

IP 00-1793-C H/K Veach v. Sheeks [2]
Judge David F. Hamilton

Signed on 4/16/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

VEACH, GARY L,)	
)	
Plaintiff,)	
vs.)	
)	
SHEEKS, CHARLES,)	
SHEEKS ITTENBACH & JOHNSON,)	CAUSE NO. IP00-1793-C-H/?
SHEEKS ITTENBACH JOHNSON)	
TRETTIN & CAMPBELL,)	
)	
Defendants.)	

π Clifford W Shepard
Consumer Protection Law Office
2325 W Washington St
Indianapolis, IN 46222-4256

G Ronald Heath (o1)
Johnson Smith Heath LLP
One Indiana Square #1800
Indianapolis, IN 46204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GARY L. VEACH,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. IP 00-1793-C H/K
)	
CHARLES R. SHEEKS,)	
SHEEKS, ITTENBACH & JOHNSON,)	
and SHEEKS, ITTENBACH, JOHNSON,)	
TRETTIN & CAMPBELL,)	
)	
Defendants.)	

ENTRY ON DEFENDANTS' MOTIONS FOR ATTORNEY FEES

Defendants Charles R. Sheeks and two law firms with which he has been associated have moved for an award of attorney fees and costs in this action brought under the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* Sheeks and the two law firms prevailed in this case, though plaintiff Gary Veach has appealed the judgment in favor of Sheeks on certain claims. Defendants contend that plaintiff and his attorney brought frivolous claims and pursued the case in bad faith and for the purpose of harassment. For the following reasons, defendants' motions are denied.

First, at the most basic level, defendants have not presented any actual evidence of the amount of fees they actually incurred. They have submitted only unsworn assertions in their memoranda of law. To the extent that the law firm defendants contend their right to a fee award is different from Sheeks' right, the law firm defendants have not offered any indication, let alone any evidence, about the amount of any separate fees they incurred.

Second, plaintiff Veach proved, at least in the court's view of the law and the jury's view of the evidence, that Sheeks violated the venue provision in 15 U.S.C. § 1692i(2). (The jury also found, however, that Sheeks was entitled to a good faith defense under § 1692k(c).) In light of the jury's finding of a violation, even if the court thought that some award might be justified, the court could not possibly award all of the fees and costs incurred by defendants. Instead, some basis for sorting out the fees incurred on different claims and theories would be needed. See, e.g., *Merriweather v. Family Dollar Stores of Indiana, Inc.*, 103 F.3d 576, 583-84 (7th Cir. 1996). Defendants have made no effort to supply such a basis.

Third, although the court has found that plaintiff's other claims against defendant Sheeks were without merit, application of the FDCPA is fraught with uncertainties. In particular, applying the FDCPA to activities of attorneys in state

court collection litigation poses difficult problems, as discussed in this court's previous entry, *Veach v. Sheeks*, 2002 WL 243658 (S.D. Ind. Jan. 4, 2002), discussing *Heintz v. Jenkins*, 514 U.S. 291 (1995), and *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols & Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000), among other cases. At this stage of development of FDCPA law as applied to litigation activities, lawyers can make colorable arguments for a variety of different positions. Given the uncertainties involved in FDCPA cases, the court cannot conclude that the claims that Veach actually pursued at trial against Sheeks were outside the bounds of colorable argument. Defendants' motions for attorney fees and costs are therefore denied.

So ordered.

Date: April 16, 2002

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Clifford W. Shepard
Consumer Protection Law Office
2325 West Washington Street
Indianapolis, IN 46222-4256

G. Ronald Heath
Johnson Smith Heath
One Indiana Square
Suite 1800

Indianapolis, IN 46204

John F. Ittenbach
6350 North Shadeland, Suite 4
Indianapolis, Indiana 46220