

Fla. Appeals Court Says Injury Needed For FACTA Standing

By **Carolina Bolado**

Law360 (July 13, 2022, 9:26 PM EDT) -- A Florida appeals court on Wednesday upheld the dismissal of a class suit against Red Wing Shoe Co. over Fair and Accurate Credit Transactions Act violations after finding that the lead plaintiff lacked standing to sue because he had suffered no harm.

Florida's Fourth District Court of Appeal said plaintiff James Southam suffered no economic or other injury when the company printed a receipt with 10 digits of his credit card number and therefore could not bring his suit for statutory damages under FACTA.


Southam did not allege that his credit card was used, lost or stolen in any way, and there was no evidence of any danger of his credit card being used, according to the opinion.

"Appellant suffered no 'economic' injury, nor any 'distinct or palpable' injury," the appeals court said. "Thus, in this case, we find '[n]o concrete harm, no standing.'"

The **decision** is the first from a Florida appellate court on the issue of standing for FACTA claims, according to Aaron Weiss of Carlton Fields, who handles consumer class actions.

"Without question, this is the most significant appellate decision for consumer class actions in Florida state court that has been issued in at least the last decade," said Weiss, who was not involved in this case. "This decision will go a long way in slamming the door shut anywhere in Florida for these types of claims."

Southam first sued Red Wing Shoe Co. in federal court in 2019 after one of the company's stores gave him a receipt that included 10 digits of his credit card number, more than the maximum allowed by FACTA. The class action suit asked for only statutory damages, not actual damages.

The suit was stayed while the Eleventh Circuit heard another FACTA dispute, [Muransky v. Godiva Chocolatier Inc.](#)  The federal appeals court issued an **en banc decision** in October 2020 vacating a \$6.3 million class settlement and ruling that consumers have to show concrete harm and not just a "bare procedural violation" in order to have standing.

While the federal action was stayed, Southam filed the suit in state court where he argued that state standing was plenary and less restrictive than federal standing.

But the trial court, and now the Fourth District, said that while state standing is less restrictive, plaintiffs still need to allege injury in fact. Here, there was no injury, and because Southam retained possession of the receipt, no imminent possibility of injury, according to Fourth District.

"A purely illegal action in the absence of resulting harm does not confer standing on an individual," the appeals court said.

Attorneys for the parties did not respond to requests for comment Wednesday.

Southam is represented by Keith J. Keogh of Keogh Law, Scott Owens of Scott D. Owens PA and Bret Lusskin of Bret L. Lusskin PA.

Red Wing Shoe Co. is represented by Jordan S. Kosches of GrayRobinson PA and David S. Almeida

and Mark S. Eisen of Benesch Friedlander Coplan & Aronoff LLP.

The case is Southam v. Red Wing Shoe Co. Inc., case number 4D21-3338, in the Fourth District Court of Appeal of the State of Florida.

--Editing by Kristen Becker.