

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO, individually and on behalf of all others similarly situated,]	CIVIL ACTION 08-3535
]	
Plaintiffs]	SECTION R
]	JUDGE SARAH S. VANCE
VERSUS]	
]	MAG. 3
JACKSON HEWITT TAX SERVICE INC.; JACKSON HEWITT INC.; and CRESCENT CITY TAX SERVICE, INC. D/B/A JACKSON HEWITT TAX SERVICE,]	
]	
Defendants]	
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MEMORANDUM IN SUPPORT OF RULE 12(B)(6) MOTION TO DISMISS

MAY IT PLEASE THE COURT:

Crescent City Tax Service, Inc., d/b/a Jackson Hewitt Tax Service moves for a dismissal of plaintiffs’ class action complaint, on the grounds that plaintiffs have suffered no injury which would entitled them to relief, all as set forth more fully herein, and as set forth in the memorandum filed by Jackson Hewitt Tax Service, Inc. and Jackson Hewitt, Inc.

FACTS

Crescent City Tax Service, Inc., d/b/a Jackson Hewitt Tax Service, (CCTS), operates a franchise tax preparation service through Jackson Hewitt, Inc. Plaintiff claims that a group of tax records, including her own, were recently found in a dumpster.

Plaintiff says that she has suffered distress as a result of the improper handling of her records, and has filed suit on behalf of herself and a purported class of others similarly situated. For the same reasons cited by co-defendants Jackson Hewitt Tax Service, Inc. and Jackson Hewitt, Inc., in their Motion to Dismiss the Complaint, Crescent City Tax Service, Inc., d/b/a Jackson Hewitt Tax Service, also moves for a dismissal of the plaintiffs' complaints.

The reasons are simple. Several of the specific statutes cited by Pinero do not apply to this situation, and Pinero has not suffered any injuries which would entitle her to any relief. Certain CCTS property was discovered in a dumpster. The person who made the discovery contacted a local television reporter who retrieved the CCTS property from the dumpster, and used it as a basis for a television report. The reporter then turned the property over to the Jefferson Parish Sheriff's Office.

There is no allegation that anyone else has seen these documents, other than the person who discovered them, the reporter, and the police. There is no allegation that anyone whose documents were allegedly mishandled has suffered any actual damages. There are no reports of any actual identity theft.

Under these circumstances, plaintiffs' petition should be dismissed.

As noted in the memorandum provided by Jackson Hewitt, the claims must be dismissed because she has not suffered any injury. The cases of *Melancon v. LOSFA* and the *Ponder v. Pfizer* are exactly on point. As noted in *Melancon*, where "plaintiffs' allege damages that are purely speculative rather than asserting any actual, cognizable losses," plaintiffs therefore "lack the ability to prove an essential element of their negligence claim," and summary judgment is appropriate.

As Judge Brady stated in the *Ponder* case, the injury from the theft of personal information accrues only when the compromised data is actually used by some third party to steal someone's identity. The mere possibility that personal information may be at increased risk does not constitute actual injury sufficient to maintain a claim for negligence under the current state of Louisiana law.

Louisiana's Data Breach Notification statute does apply to this case.

Plaintiff's claims for fraud and violation of privacy do not meet the Louisiana requirements for those causes of action.

26 U.S.C. § 6103 does not apply to this case. Plaintiff's First Amended Petition adds nothing that cures the defects of the original filing.

As set forth in the pleadings filed by the co-defendant, plaintiff's claims must be dismissed.

Respectfully submitted:

BLUE WILLIAMS, L.L.P.

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CERTIFICATE OF SERVICE

I do hereby certify that I have on August 11, 2008, electronically filed the foregoing with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to the following.

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM.ECF participants.

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