Justice Thomas Issues Blistering Descent in Fair Credit Reporting Case

June 26, 2021 - It has been ten years since Sergio Ramirez walked into a California Nissan dealership to purchase a vehicle, only to be turned away because his TransUnion credit report had a notation on it that labeled him as being on the terrorist watch list. TransUnion had placed that label on his file even through the actual terrorist with a similar name used a different spelling. Mr. Ramirez sued, as is his right under the Fair Credit Reporting Act (FCRA), and became the lead plaintiff in a lawsuit that involved more than 8,000 other people too.

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Ramirez won his case in both at both the lower and the appellate level. Initially, the class of people hurt by TransUnion's actions won $60 million. The 9th Circuit Court of appeals reduced that amount to $40 million but kept the rest of the judgement intact. But this week, the US Supreme Court gutted much of the suit.

Of the 8,185 people who had the same warning placed on their credit file as Ramirez did, only 1,853 of them had their credit file shared with other businesses when trying to make a purchase or establish credit. In this week's ruling, the court declared that only the people that had their information shared had standing to sue. The end result of that decision is that it will wipe out most of the $40 million award against TransUnion; an unfortunate result.

The SCOTUS ruling was far from unanimous. The decision was 5 to 4 in favor of TranUnion, and it resulted in the issuance of a strongly worded descent from Justice Thomas. He wrote, "One need only tap into common sense to know that receiving a letter identifying you as a potential drug trafficker of terrorist is harmful. All the more true when the information comes in the context of a credit report, the entire purpose of which is to demonstrate that a person can be trusted."

Thomas noted that the FCRA as enacted by congress specifically gives individuals the right to sue credit reporting agencies when they include erroneous data on credit reports and fail to correct it. He then went on to say, "In the name of protecting the separation of powers, this court has relieved the legislature of its power to create and define rights."

The result of this SCOTUS ruling is likely to be far reaching. It appears to severely limit consumers' right to sue over erroneous credit reporting and it appears to limit congress's ability to give consumers the right to sue. With that said, it is really time for congress to take back some of the control it has given courts to determine the issue of "standing" in lawsuits. That's something they do have the power to address legislatively and it is something that they should take up, sooner rather than later.

by Jim Malmberg
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