IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Great Seneca Financial Corp., A Maryland Corporation Assignee of Madison Street Investments, Assignee of Chase Manhattan Bank	)	
Plaintiff,	)	C.A. No. 2005-06-493
vs.	)	
Lifeng Lee Hsu	)	
Defendant.	)	

Submitted: March 2, 2006
Decided: May 17, 2006

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This Order addresses a debt owed to plaintiff Great Seneca Financial Corporation ("plaintiff"), assignee of Chase Manhattan Bank. Plaintiff seeks damages in the amount of $11,616.00 from Lifeng Lee Hsu ("defendant"). Plaintiff alleges that Chase Manhattan Bank issued a "Chase Freedom Gold Mastercard" credit card to defendant, and that defendant eventually ceased making payments towards the balance. Attached to plaintiff's Motion for Summary Judgment (the "Motion") as Exhibit A are photocopies of nine monthly credit card statements bearing defendant's name and home address, and span from July 10, 2002 to March 11, 2003. The statements dated July 10, 2002 and August 9, 2002 reflect that payments were made on the account. The remaining statements after August 9, 2002 reflect that no further payments have since been made.

Defendant opposes plaintiff's Motion, maintaining no contractual obligation to plaintiff exists because he is only an authorized user on the account; that counsel for plaintiff along with his law firm have engaged in the unauthorized practice of law; and that pursuant to 15 U.S.C. §1692(g)(b) of the Fair Debt Collection Practices Act ("FDCPA"), he is shielded from any attempts at litigation by plaintiff's counsel or his law firm. Although the Court previously dismissed defendant's Counterclaim regarding FDCPA, the Court requested memoranda from both parties regarding its applicability and relevance.

PROCEDURAL POSTURE

On or about June 29, 2005 plaintiff filed its Complaint with this Court, and on August 3, 2005 defendant was served personally at the same address listed on the above-mentioned monthly credit card statements. Defendant filed his Answer on or about August 17, 2005 denying the debt and filed a Counterclaim alleging that plaintiff violated the FDCPA by allegedly continuing collection attempts before providing defendant with written verification of the debt. The first communication defendant claims receiving from plaintiff was a letter dated February 23, 2005 from Paul T. Oliver, Jr. Esq. of the law offices of Wolpoff & Abramson, LLP. The letter indicates that Mr. Oliver is admitted to practice law in the State of Michigan. Specifically, the letter provides, "I urge you to take advantage of your right to dispute this debt as described in the important notice on the reverse side of this letter." No copy of the reverse side of this letter appears in the record. Defendant alleges that he mailed a reply to plaintiffs on March 21, 2005 stating,

> "I could not find in my record any transaction with Chase Manhattan in the past 18 months. However, I found in my credit report that I am only an

> authorized user of the above account number, so I do not have any contractual obligation to this account.
>
> I am sorry that I will not call your company because I would prefer written communication."

Defendant further claims that after receiving no response, he mailed a second letter on June 7, 2005 in which he requests a copy of,

> "1. Loan agreement that bears my signature. 2. The history and the nature of this loan. 3. The document that shows that I am the owner of the above mentioned account. I am sorry that I will not call your office because I would prefer written communication."

Plaintiff filed its response to defendant's Counterclaim, and denied that any of its actions amounted to "collection activity" since plaintiff is not a collector, but in fact owns the debt and is a creditor, and thus the FDCPA does not apply in this instance. Plaintiff further stated that even if the FDCPA applied, "Defendant has not alleged Plaintiff wrote to or spoke with Defendant in an effort to recover the outstanding balance." On September 30, 2005 this Court dismissed defendant's Counterclaim regarding the FDCPA without prejudice. On or about December 30, 2005 plaintiff filed a Motion for Summary Judgment, and on or about January 18, 2006 defendant filed an Opposition to plaintiff's Motion along with a Cross-Motion for Summary Judgment. Defendant attached to his Opposition and Cross-Motion as Exhibit A-1 a copy of his TransUnion credit report. The credit report lists the Chase Manhattan account and in the field marked "Responsibility" it states, "Authorized Account." Defendant argues that this verifies his claim that he is an authorized user and not the primary cardholder on the account, and thus bears no contractual relationship to plaintiff. On or about February 1, 2006 plaintiff filed its Reply and Opposition to Defendant's Cross-Motion and argued,

> "The notation on Defendant's credit report reflects that this account was … opened under Defendant's name as the primary accountholder according to

> Defendant's authorization and request. The credit bureaus only report accounts for the responsible accountholders such as Defendant on this account. *Defendant mistakenly claims that the language "authorized account" is equivalent to an authorized user notation. This is simply incorrect and Defendant, again, is attempting to attempt to avoid his repayment obligations. Notably, Defendant does not submit any documentation in connection with his credit account substantiating his claims but instead relies upon his misinterpretation of the third party credit reporting bureau's documentation."* (Emphasis added).
>
> On February 3, 2006 the Court's docket provides:
>
> "PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, CROSS MOTION AND OPPOSITION TO PLAINTIFF'S MOTION PRESENTED BEFORE JUDGE JOSEPH FLICKINGER. AFTER HEARING FROM BOTH PARTIES, THE BOTH MOTIONS FOR SUMMARY JUDGMENT WERE DENIED *WITH THE EXCEPTION OF ISSUE OF US CODE.* MEMOS DUE 2/17/06 BY PLAINTIFF AND ON 3/3/06 BY DEFENDANT; FILE WILL THEN BE SENT TO JUDGE FLICKINGER FOR REVIEW AND POSSIBLE SCHEDULING. *PLAINTIFF IS TO SUPPLY VERIFICATION OF POLICY TO DEFENDANT AND DEFENDANT IS TO SUPPLY A VERIFIED AUTHORIZED USER AFFIDAVIT."* (Emphasis added).

As mentioned at the outset, per the Court's instruction, on February 17, 2006 plaintiff filed a Memorandum of Law requesting this Court to deny defendant's Motion for Summary Judgment. Plaintiff argues that defendant is misapplying the FDCPA, and even if the federal statute applied, plaintiff is nonetheless in full compliance with the FDCPA. Moreover, defendant has not presented "any exhibits that evidence a verification request that would fall within the purview of Sec. 1692g." Plaintiff further denies ever receiving from defendant a written request for verification of the debt within thirty days of plaintiff's first letter dated February 23, 2005. In essence, since plaintiff denies ever receiving any correspondence from defendant, assuming that the FDCPA applies, it is plaintiff's contention that "…Defendant's debt was 'assumed to be valid.'" Regardless, plaintiff claims it has provided defendant with copies of the account statement previously, "including throughout discovery" even though under relevant case law, it is under no obligation to do so.

Plaintiff's Motion provides,

"Where verification is requested, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is that the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt. Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1999), *citing* Azar v. Hayter, 874 F.Supp. 1314 (N.D. Fla.) *aff'd,* 66 F.3d 342 (11th Cir. 1995), *cert. Denied*, 516 U.S. 1048, 116 S.Ct. 712, 113 L.Ed.2d 666 (1996). Consistent with the legislative history, verification is only intended to 'eliminate the … problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." Id., *citing* S.Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699. Where verification is requested within thirty (30) days received prescribed by the FDCPA, once the debt collector provides verification, the debt collector may proceed with collection including instituting a lawsuit. Heintz v. Jenkins, 514 U.S. 291 (1995)."

Plaintiff concludes by noting, "…Plaintiff's counsel are not parties to this matter and this matter was commenced properly under state and federal law."

In response, defendant alleges that plaintiff is not in full compliance with the FDCPA because first, attorney Paul T. Oliver, Jr. is "likely retired"; second, that attorney Oliver did not engage in a meaningful review of his case despite his signature appearing on the February 23, 2005 letter to defendant indicating the contrary; and third, attorney Ronald S. Canter, Esq. affirmed that attorney Oliver reviewed defendant's file, and therefore he, too, is not in compliance with the FDCPA. Defendant next argues that his letters to plaintiff constitute a written request falling within the confines of the FDCPA's specifications for a written verification of the debt. Finally, defendant alleges that the FDCPA applies once a consumer debt is placed in the hands of a debt collector, regardless of whether valid debt actually exists, and in support of this, cites a United States Supreme Court case of *Heitz v. Jenkins*, 514 U.S. 291 (1995) as well as the plain language of 15 U.S.C. § 1692(g)(b).

Defendant first attaches to his Memorandum an "Affidavit of Statements" signed by defendant and a notary stating "I am an authorized user of the disputed credit card

account by Chase." Attachment "B-1" is a copy of the February 23, 2005 letter from Wolpoff & Abramson, LLP signed by attorney Paul T. Oliver, Jr. Attachment "B-2" is a printout from what appears to be an online genealogy and lineage website, and defendant's handwritten highlights on the printout note that a person by the name of Paul T. Oliver was born in 1929 and "was an attorney at law in the USA, and succeeded as the 8th Marquis Testaferrata-Oliver." Attachment, "B-3" is a printout from the online Martindale-Hubbel Law Directory showing that an attorney named Paul T. Oliver, Jr. was admitted to the Bar of the State of Michigan in 1950. Attachment "B-4" is a printout from the State of Michigan's website titled, "Corporate Entity Details," and lists the entity name "Paul T. Oliver, Jr., P.C." whose status is listed as "Automatic Dissolution, Date: 7-15-2002." Attachment "B-5" is print out of an online credit report from a showing inquiries made by Wolpoff & Abramson on February 18, 2005 and another on March 26, 2005. Attachment "B6-a" is a copy of attorney Canter's Affidavit signed and notarized on February 16, 2006 in which Canter states that attorney Oliver did, in fact, review defendant's file. Attachment "B-7" is a copy of defendant's letter addressed to plaintiff dated February 23, 2005. Attachment "B-8" is a printout of an online web page titled, "Large Rockville Companies by Employee Count." Attachment "B-9" is a copy of defendant's second letter addressed to plaintiff dated June 7, 2005.

