

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 07-80031-CIV-MIDDLEBROOKS/JOHNSON

MICHAEL YOUNG,

Plaintiff,

v.

REED ELSEVIER, INC., SEISINT, INC.,
CITIBANK, FEDERAL SAVINGS BANK,
CITIBANK (WEST), FSB,
CITIMORTGAGE, INC., and TRANS
UNION, LLC,

Defendants.

**ORDER GRANTING DEFENDANT TRANS UNION'S
PARTIAL MOTION TO DISMISS**

This Cause comes before the Court on Defendant Trans Union's Partial Motion to Dismiss (DE 3), filed January 11, 2007. The Court has reviewed the record and is fully advised in the premises.

Plaintiff Michael Young ("Young") brings a claim against Defendant Trans Union LLC ("Trans Union") under the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681, et seq. Young alleges that Trans Union included inaccurate information pertaining to accounts on his credit report. As part of his claim against Trans Union, Young is seeking a temporary and permanent injunction to prevent future damages from a continuation of Defendant's allegedly illegal actions. Defendant argues in the instant motion that a private litigant may not obtain injunctive relief under FCRA, and that Plaintiff's request for an injunction must be dismissed.

The FCRA requires consumer reporting agencies to adopt reasonable procedures for ensuring the accuracy of credit information that they collect and report on individuals. 15 U.S.C. § 1681(b), 1681e, *Mangio v. Equifax, Inc.*, 887 F. Supp. 283, 284 (S.D. Fla. 1995). Individuals believing that a credit agency's file contains inaccurate information are entitled to dispute this information with the agency. *Id.* at § 1681i(a). Once an individual notifies a credit agency of a dispute, the agency is required to reinvestigate that information unless the dispute is frivolous or irrelevant. *Id.* If the agency learns that the information is inaccurate, the agency “shall promptly delete such information” from the individual’s credit record. *Id.*

If reinvestigation does not resolve the dispute -- i.e., the credit agency finds insufficient reason to believe that the information is inaccurate -- the individual may file a brief statement of the dispute with the agency. *Id.* at § 1681i(b), *Mangio*, 887 F. Supp. at 284. The credit agency then must report the statement and the existence of a dispute whenever it reports the challenged information. *Id.* at 1681i(c).

Individuals also may sue for damages. A credit agency that willfully fails to comply with its FCRA obligations “is liable” to an individual for his or her actual damages, costs and reasonable attorney's fees as well as such punitive damages as a court will allow. *Id.* at § 1681n; *see Hovater v. Equifax, Inc.*, 823 F.2d 413, 417 (11th Cir. 1986). A credit agency that is merely negligent “is liable” for the same amounts, except that it is not subject to punitive damages. 15 U.S.C. § 1681o. The FCRA grants district courts jurisdiction to “enforce” these “liabilities”:

An action to enforce any liability created under this subchapter may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction.

Id. at § 1681p.

In *Mangio* the court found that FCRA did not include injunctive relief as one of the “liabilities” defined in the statute, so that remedy was not available to private litigants. *Mangio*, 887 F. Supp. at 284. The court pointed to the Eleventh Circuit’s interpretation of the Fair Debt Collection Practices Act (“FDCPA”), which contains an analogous damages provision, where the appeals court found that injunctive relief was not available to private litigants. *See Sibley v. Fulton Dekalb Collection Serv.*, 677 F.2d 830 (11th Cir. 1982).

The thrust of the Fair Debt Collection Practices Act is prevention of harassment and abuse as well as false, deceptive or misleading practices The relief sought is money damages. . . . Indeed, equitable relief is not available to an individual under the civil liability section of the Act.

Id. at 834.

I agree with the reasoning in *Mangio* that were it to reach the issue, the Eleventh Circuit would hold that injunctive relief is not available to private litigants under FCRA. Indeed, various other courts in this circuit have already reached the same conclusion. *See Odin Gonzalez v. Macy's/DSNB*, 2006 U.S. Dist. LEXIS 89644 (S.D. Fla. 2006) (Upon a review of the FCRA's civil remedy provisions, the plain language of the statute reveals that a private plaintiff can only obtain compensatory damages, punitive damages and attorney's fees. 15 U.S.C. §§ 1681n and 1681o. Declaratory or injunctive relief is not available to a private plaintiff..), *see also Jones v. Sonic Auto., Inc.*, 391 F. Supp. 2d 1064, 1065 (M.D. Ala. 2005) (Although the Eleventh Circuit Court of Appeals has not addressed this issue, this Court agrees with the well-reasoned opinion of *Mangio* and concludes that the FCRA does not authorize equitable relief to private parties.), *See Washington v. CSC Credit Servs.*, 199 F.3d 263, 268 (5th Cir. 2000) (We hold that the affirmative grant of power to the FTC to pursue injunctive relief, coupled with the absence of a

similar grant to private litigants when they are expressly granted the right to obtain damages and other relief, persuasively demonstrates that Congress vested the power to obtain injunctive relief solely with the FTC.).

Accordingly, it is

ORDERED AND ADJUDGED that Defendant Trans Union's Partial Motion to Dismiss (DE 3) is GRANTED. Plaintiff's claim against Trans Union for injunctive relief ONLY is DISMISSED WITH PREJUDICE.

DONE AND ORDERED in Chambers at West Palm Beach, FL, this 29th day of January 2007.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

copies to counsel of record