UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Archer v. Connors

998 F. Supp. 2d 1360 (S.D. Fla. 2014) · Decided February 26, 2014

SUMMARY

The court denied a defendant's motion to dismiss an action alleging that a foreclosure-related notice violated the Fair Debt Collection Practices Act. The court held that the claim was not barred by the FDCPA's one-year statute of limitations because the limitations period ran from, at the earliest, service of the foreclosure complaint and notice rather than filing of the foreclosure action. The defendant was ordered to file an answer by March 11, 2014.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	William P. Dimitrouleas
JURISDICTION	Florida
DECIDED	February 26, 2014
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss Plaintiffs' Fair Debt Collection Practices Act claim under Federal Rule of Civil Procedure 12(b)(6), arguing that the claim was barred by the FDCPA's one-year statute of limitations.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and determines whether the complaint states a plausible claim for relief under Rule 8(a)(2).
PRECEDENTIAL VALUE	Published federal district court opinion

TOPICS

fair debt collection · statute of limitations · motions to dismiss · consumer protection · mortgages

PRACTICE AREAS

consumer protection · fair debt collection · civil procedure · real estate

QUESTIONS PRESENTED

1. Whether Plaintiffs' FDCPA claim was barred by the one-year statute of limitations in 15 U.S.C. § 1692k(d) because the foreclosure complaint was filed more than one year before the federal action.
2. Whether the limitations period for an FDCPA claim based on allegedly false or misleading statements in a notice attached to a foreclosure complaint begins when the foreclosure action is filed or when the notice is served and communicated to the debtor.

HOLDINGS

1. For purposes of the FDCPA's one-year statute of limitations, a claim based on allegedly false or misleading statements in a notice attached to a foreclosure complaint accrues no earlier than the notice's service and communication to the debtor; the claim was therefore not time-barred when Plaintiffs filed suit on December 30, 2013.
2. A Rule 12(b)(6) motion should be granted only when the complaint fails to state a plausible claim for relief, accepting well-pleaded factual allegations as true while disregarding allegations that are merely legal conclusions.

KEY QUOTATIONS

> *"The plaintiff must plead "enough facts to state a claim to relief that is plausible on its face.""* (998 F. Supp. 2d at 1362)

> *"Here, the remedial nature of the FDCPA is best served by calculating the one-year period from the December 28, 2012 date of service of the foreclosure action and the attached Notice."* (998 F. Supp. 2d at 1364)

FACTUAL BACKGROUND

Defendant, a debt collector and Florida professional association with its principal place of business in Georgia, pursued a state-court mortgage foreclosure against Plaintiffs. The foreclosure complaint and an attached FDCPA notice were served on Plaintiffs on or about December 28, 2012. Plaintiffs alleged that the notice contained false, deceptive, or misleading representations in violation of 15 U.S.C. § 1692e(10), and filed this federal action on December 30, 2013.

PROCEDURAL HISTORY

Plaintiffs filed an FDCPA action based on allegedly false or misleading statements in a notice attached to a state-court mortgage foreclosure complaint and served on Plaintiffs. Defendant moved to dismiss, contending that the limitations period began when the foreclosure complaint was filed. The district court denied the motion and ordered Defendant to file an answer by March 11, 2014.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)
- Zen-on v. Palisades Collection, LLC, 2008 WL 506231 (M.D. Fla. Feb. 21, 2008)
- Naas v. Stolman, 130 F.3d 892 (9th Cir. 1997)
- Tyler v. DH Capital Management, Inc., 736 F.3d 455 (6th Cir. 2013)
- Collins v. Erin Capital Management, LLC, 290 F.R.D. 689, 697-98 (S.D. Fla. 2013)
- Hinds v. Credigy Receivables, Inc., 2008 WL 5381345, at *6 (M.D. Fla. Dec. 23, 2008)
- Maloy v. Phillips, 64 F.3d 607 (11th Cir. 1995)
- Mattson v. U.S. West Communications, Inc., 967 F.2d 259, 261 (8th Cir. 1992)
- Johnson v. Riddle, 305 F.3d 1107 (10th Cir. 2002)
- Serna v. Law Office of Joseph Onwuteaka, P.C., 732 F.3d 440 (5th Cir. 2013)
- Perez v. Bureaus Investment Group No. II, LLC, 2009 WL 1973476 (S.D. Fla. July 8, 2009)
- Andrade v. Erin Capital Management LLC, 2010 WL 1961843 (S.D. Fla. May 17, 2010)