MOTION FOR SUMMARY JUDGMENT STANDARD OF REVIEW

A motion for summary judgment is granted where there "is no genuine issue as to any material fact." *Van Dyke v. Pennsylvania R.R.,* 86 A.2d 346, 349 (Del.Supr.1952); *Behringer v. William Gretz Brewing Co.,* 169 A.2d 249, 251 (Del.Supr.1961); *Matas v.*

Green, 171 A.2d 916, 918 (Del.Supr.1961). It must be denied when evidence indicates that "there is reasonable indication that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law." *Ebersole v. Lowengrub,* 180 A.2d 467, 468-469 (Del.Supr.1962) *rev'd in part and aff'd in part,* 208 A.2d 495 (1965); *Myers v. Nicholson,* 192 A.2d 448, 451 (Del.Supr.1963); *Guy v. Judicial Nominating Comm'n,* 659 A.2d 777 (Del.Super.1995); *Smith v. Berwin Bldrs., Inc.,* 287 A.2d 693 (Del.Super.1972). Further, the court is required to view the facts in a light most favorable to the non-moving party. *Matas,* 171 A.2d at 918; *James v. Getty Oil Co. (E.Operations), Inc.,* 472 A.2d 33, 38 (Del.Super.1983); *Borish v. Graham,* 655 A.2d 831, 833 (Del.Super.1994); *Shultz v. Delaware Trust Co.,* 360 A.2d 576, 578 (Del.Super.1976); *Pullman, Inc. v. Phoenix Steel Corp.,* 304 A.2d 334, 335 (Del.Super.1973).

ANALYSIS

Assuming that the FDCPA applied to plaintiff, the Court is not persuaded that plaintiff has violated any of its provisions. The FDCPA allows a defendant to submit a written request to a debt collector requesting verification of the debt within thirty days of initially contacting a defendant regarding the debt, during which time collection efforts are put on hold. Plaintiff denies receiving such a request from defendant. Despite the fact that defendant's attachment B-7 is a copy of the March 21, 2005 letter addressed to plaintiff, the record contains nothing further by way of documents, testimony, or other evidence to sufficiently establish that defendant *indeed* mailed the letter to plaintiff, or that it was postmarked and/or *received* by plaintiff within the thirty day time period under the FDCPA. Regardless, nowhere in the letter does defendant request verification of the

debt. In the body of the letter, defendant does nothing more than deny transacting with Chase Manhattan "during the past 18 months" and claims he is an authorized user on the account. The second letter defendant allegedly mailed to plaintiff on June 7, 2005 arguably could suffice as a request for verification, when viewing the facts in the light most favorable to defendant. However, under the FDCPA, this fell outside of the thirty day time period, which expired on or about March 23, 2005.

Defendant claims that his March 21, 2005 letter must have been received because Wolpoff & Abramson checked his credit report on March 26, 2005. To bolster his argument defendant proffers, as attachment "B-5" of his Memorandum, a one-page print out from a website showing that Wolpoff & Abramson made two inquiries, one on February 18, 2005 and another on March 26, 2005. However, nowhere on this printout does defendant's name, address, or any other identifying information appear. Even if the Court assumed it is a true and correct copy of a page from defendant's credit report, it does nothing by way of exculpation since defendant's March 21, 2005 letter *did not request verification of the debt* from plaintiff.

Defendant argues that the plaintiff's attorneys acted in bad-faith and violated the FDCPA for two reasons: first, defendant alleges that attorney Oliver did not conduct a meaningful review of his file; and second, defendant alleges that attorney Canter's Affidavit in which he states that attorney Oliver did, in fact, review defendant's file, is untrue. Defendant argues, "…according to my research, it is quite impossible that attorney Paul T. Oliver had personally done so as required by the FDCPA." In support of his allegations, defendant speciously encloses printout copies from the internet which he professes to be a showing that attorney Oliver is "likely retired" from the practice of

law and was not involved in reviewing the file due to his age. Defendant's attachment "B-2" from the genealogy website is apocryphal at best. It is obvious that defendant has examined all means available to uncover facts regarding attorney Oliver's life and legal career, but his findings, nonetheless, amount to conjecture that belies Mr. Oliver's status as retired. The automatic dissolution of a corporate entity bears no significance on whether or not an attorney is still engaged in the practice of law. The Court finds the allegations against attorneys Oliver, Canter, and plaintiff's counsel both nugatory and irrelevant, as nothing in the record reflects that they acted either in bad faith or in violation of the FDCPA.

Most notably, on February 3, 2005 the Court ordered defendant to provide an Affidavit verifying his status as an authorized user on the account at issue. Defendant's attached notarized "Affidavit of Statements" is insufficient for the Court to extrapolate upon, and does not amount to the requisite level of a showing that a *genuine* issue of material fact exists between the parties.

CONCLUSION

For the reasons stated above, plaintiff's Motion for Summary Judgment is hereby GRANTED and defendant's Motion for Summary Judgment is hereby DENIED.

IT IS SO ORDERED.

Joseph F. Flickinger III
Judge