

# EXHIBIT #1

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS GRAY,

Plaintiff,

v.

TROTT & TROTT, P.C.,

Defendant.

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File No. 1:16-cv-237

HON. ROBERT HOLMES BELL

**MEMORANDUM OPINION AND ORDER**

Plaintiff filed a class action complaint alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* Plaintiff alleges that Defendant used illegal practices in connection with its attempt to collect debts. The matter is before the Court on Defendant’s motion for judgment on the pleadings. (ECF No. 16.)

**I.**

In reviewing a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), “all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment.” *Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235, 240 (6th Cir. 2011) (quoting *Tucker v. Middleburg–Legacy Place*, 539 F.3d 545, 549 (6th Cir. 2008)). Motions for judgment on the pleadings pursuant to Rule 12(c) are analyzed under the same standard as motions to dismiss pursuant to Rule 12(b)(6). *Albrecht*

*v. Treon*, 617 F.3d 890, 893 (6th Cir. 2010). Accordingly, the Court must construe the complaint in the light most favorable to Plaintiff, accept all well-pled factual allegations as true, and determine whether the complaint states a plausible claim for relief. *Id.* The court “need not accept as true legal conclusions or unwarranted factual inferences.” *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007) (quoting *Mixon v. Ohio*, 193 F.3d 389, 400 (6th Cir. 1999)).

## II.

The FDCPA does not extend to every communication made by a debt collector, but only applies to communications made “in connection with the collection of a debt.” 15 U.S.C. § 1692c. The “[a]nimating purpose of the communication must be to induce payment by the debtor.” *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011). Defendant argues that, based on the plain language of the FDCPA, it did not act in connection with the collection a debt. Defendant claims that it published the notice of sale to satisfy statutory prerequisites and notice provisions governing the foreclosure of the mortgage by advertisement, not to induce Plaintiff into making payments on his defaulted mortgage. The notice of sale did not demand payment, indicate the due date of future payments, or invite a response from Plaintiff. Further, Defendant argues that the boilerplate disclaimer language stating that the notice was from a “debt collector attempting to collect debt” did not transform the notice into a debt-collection activity. Defendants also cite the Federal Trade Commission’s (“FTC”) staff commentary in support of this argument. But this commentary is not binding on the Court. *See Heintz v. Jenkins*, 514 U.S. 291, 298 (1995).

Moreover, Defendant fails to account for *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453 (6th Cir. 2013). In *Glazer*, the Sixth Circuit held that mortgage foreclosure, whether judicial or otherwise, “is undertaken for the very purpose of obtaining payment on the underlying debt . . . . Accordingly, mortgage foreclosure is debt collection under the FDCPA.” *Id.* at 461. Defendant cites *Goodson v. Bank of America*, 600 F. App’x 422 (6th Cir. 2015) and *Gillespie v. Chase Home Fin. LLC*, No. 3:09-CV-191-TS, 2009 WL 4061428 (N.D. Ind. Nov. 20, 2009), as instructive as to the animating purpose of the notice of sale. In *Goodson*, the Sixth Circuit found that the letter was made to inform plaintiff of the status of his loan, and not to induce payment. *Goodson*, 600 F. App’x at 431-32. Similarly, in *Gillespie*, the court found that the letters were purely informational in nature. *Gillespie*, 2009 WL 4061428, at \*5. But the notice of sale is different here. The purpose was not to inform Plaintiff of the status of the loan, but rather to obtain payment on the underlying debt. Therefore, Defendant’s publication of the notice of sale to satisfy statutory requirements for a foreclosure by advertisement was a debt collection, and the FDCPA applies.

Upon review of the complaint, accepting all well-pleaded factual allegations as true, this Court is able to draw a reasonable inference that Defendant is liable for the misconduct alleged. *Iqbal*, 566 U.S. at 677. First, the notice of foreclosure states in large, bold type that Defendant is “a debt collector attempting to collect a debt, any information we obtain will be used for that purpose.” (ECF No. 11, PageID.119.) Although Defendant argues that this boilerplate language does not transform the communication into one connected to debt collection, this Court disagrees. Further, the complaint alleges that Defendant placed the

notice of mortgage foreclosure sale in newspapers, and that Defendant sold the home at auction and applied the proceeds from the sale to pay down the outstanding debt. Defendant published the notice of sale for the very purpose of obtaining payment on the underlying debt through Michigan's foreclosure by advertisement statute, so it was a communication made in connection with the collection of a debt. Therefore, Plaintiff's well-pleaded complaint states a plausible claim for relief. Accordingly,

**IT IS HEREBY ORDERED** that Defendant's motion for judgment on the pleadings (ECF No. 16) is **DENIED**.

Dated: November 10, 2016

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE