's ruling and argued that the FDCPA incorporates a discovery rule that tolls the limitations period from running until the plaintiff discovers or should have discovered the violation. On appeal, the Third Circuit affirmed the lower court's decision. The Third Circuit acknowledged that the Fourth and Ninth Circuits both applied a discovery rule to the FDCPA's statute of limitations, but nonetheless held that the FDCPA "says what it means and means what it says: the statute of limitations runs from 'the date on which the violation occurs'". The Court in the Third Circuit took a literal interpretation of the FDCPA, and while acknowledging other courts have ruled in the opposite direction, the Third Circuit applied the strict interpretation of the FDCPA. The Third Circuit did however leave the door open for a plaintiff to assert the discovery rule that involves a fraudulent, misleading, or self-concealing conduct of a creditor, which was not raised on appeal.

The discovery rule, and whether it applies to a plaintiff's FDCPA claim, is dependent upon which jurisdiction the plaintiff resides. As more courts take on FDCPA claims and the application of the discovery rule, there looks to be a great divide, and this will continue until the United States Supreme Court weighs in.

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