

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,)	
)	
Plaintiff,)	
)	C.A. No. 06 CA 11370 MLW
v.)	
)	
REED ELSEVIER INCORPORATED,)	
d/b/a/ Lexis Nexis Corporation,)	
Lexis Nexis Accurint,)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S STATEMENT OF FACTS,
AND DEFENDANT’S CONCISE STATEMENT OF ADDITIONAL
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Rule 56.1, defendant Reed Elsevier Inc. (“Reed”) provides the following response to plaintiff Christine Varad’s (“Plaintiff”) statement of facts set forth in her summary judgment memorandum. Reed further submits herein its statement of additional, undisputed material facts (“Reed’s Statement of Facts”).

A. Response to Plaintiff’s Statement of Facts.

Plaintiff’s “Statement of Facts” begins on page 5 of her Memorandum In Support of Motion for Summary Judgment (“Pl. Memo.”) and comprises twelve unnumbered paragraphs. Reed’s response to each of these paragraphs – which have been numbered for ease of reference – follows:

1. (Pl. Memo at pp. 5-6). Disputed in part. Reed does not dispute that Plaintiff applied for employment with F&W Publishing (“F&W”), but disputes that Plaintiff’s Exhibit 1 is an accurate copy of such application. Accordingly, Reed disputes any characterization or extrapolation that Plaintiff seeks to make regarding the application. See also Reed Opposition (“Reed Opp.”) p. 9. Reed likewise disputes that a “background

check” was conducted by Gall & Gall Company, Inc. (“Gall & Gall”), as there is no evidence in the record attesting to what type of screening Gall & Gall did. Id. Further, the “applicant screening report” attached as Exhibit 2 is incomplete, by Plaintiff’s own admission, and has not been authenticated. Id. Reed disputes that it provided any information regarding a criminal background check on Plaintiff. Byrne 2d Aff. ¶ 4. Reed does not dispute that Plaintiff claims that the Gall & Gall report contained inaccurate address information. Reed admits that Seisint, a separate legal entity from Reed, provided Gall & Gall with identification verification information only regarding Plaintiff. Byrne 2d Aff. ¶¶ 3-4.

2. (Pl. Memo at p. 6). Disputed. There is no evidence in the record attesting to Plaintiff’s conversation with anyone at F&W, nor is Exhibit 3 admissible, as it is unauthenticated and hearsay. See Reed Opp. p. 10.

3. (Pl. Memo at p. 6). Disputed. There is no evidence in the record attesting to Plaintiff’s verbal contacts with Gall & Gall, nor has Exhibit 4 been authenticated. Id.

4. (Pl. Memo at pp. 6-7). Disputed. There is no evidence in the record that Gall & Gall provided a second report to F&W, or that Plaintiff’s Exhibit 5 is a true and accurate copy of an additional screening report. Id. Further, there is no evidence in the record that the “second” report contained a federal social security database search. Id. pp. 6-7, 9.

5. (Pl. Memo at p. 7). Disputed in part. There is no evidence in the record attesting to Plaintiff’s verbal communications with Gall & Gall, nor has Exhibit 6 been authenticated, and it contains inadmissible hearsay. Id. p. 10. Reed does not dispute,

however, that Seisint provided address information to Gall & Gall concerning Plaintiff. Byrne 2d Aff. ¶ 4.

6. (Pl. Memo at p. 7). Disputed. There is no evidence in the record attesting to Plaintiff's attempts to contact Lexis Nexis Accurint. See Plaintiff's Exhibit 13.

7. (Pl. Memo at pp. 7-8). Disputed in part. Although unauthenticated, Reed does not dispute that Plaintiff sent the letter attached as Exhibit 7 to Seisint. Reed disputes the statements and allegations set forth in the letter, including that Seisint is subject to the Fair Credit Reporting Act by providing identity verification information to Gall & Gall. Id. pp. 13-18.

8. (Pl. Memo at p. 8). Disputed in part. Reed does not dispute that Seisint (by James Swift) sent the April 20, 2006 letter attached as Exhibit 8. Reed refers to the exhibit for the statements made therein. See Exhibit 8.

9. (Pl. Memo at p. 8). Disputed in part. Reed disputes that Plaintiff was left with no way to correct or challenge the address information. Byrne 2d Aff. ¶ 7-8, 12. Reed further refers to Exhibit 8 for the statements made therein.

10. (Pl. Memo at pp. 8-9). Disputed in part. Although unauthenticated, Reed does not dispute that Plaintiff sent the letter attached as Exhibit 9 to Seisint. Reed disputes the statements and allegations set forth in the letter, including that it is a consumer reporting agency. Reed Opp. pp. 13-18. Reed further disputes Plaintiff's allegation that "no source information was ever supplied....", as Mr. Byrne attests that Seisint provided the names and contact information for the three major credit agencies to Plaintiff because Seisint had identified one or more of those agencies as being the source of the allegedly incorrect information. Byrne 2d Aff. ¶ 7. Seisint further urged Plaintiff

to contact those agencies to dispute and/or correct the information. Id. ¶ 8. Reed admits that Seisint sent the May 23, 2006 correspondence to Plaintiff. Reed disputes that the address information Seisint received came from some other, undisclosed source. Id. ¶ 7.

