

Spokeo Shreds Receipt Suit Against Restaurant Operator

By **Shayna Posses**

Law360 (March 30, 2018, 5:57 PM EDT) -- Luby's Inc. has escaped a proposed class action accusing the restaurant operator of printing too many card digits on receipts, with a Texas federal judge holding Thursday that a patron failed to allege an injury sufficient to meet the standard laid out in the U.S. Supreme Court's landmark Spokeo decision.

U.S. District Judge Kenneth M. Hoyt held that consumer John B. Woods lacks standing to bring his suit accusing the Texas-based company behind eateries like Fuddruckers and Cheeseburger in Paradise of violating the Fair and Accurate Credit Transactions Act, saying his allegations indicate that receiving receipts displaying more than the last five digits of his debit card didn't cause him the sort of concrete harm required under Spokeo.

In its 2016 decision in *Spokeo Inc. v. Robins*, the high court determined that a bare procedural violation divorced from any concrete harm isn't enough to satisfy the injury-in-fact requirement for Article III standing, which dooms Woods' allegations, Judge Hoyt concluded. Woods hasn't shown that the receipts injured him in any way, nor has the FACTA violation opened him up to any "certainly impending" risk of harm, since he noticed the issue immediately and held onto the problematic printouts, the judge said.

"Under these circumstances, it is hard to imagine how the mere presence of more than the last five numbers of his Visa debit card could have increased the risk that the plaintiff's identity would be stolen or compromised," Judge Hoyt said. "Further, 'district courts have repeatedly held that an allegation that a receipt contained credit card information in violation of FACTA, without more, does not implicate traditional privacy interests.'"

Woods filed suit in April 2017, alleging that he went to a Luby's Cafeteria in Sugarland, Texas, twice the previous year and used his Visa debit card to pay. The receipts he received displayed more than the last five digits of his card number, violating FACTA, which provides that a receipt cannot contain more than that number of digits, nor a card's expiration date, according to the complaint.

As a result, Woods said, he has had to check his card statements and credit report to make sure he hasn't fallen victim to identity theft, which has caused him unnecessary stress and wasted his time.

He sought to represent a proposed class of individuals who received electronically printed receipts from Luby's within the appropriate statutory deadline that displayed more than the last five digits of their credit or debit card number.

Luby's, however, moved to toss the action in May, contending that Woods' alleged "hyper-technical" violation of FACTA wasn't enough to confer standing under Spokeo. His complaint doesn't even try to allege an actual or threatened injury-in-fact, the restaurant operator asserted, pointing out that he doesn't say his identity was stolen, nor his privacy invaded, because of the receipts he received.

The only harm he alleges is having to monitor his bank account and credit report, but, Luby's said, "This conclusory allegation ... is the exact type of hypothetical, speculative risk of harm that this court and the Supreme Court hold is insufficient to establish an injury in fact."

Woods countered that simply alleging a violation of FACTA is enough to establish a concrete injury, but Judge Hoyt disagreed Thursday, saying the authority governing Article III standing makes it clear that such a claim doesn't pass muster. Woods hasn't alleged a concrete injury, nor one that is "actual or imminent," so his claims must be dismissed, the judge held.

A representative for Woods declined to comment Friday. Representatives for Luby's didn't immediately return a request for comment.

Woods is represented by Tod A. Lewis and Phillip A. Bock of Bock Hatch Lewis & Oppenheim LLC.

Luby's is represented by Marjorie L. Cohen of Wilson Elser Moskowitz Edelman & Dicker LLP and Mark S. Eisen and David S. Almeida of Benesch Friedlander Coplan & Aronoff LLP.

The case is Woods v. Luby's Inc., case number 4:17-cv-01146, in the U.S. District Court for the Southern District of Texas.

--Editing by Marygrace Murphy.