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Addressing the Injury in Fact Requirement in the context of an FDCPA Claim

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Its winter, there is a pandemic, and many of us are annoyed with all of it. When addressing the injury in fact requirement under Article III in the context of an FDCPA claim, however, simply being annoyed is not enough to satisfy the standing requirements in federal court. In Gunn v. Thrasher, Buschmann & Voelkel, PC, 982 F. 3d 1069 (7th Cir.) (2020), the owner of a condominium received a letter from a law firm for unpaid assessments, which letter demanded payment. The letter stated as follows: If Creditor has recorded a mechanics lien, covenants, mortgage, or security agreement, it may seek to foreclose such mechanics lien, covenants, mortgage or security agreement.

The unit owner did not pay. The law firm filed a suit for damages against the unit owner rather than foreclosure. The unit owner then sued the law firm under the FDCPA, claiming the letter was false or misleading because the law firm would have found it too costly to pursue foreclosure to collect a \$2,000 debt. The district court dismissed the suit on the pleadings, holding that a true statement about the availability of legal options cannot be condemned under the FDCPA simply because the costs of collection may persuade a law firm to seek one remedy (damages) rather than foreclosure. The unit owner appealed. On appeal, neither party addressed Article III and the injury in fact requirement. The Court of Appeals raised it sua sponte. The unit owner claimed that they were annoyed or intimidated by the letter, and that such a position satisfied the injury in fact requirement. The 7th Circuit rejected this argument and dismissed the suit for lack of standing. In a rather amusing opinion, the 7th Circuit stated that the Supreme Court has never thought that having one's nose out of joint and one's dander up creates a case or controversy. This is a helpful decision to debt collectors. The mere fact that someone owes a debt and demand is made to pay a debt does not mean the communication is illegal, no matter how unwelcome the demand letter is. It is likely that many demand letters sent during the pandemic may be unwelcome by consumers but being annoyed is not enough to file suit under the FDCPA.