

# FEDERAL COURT IN CALIFORNIA UPHOLDS RIGHT TO EQUITABLE RELIEF UNDER FAIR CREDIT REPORTING ACT

(SE) Chris Ryan November 06, 2012



Sometimes Justice is Done

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November 6, 2012/Los Angeles, California/NEWSWIRE/ The Fair Credit Reporting Act (FCRA), enacted by Congress in 1971, was put into place because the banking system is dependent upon fair and accurate credit reporting and unfair credit reporting methods undermine the confidence of the public in that system. The three major credit reporting

agencies (CRA's), Experian, Trans Union, and Equifax, just suffered a major blow today when a federal court in California ruled that equitable relief is allowed under the FCRA. The case, *Engelbrecht v. Experian*, EDCV 12-1547 VAP, brought by California Attorney Kenneth Eade, sought declaratory and injunctive relief against the three major CRA's for failing to correct inaccuracies on his client's credit report which had lingered on the report in some cases, for over one year, despite numerous requests to reinvestigate under the FCRA. In the complaint, Eade sought to enjoin them from reporting the negative items. The CRA's moved to dismiss the complaint, contending that injunctions are not available to private plaintiffs under the FCRA. The Court disagreed.

Consumer credit reporting agencies, like Experian, Trans Union and Equifax, are charged by the FCRA with the exercise of due care in accurately and completely reporting credit information. Any item on a credit report which is "incomplete or inaccurate" after reinvestigation under the FCRA must be deleted. Thanks to today's court decision, if the credit reporting agency does not delete it, you can force them to with the injunction power vested in the Courts. But most people do not have the financial wherewithal to mount a lawsuit against the giant conglomerates and are left to suffer the fate brought on by sloppy and negligent investigations.

There is no Ninth Circuit precedent on the matter, which makes this a precedent setting decision. The 11<sup>th</sup> Circuit has held that only government agencies are vested with the equitable power to request injunctive relief under the FCRA. But the Central District Court held today that case may be in direct conflict with the U.S. Supreme Court decision of *Califano v. Yamaski*, in which the Supreme Court held that the equitable powers of the Court can be invoked unless Congress gives a "clear command" that they are excluded. This "clear command" does not appear anywhere in the FCRA, although federal courts are divided on the subject. According to a recent FTC report, in 40 years of enforcement of the FCRA, the FTC, the agency responsible for enforcement of the Act (and the agency that the CRA's claim is the only one who has the right to claim equitable relief under the FCRA), has brought only 87 cases against credit furnishers and credit reporting agencies. That is an average of only two cases per year. Therefore, the private enforcement of the FCRA is the only hope that consumers have to realize their rights under it.

Congress passed the FCRA to ensure that "consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy. However, in the forty-two years since the passage of the FCRA, information technology has advanced faster than the reinvestigation procedures in the Act. As a result, not only is the FCRA inadequate, but the procedures that have been put in place by the credit reporting agencies to perform their responsibilities under it are also antiquated and woefully inadequate. Since the technology revolution and the explosion of Internet use, it has become easier and quicker to place negative information on a credit record, and almost impossible to have inaccurate information removed. At the same time, credit information has become even more critical to our everyday lives.

Many employers will not allow a person into a high position with their company unless his or her credit record is clean. Most consumers don't have the financial resources to bring a lawsuit of this nature and are left to suffer the fate of negligent and sloppy investigations. This decision makes credit bureaus take their responsibilities under the FCRA seriously.

#### About Kenneth Eade

Kenneth Eade is an international business lawyer, based in Los Angeles, California, specializing in international law, transactional and corporate law, complex business litigation, securities litigation, Contract Law, General Commercial and Business Law Matters, Licensing Agreements, Mergers & Acquisitions. He is a member of the Bar of California, the federal District Court for the Central District of California, and the Ninth Circuit Court of Appeal. His previous experience over the past 30 years includes licensing, mergers and acquisitions, securities, collections, real estate, and bankruptcy. He holds a Juris Doctor in Law from Southwestern University School of Law, and a B.A. in Liberal Studies from California State University, Northridge. Mr. Eade is a member in good standing of the California State Bar, the federal Bar of the United States District Court for the Central District of California and the Ninth Circuit Court of Appeal. He is also an accomplished filmmaker.

Mr. Eade was recently presented with a plaque by Martindale Hubbel for his 30 years of service to the community as a California lawyer. In his 30 years' of practice, Mr. Eade has championed thousands of causes for individuals for their civil liberties and freedoms, and advocated the rights of small businesses and individuals against large special interest groups. Included among his recent litigation victories are major victories against banks thought "too big to fail" who illegally take advantage of consumers with illegal collections after foreclosure, which prompted him to open the consumer relief website, <http://suepredatorylender.com>. Recent advances include the quashing of a fraudulent attempt to hijack a small publicly traded company by a custodian filing in Nevada, a preliminary injunction against one of the world's largest banks for attempting to collect an illegal debt, and a major lawsuit against the three major credit bureaus for failing to correct inaccurate information in a credit investigation.

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