OPINION

DIMITROULEAS, J.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS WILLIAM P. DIMITROULEAS, District Judge. THIS CAUSE is before the Court upon Defendant Aldridge Connors' ("Defendant" or "Aldridge Connors")'s Motion to Dismiss Plaintiffs Complaint [DE 6], The Court has carefully considered the Motion, Plaintiffs John C. Archer and Delynn M. Archer ("Plaintiffs")'s Response [DE 11], Defendant's Reply [DE 13], and is otherwise fully advised in the premises.

I. BACKGROUND This action arises from a state court mortgage foreclosure action. The following facts are according to Plaintiffs' Complaint, the allegations of which the Court regards as true for the purposes of the Motion to Dismiss: Plaintiffs are natural persons, and are "consumers" as that term is defined by 15 U.S.C. § 1692(a)(3), and/or. a person with standing to bring a claim under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") by virtue of being directly affected by violations of the Act.

See [DE 1] at ¶ 11. Defendant is a Professional Association, incorporated under the laws of the State of Florida, with its principal place of business in Georgia. ¶ 5. Defendant is a debt collector who regularly collects or attempts to collect debts for other parties and regularly uses the mail and telephone in the collection of consumer debt. ¶¶ 6-7. At all times material to the allegations of this Complaint, Defendant was acting as a debt collector with respect to the collection of Plaintiffs' alleged debt. ¶ 10.

On or about December 28, 2012, Defendant caused to be served upon Plaintiff a state court complaint and summons in the mortgage foreclosure action. See [DE 1] at ¶¶ 23, 39. On the civil cover sheet filed with the complaint, an attorney for Defendant checked off the box indicating that Defendant was seeking monetary relief. ¶ 25.

In the “Wherefore” clause of the Complaint, Defendant stated: Plaintiff requests that the Court ascertain the amount due Plaintiff for principal and interest on the Note and Mortgage and for late charges, abstracting, taxes, expenses, and costs, including attorney’s fees, plus interest thereon; that if the sums due Plaintiff under the Note and Mortgage are not paid immediately, the Court foreclose the Mortgage and the Clerk of the Court sell the Property securing the indebtedness to satisfy Plaintiffs mortgage lien in accordance with the provisions of Florida Statutes § 45.031 (2006)... *1362¶ 26; see [DE 1-1].

Attached to the state court complaint was a “Notice” titled as follows: Notice Required by Fair Debt Collection Practices Act, 15 U.S.C. § 1692(G) Et Seq., as Amended ¶ 28; see [DE 1-2]. The Notice states in relevant part: 1.

The amount of the debt is stated in the attached complaint. 2. The Plaintiff named in the attached summons and complaint is the creditor to whom the debt is owed. 3. If the original creditor is different from the current creditor, the creditor’s law firm will provide the debtor with the name and address of the original creditor if requested by the debtor within thirty (30) days of the receipt of this notice.

4. The debt described in the attached complaint and evidenced by the attached promissory note and Mortgage will be assumed to be valid by the creditor’s law firm, unless the debtor, within thirty (SO) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion of it. See [DE 1] at ¶ 14. Plaintiff filed the instant action on December 30, 2013, alleging that Defendant’s Notice (the “Notice”) violated the FDCPA.

Specifically, Plaintiff claims a violation of 15 U.S.C. § 1692e(10), which prohibits debt collectors from using false, deceptive, and misleading representations in an attempt to collect a debt. II. DISCUSSION 1. Motion to Dismiss Standard Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a motion to dismiss will be granted if the plaintiff fails to state a claim for which relief can be granted.

