

No. 14-2384

---

In the  
**United States Court of Appeals**  
for the **Seventh Circuit**

---

GRANT E. BENTRUD,  
*Plaintiff-Appellant,*

v.

BOWMAN, HEINTZ, BOSCIA & VICIAN, P.C.,  
*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Southern District of Indiana, Indianapolis Division  
Case No. 1:12-cv-01340-WLT-DML  
The Honorable William T. Lawrence, District Judge, Presiding

---

**BRIEF AND REQUIRED SHORT APPENDIX OF  
PLAINTIFF-APPELLANT GRANT E. BENTRUD**

---

ROBERT E. DUFF  
INDIANA CONSUMER LAW GROUP/  
THE LAW OFFICE OF ROBERT E. DUFF  
P.O. BOX 7251  
FISHERS, IN 46037  
800-817-0461  
ROBERT@ROBERTDUFFLAW.COM

*Attorney for Plaintiff-Appellant  
Grant E. Bentrud*

**CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

Appellate Court No: 14-2384

Short Caption: Grant E. Bentrud v. Bowman, Heintz Boscia & Vician, P.C.

(1) The full name of every party that the attorney represents in the case:

Grant E. Bentrud

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Indiana Consumer Law Group/The Law Office of Robert E. Duff

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: /s/ Robert E. Duff

Date: September 18, 2014

Attorney's Printed Name: Robert E. Duff

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).  Yes  No

Address: P.O. Box 7251  
Fishers, IN 46037

Phone Number: 800-817-0461

Fax Number: 800-817-0461

E-Mail Address: robert@robertdufflaw.com

## TABLE OF CONTENTS

|   |     |
|---|-----|
| CIRCUIT RULE 26.1 DISCLOSURE STATEMENT.....   | i   |
| TABLE OF AUTHORITIES .....  | iii |
| JURISDICTIONAL STATEMENT .....  | 1   |
| STATEMENT OF ISSUES FOR REVIEW.....   | 1   |
| STATEMENT OF THE CASE.....  | 2   |
| SUMMARY OF ARGUMENT .....   | 8   |
| STANDARD OF REVIEW.....   | 10  |
| ARGUMENT .....  | 10  |
| 1. Proceeding in Court After Election of Arbitration.....   | 10  |
| 2. Collecting an Amount Bentrud Does Not Owe <u>Or</u> Misrepresenting the<br>Correct Interest Rate ..... | 14  |
| a. The District Court Impermissibly Made an Evidentiary Inference<br>Against the Nonmovant (Bentrud)..... | 14  |
| b. Law Firm Cannot Collect Excessive Interest Even If It Is Rolled<br>Into Principal .....                | 15  |
| c. No Bona Fide Error.....  | 17  |
| CONCLUSION.....   | 21  |
| CERTIFICATE OF COMPLIANCE WITH RULE 32(a).....  | 22  |
| CERTIFICATE OF SERVICE.....   | 23  |
| CIRCUIT RULE 30(d) STATEMENT .....  | 24  |

## TABLE OF AUTHORITIES

### Cases

|   |            |
|---|------------|
| <i>Exxon Mobil Corp. v. Saudi Basic Industries Corp.</i> ,<br>544 U.S. 280 (2005) .....           | 11         |
| <i>Capital One Bank v. Grant E. Bentrud</i> ,<br>Cause No. 32D04-1201-CC-0109 .....               | 2          |
| <i>Hahn v. Triumph Partnerships LLC</i> ,<br>557 F.3d 755 (7th Cir. 2009) .....                   | 16         |
| <i>Jenkins v. Heintz</i> ,<br>124 F.3d 824 (7th Cir. 1997) .....                                  | 18, 19, 20 |
| <i>Jerman v. Carlisle, McNellie, Rini, Kramer &amp; Ulrich LPA</i> ,<br>559 U.S. 573 (2010) ..... | 20         |
| <i>Kort v. Diversified Collection Services, Inc.</i> ,<br>384 F.3d 530 (7th Cir. 2005) .....      | 17         |
| <i>Ruttenberg v. U.S. Life Insurance Company</i> ,<br>413 F.3d 652 (7th Cir. 2005) .....          | 10, 15     |
| <i>Todd v. Collecto, Inc.</i> ,<br>731 F.3d 734 (7th Cir. 2013) .....                             | 13         |
| <i>Wahl v. Midland Credit Management, Inc.</i> ,<br>556 F.3d 643 (7th Cir. 2009) .....            | 16         |
| <i>Weiland v. Linear Const. Ltd.</i> ,<br>2003 WL 21800069 (N.D.Ill. July 23, 2003) .....         | 3          |

### Statutes

|                            |               |
|----------------------------|---------------|
| 15 U.S.C. § 1692d.....     | 10            |
| 15 U.S.C. § 1692e.....     | 16            |
| 15 U.S.C. § 1692f .....    | 8, 10, 13, 21 |
| 15 U.S.C. § 1692f(1) ..... | 16            |

|                            |    |
|----------------------------|----|
| 15 U.S.C. § 1692k(c).....  | 17 |
| 15 U.S.C. § 1692k(d) ..... | 1  |
| 28 U.S.C. § 1291.....      | 1  |
| 28 U.S.C. § 1331.....      | 1  |
| 28 U.S.C. § 1337.....      | 1  |

**Rules**

|                             |   |
|-----------------------------|---|
| Fed. R. Civ. P. 12(C) ..... | 5 |
|-----------------------------|---|

## **JURISDICTIONAL STATEMENT**

1. JURISDICTION OF THE DISTRICT COURT (Fed. R. App. P. 28(a)(4)(A)) and Circuit Rule 28(a)(1)). Plaintiff-Appellant's claims under the Fair Debt Collection Practices Act gave rise to the district court's jurisdiction in this case. The district court had jurisdiction over this case by reason of 15 U.S.C. § 1692k(d) (Fair Debt Collection Practices Act grant of jurisdiction), 28 U.S.C. § 1331 (Federal question jurisdiction) and § 1337 (jurisdiction for Act of Congress regulating commerce).

2. JURISDICTION OF THIS COURT (Fed. R. App. P. 28(a)(4)(B-D) and Circuit Rule 28(a)(2)). The district court's Entry on Cross Motions for Summary Judgment of May 27, 2014 rendered judgment in favor of Defendant on all of Plaintiff's claims and is therefore a final judgment. Indeed, the district court concurrently issued a final Judgment. Plaintiff filed his Notice of Appeal in the district court on June 26, 2014 and therefore this appeal has been timely filed. The United States Court of Appeals for the Seventh Circuit has jurisdiction of this appeal by reason of 28 U.S.C. § 1291, which provides jurisdiction over appeals from all final decisions of the district courts.

### **STATEMENT OF ISSUES FOR REVIEW**

Whether the District Court erred in granting Defendant's Motion for Summary Judgment and denying Plaintiff's Motion for Summary Judgment?

The balance of the brief has been eliminated for this sample. For a copy of the complete brief please call our office. Thank you.