

UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80593-Civ-HURLEY/LYNCH

JAMES KEHOE, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

FIDELITY FEDERAL BANK AND  
TRUST,

Defendant.

**DEFENDANT, FIDELITY FEDERAL BANK AND TRUST'S,  
MOTION TO DISMISS AND/OR IN THE ALTERNATIVE,  
MOTION FOR SUMMARY JUDGMENT**

Defendant, FIDELITY FEDERAL BANK AND TRUST (the "Fidelity"), pursuant to Rule 12(B)(6) and Rule 56 of the Fed.R.Civ.P., moves this Court for an order dismissing the Complaint against it or, in the alternative, for summary judgment in favor of Fidelity. As grounds therefor, Fidelity states that:

1. Plaintiff, James Kehoe, on behalf of himself and all other similarly situated ("Plaintiff"), has filed the putative class action Complaint against Fidelity alleging violations of the Drivers Privacy Protection Act, 18 U.S.C. Section 2721, *et seq.* (the "DPPA").

2. The gravamen of Plaintiff's Complaint is that Fidelity knowingly obtained and used within the meaning of DPPA "personal information" contained in "motor vehicle records" maintained by the State of Florida in violation of the DPPA because those individuals did not provide "express consent" to the State of Florida for the distribution of their "personal information".

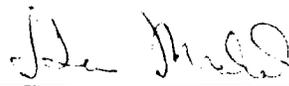
3. Plaintiff has failed to state a cause of action under the DPPA on two grounds: (a) Plaintiff has failed to state a cause of action for liquidated minimum damages under the DPPA because Plaintiff has not alleged any actual harm; and (b) Plaintiff cannot prevail because he has not alleged and cannot prove that Fidelity knew, or had reason to know, the State of Florida had not obtained the express consent of the individuals whose information Fidelity purchased from the State.

WHEREFORE, Fidelity requests the Court enter an order that:

- A. Dismisses Plaintiff's Complaint for failure to state a cause of action; and/or in the alternative,
- B. Grants summary judgment in Fidelity's favor; and
- C. Such other and further relief as the Court deems necessary and proper.

PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL. 33401  
(561) 655-2250/FAX (561) 655-5537  
e-mail: [rfitzgerald@pm-law.com](mailto:rfitzgerald@pm-law.com)  
e-mail: [lmrachek@pm-law.com](mailto:lmrachek@pm-law.com)  
Counsel for Defendant Fidelity Federal Bank and Trust

By



L. Louis Mrachek  
Fla. Bar No. 182880  
Roy E. Fitzgerald  
Fla. Bar No. 856540

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to all parties on the attached service list, by  U.S. Mail,  Facsimile, [  ] Hand Delivery, [  ] overnight delivery, this 21<sup>st</sup> day of August, 2003.

PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL. 33401  
(561) 655-2250/FAX (561) 655-5537  
e-mail: [rfitzgerald@pm-law.com](mailto:rfitzgerald@pm-law.com)  
e-mail: [lmrachek@pm-law.com](mailto:lmrachek@pm-law.com)  
Counsel for Defendant Fidelity Federal Bank and Trust

By \_\_\_\_\_

  
L. Louis Mrachek  
Fla Bar No 182880  
Roy E. Fitzgerald  
Fla. Bar No. 856540

**SERVICE LIST**

Roger Slade, Esq.  
Fla. Bar No. 0041319  
Mark Goldstein, Esq.  
Fla. Bar No. 882186  
PATHMAN LEWIS, LLP  
One South Biscayne Tower  
2 S. Biscayne Blvd.  
Miami, FL. 33131  
(305) 379-2425  
FAX: (305) 379-2420  
Counsel for Plaintiffs