According to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a claimant must only state “a short and plain statement of the claim showing that the pleader is entitled to relief.” When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint. See Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

The plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). “A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint’s framework, they must be supported by factual allegations.” Iqbal, 556 U.S. at 664, 129 S.Ct.

1937. 2. Motion to Dismiss The FDCPA has a one-year statute of limitations. See 15 U.S.C. § 1692k(d). Defendant argues in the instant Motion to Dismiss that the Complaint should be dismissed on statute of limitations grounds because Plaintiffs filed this action on December 30, 2013, more than a year from the December 14, 2012 filing of the state court foreclosure action.

Plaintiffs respond that the statute of limitations for this action began to run upon the December 28, 2012 date of service of the foreclosure action and the attached Notice, therefore, that Plaintiffs’ FDCPA claim is not time-barred.1 An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of *1363competent jurisdiction, within one year from the date on which the violation occurs.

15 U.S.C. § 1692k(d). In support of its position that the date on which the violation occurs for purposes of 15 U.S.C. § 1692k(d) is the date of the filing of the state court foreclosure complaint 2, Defendant relies, in part, on Zen-on v. Palisades Collection, LLC, 2008 WL 506231 (M.D.Fla. Feb. 21, 2008).

In that case, the plaintiff claimed that the defendant violated the FDCPA by hiring a law firm and filing a lawsuit in order to collect a debt that the plaintiff had already paid. Id. at *1. The court held that: “The alleged misconduct of [the defendant] and the misrepresentation of Plaintiffs debt culminated in the filing of the lawsuit on May 3, 2006, by [defendant].

The one year limitation period began to run when the lawsuit was filed.” Id. Defendant also relies on the Ninth Circuit opinion in Naas v. Stolman, 130 F.3d 892 (9th Cir.1997). In Naas, the plaintiffs alleged that defendants violated the FDCPA by filing a lawsuit to recover unpaid hospital bills.

The Ninth Circuit held that the statute of limitations began to run when the lawsuit was filed because that was the defendants’ last opportunity to comply with the FDCPA. Id. at 893. See also Tyler v. DH Capital Management, Inc., 736 F.3d 455 (6th Cir. 2013) (in determining when a cause of action became bankruptcy property under 11 U.S.C. § 541, the court held that the FDCPA violation for prosecution of a legal action in an “attempt to collect” a debt occurred when the complaint was filed); Collins v. Erin Capital Management, LLC, 290 F.R.D.

689, 697-98 (S.D.Fla. 2013) (statute of limitations began to run ón date that the defendant initiated the garnishment proceeding, not on the earlier date when the defendant had filed its state court action and received a favorable judgment against the plaintiff); Hinds v. Credigy Receivables, Inc., 2008 WL 5381345, *6 (M.D.Fla. Dec. 23, 2008) (“Because Plaintiffs Amended Complaint is based on the filing of the County Court Action, the date that action was commenced is the date the statute of limitations began to run.”).

Those cases are distinguishable from the instant action because here Plaintiffs are not claiming that the FDCPA violation was the actual filing of the foreclosure action. Plaintiffs take no issue in this case with the filing of the foreclosure action. Rather, Plaintiffs are claiming that Defendant made false statements or misrepresentations to them in a notice that was communicated to the Plaintiffs when the foreclosure and Notice was served upon them.

The Court also finds Defendant’s reliance on Maloy v. Phillips, 64 F.3d 607 (11th Cir.1995) misplaced. In that case, the plaintiff claimed that the defendant violated 15 U.S.C. § 1692e(11) by failing to disclose in a letter that the defendant was attempting to collect a debt and that any information obtained would be used for that purpose.

The question before the Eleventh Circuit was whether the FDCPA violation occurred on the date when the letter was mailed or on the date when the plaintiff received the letter. The Eleventh Circuit held that the day after the defendant mailed the letter is the date from which the one-year period of limitations began to run. Id. at 609.