11. (Pl. Memo at p. 9). Disputed. Reed disputes that it defamed or harmed Plaintiff. (see Reed Opp. pp.18-21) and disputes that it received a demand letter pursuant to M.G.L. c. 93A from Plaintiff. See Affidavit of Henry Z. Horbaczewski (“Horbaczewski Aff.”), ¶ 3. Although unauthenticated, Reed admits that Seisint received, at Seisint’s corporate headquarters in Boca Raton, Florida, Plaintiff’s June 3, 2006 letter (Exhibit 11).

12. (Pl. Memo at pp. 9-10). Disputed in part. Reed does not contest that on June 20, 2006, John M. Byrne, Director and Senior Corporate Counsel for Seisint, sent a letter to Plaintiff on behalf of Seisint. Byrne 2d Aff. ¶ 12. Reed contests that it or Seisint defamed Plaintiff. See Reed Opp. pp. 18-21.

B. Reed’s Concise Statement of Additional, Undisputed Material Facts.

1. Seisint is a provider of information management products and services. Byrne 2d Aff. ¶ 2. Seisint owns Accurint, a service and database of information that provides identity validation and verification. Id.

2. In early 2006, Seisint received a request from its customer, Gall & Gall, to provide identification verification information concerning Plaintiff. Id. ¶ 3. In response to Gall & Gall’s request, Seisint provided Gall & Gall with information from its Accurint database regarding Plaintiff, which information pertained solely to verification of her identity – name, current and prior address information, date of birth, partially masked social security number, and possibly telephone number information. Id.

3. Seisint did not provide any other information to Gall & Gall concerning Plaintiff. Id. ¶ 4.

4. In April 2006 Plaintiff contacted Seisint, claiming that certain address information that was provided to Gall & Gall from Seisint's Accurint database was incorrect. Id. ¶ 5 and Exhibit A thereto (April 20, 2006 letter to Plaintiff).

5. In response, Seisint requested that Plaintiff fill out a form specifying the allegedly incorrect information, so that Seisint could attempt to provide her with the source of the information. Id. ¶ 6.

6. After making inquiry, Seisint determined and informed Plaintiff that the address information she was disputing was provided to Seisint by one or more of the three national credit reporting agencies, and gave her the contact information for each of those agencies. Id. ¶ 7 and Exhibit B thereto (May 23, 2006 letter to Plaintiff). Seisint then urged Plaintiff to contact those agencies and correct the information at the source, as Seisint could not change such information. Id. ¶ 8.

7. Seisint's contract with Gall & Gall explicitly specifies that Gall & Gall is not permitted to use Accurint information for purposes that fall within the purview of the Fair Credit Reporting Act. Id. ¶ 9 and Exhibit C thereto. Seisint therefore contacted Gall & Gall to confirm that the information it supplied to Gall & Gall regarding Plaintiff was used in accordance with their contract. Id.

8. Seisint's audit of Gall & Gall confirmed that the information it provided to Gall & Gall about Plaintiff was identification information only. Id. ¶ 10. Seisint's audit further confirmed that Gall & Gall used that information for verification purposes only, and for no other purpose. Id.

9. On June 20, 2006, Seisint informed Plaintiff of the results of its audit of Gall & Gall. Id. ¶ 11 and Exhibit D thereto (June 20, 2006 letter to Plaintiff).

10. Despite Seisint's efforts to respond to and aid Plaintiff, on June 3, 2006, Plaintiff sent a letter to Seisint at its corporate headquarters in Boca Raton, Florida, contending that Seisint's claim that it is not a consumer reporting agency is an unfair and deceptive act under c. 93A. Byrne 2d Aff. ¶ 12 and Exhibit E thereto (June 3, 2006 letter from Plaintiff to Seisint).

11. In response, Seisint again explained that it is not a consumer reporting agency, and that it does not correct information it obtains from third parties – but rather simply gathers and reports the information it receives. Id. ¶ 12 and Exhibit D thereto. Seisint again urged Plaintiff to contact the source of the information to correct it. Id. Plaintiff has apparently failed to do so.

12. From April 2006 through the filing of the lawsuit, the only correspondence regarding Plaintiff's claims was between Plaintiff and Seisint. Affidavit of Henry Z. Horbaczewski ("Horbaczewski Aff.") ¶ 3; Byrne 2d Aff. ¶ 13.

13. Reed is a separate legal entity from Seisint. Horbaczewski Aff. ¶ 2. Reed has never received from Plaintiff a demand letter pursuant to M.G.L. c. 93A or any other correspondence. Id. ¶ 3. Furthermore, Seisint, not Reed, is the owner of Accurint. Affidavit of John M. Byrne ("Byrne Aff.") ¶ 3 [docket entry 6].

REED ELSEVIER INC.
By its attorneys,

/s/ Kristin M. Cataldo

T. Christopher Donnelly (BBO #129930)

Kristin M. Cataldo (BBO #654033)

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Dated: December 12, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2006, I caused a copy of the foregoing to be served on the following by regular mail:

Christine M. Varad
P.O. Box 583
Milton, MA 02186

/s/ Kristin M. Cataldo

Kristin M. Cataldo