The Eleventh Circuit explained that it was persuaded by the reasoning of Mattson v. U.S. West *1364Communications, Inc., 967 F.2d 259, 261 (8th Cir.1992). In Mattson, the Eighth Circuit reasoned that “the statute of limitations began to run on the date the letter was mailed because that was the debt collector’s last opportunity to comply with the FDCPA. Id. In addition, the court concluded that using the date of mailing was a better and more practical approach because it provided a date that was easy to determine, ascertainable by both parties, and easily applied.” Maloy, 64 F.3d at 608.

Here, neither of those determinative considerations are in play. First, in this case, the date the complaint was filed was not Defendant’s last opportunity to comply with the FDCPA. Unlike a letter, which cannot be retrieved once mailed, Defendant could have amended the notice attached to the foreclosure complaint prior to ever serving it and the Notice on Plaintiffs.

Additionally, it is easily ascertainable by both parties to determine the date the Plaintiffs were served with the Notice, as it would be verified in the record for the state court action by an affidavit of service.

The Court finds more persuasive the reasoning of Johnson v. Riddle, 305 F.3d 1107 (10th Cir.2002) (holding that statute of limitations of the FDCPA claim accrues once the debtor is served with the complaint), Serna v. Law Office of Joseph Onwuteaka, P.C., 732 F.3d 440 (5th Cir.2013) (holding that a violation of § 1692i(a)(2) occurs when the debtor receives notice of the filed lawsuit), Perez v. Bureaus Inv.

Group No. II, LLC, 2009 WL 1973476 (S.D.Fla. July 08, 2009) (holding that service, not filing, constitutes the violation and triggers the statute of limitations period), and Andrade v. Erin Capital Management LLC, 2010 WL 1961843 (S.D.Fla. May 17, 2010) (holding that the statute of limitations under the FDCPA does not begin to run until the plaintiff knew or should have known of the defendant's violation of the FDCPA). "Because the FDCPA... is a remedial statute, it should be construed liberally in favor of the consumer." Johnson, 305 F.3d at 1117 (10th Cir.2002).

Here, the remedial nature of the FDCPA is best served by calculating the one-year period from the December 28, 2012 date of service of the foreclosure action and the attached Notice.3 The Court need not decide whether the FDCPA violation occurred on the date the Notice was served on Plaintiffs, i.e., the date the allegedly false statements and/or misrepresentations were communicated to Plaintiffs, or if the violation occurred earlier but that the discovery rule delayed triggering the statute of limitations until the date of service of the Notice on Plaintiffs.

Based on either reasoning, Plaintiffs' claim in this action is not time-barred. III. CONCLUSION Based upon the foregoing, it is ORDERED AND ADJUDGED as follows: 1. Defendant's Motion to Dismiss Plaintiffs Complaint [DE 6] is DENIED; *13652. Defendant shall file its Answer on or before March 11, 2014.. December 30, 2013 was a Monday so this action would be within the one-year time-frame from December 28, 2012 as December 28, 2013 was a Saturday..

Defendant notes in its Motion that its position has been rejected by the Tenth Circuit, as well as by several district court opinions in the Southern District of Florida. See Johnson v. Riddle, 305 F.3d 1107 (10th Cir.2002); Perez v. Bureaus Inv. Group No.II, LLC, 2009 WL 1973476 (S.D.Fla. July 08, 2009); Andrade v. Erin Capital Management LLC, 2010 WL 1961843 (S.D.Fla.

May 17, 2010).. As the Tenth Circuit explained in Johnson, starting the one-year clock solely upon the filing of a complaint creates a perverse incentive for unscrupulous debt collectors to file debt-collection actions and purposefully delay service, thereby depriving a debtor of the benefit of the FDCPA's short, one-year limitations period. See 305 F.3d at 1114.

See also Andrade, 2010 WL 1961843 at *1 ("From a practical and fairness-oriented standpoint, this is the better view because the contrary view — that the statute of limitations runs from the filing of the debt-collection lawsuit that is the predicate of the violation of the Act, regardless of the debtor's knowledge of that lawsuit — would encourage unscrupulous debt collectors to hide their lawsuit from debtors and thereby shield themselves from liability under the Act.").