



DALTON v. FMA ENTERPRISES

953 F. Supp. 1525 (1997) | Cited 0 times | M.D. Florida | February 3, 1997

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

The cause is before the Court on the plaintiff's motion for partial summary judgment, memorandum of law, and statement of material facts, filed October 10, 1996 (Docket Nos. 70, 71 and 74) and response thereto, filed October 24, 1996 (Docket No. 77) and the defendants' motion for summary judgment and memorandum of law, filed October 11, 1996 (Docket No. 76) and response thereto, filed January 8, 1997 (Docket No. 99).

PROCEDURAL BACKGROUND

This action was commenced on December 4, 1995, with the filing of a "Class Action Complaint" against the defendants, FMA Enterprises, Inc. (hereafter "FMA") and Loraine E. Lyons (hereafter "Lyons"). The complaint was filed pursuant to 15 U.S.C. § 1692, et seq., the Fair Debt Collection Practices Act (hereafter "the FDCPA or the Act"). The complaint asserted two (2) causes of action:

Count I-violation of the Act by:

- a. causing demand letters be sent over mechanically reproduced name of attorney not actually involved in handling of the file (violation §§ 1692e, 1692e(3), 1692e(5), 1692e(10) and 1692g);
- b. threatening action which is not intended to be taken or cannot be legally taken;
- c. causing to sent collection letters which use false representations and deceptive means to collect or attempt to collect the alleged debt (violation of § 1692e(10)); and,
- d. use of a form and reproduced signature for the purpose of deceiving consumers into believing an attorney was involved in collecting the debt (violation of § 1692j).

Count II-violation of Florida Statutes, § 559.72(10)-(11), by use of communication falsely giving the appearance of being authorized, issued or approved by an attorney-at-law.

The plaintiff filed a motion and an amended motion to certify class action (Docket Nos. 15 and 41), which were opposed by the defendants (Docket No. 39). After due consideration, the Court denied the motion for class certification. Dalton v. FMA Enterprises, 1996 U.S. Dist. LEXIS 9340, 1996 WL 68441 (Fla. M.D. July 1, 1996)(Docket No. 53). A subsequent motion to reconsider the denial of class



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certification was also denied. (Docket No. 80). Now pending before the Court are cross-motions for summary judgment.

STANDARD OF REVIEW

This circuit clearly holds that summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine issue as to any material fact when all the evidence is viewed in the light most favorable to the nonmoving party. *Sweat v. Miller Brewing Co.*, 708 F.2d 655 (11th Cir. 1983). All doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. *Hayden v. First National Bank of Mt. Pleasant*, 595 F.2d 994, 996-7 (5th Cir. 1979), quoting *Gross v. Southern Railroad Co.*, 414 F.2d 292 (5th Cir. 1969). Factual disputes preclude summary judgment.

The Supreme Court of the United States held, in *Celotex Corp. v. Catrett*, 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548, (1986):

In our view the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. 477 U.S. at 322.

The Court also said, "Rule 56(e) therefore requires that nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing there is a genuine issue for trial.'" *Celotex Corp.*, at p. 274. As the district court in *Coghlan v. H.J. Heinz Co.*, 851 F. Supp. 808 (N.D. Tex. 1994), summarized:

Although a court must "review the facts drawing all inferences most favorable to the party opposing the motion," "...the nonmovant may not rest on mere allegations or denials in its pleadings; in short, "the adverse party's response... must set forth specific facts showing that there is a genuine issue for trial." FED.R.CIV.P. 56(e). However, merely colorable evidence of evidence not significantly probative will not defeat a properly supported summary judgment...The existence of a mere scintilla of evidence will not suffice...(cites omitted) at 810-811.

In fact, summary judgment may not be appropriate even when the parties agree on the basic facts, if they "disagree about the inferences that should be drawn from those facts." *Zanzuri v. G.D. Searle & Co.*, 748 F. Supp. 1511, 1513-14 (Fla. S.D. 1990) (cite omitted).

FACTS

The following facts are undisputed in this case:



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(1) Plaintiff, GWENDOLYN DALTON ("Dalton"), is an individual who resides at 1225 SW 49th Street, Cape Coral, Florida 33914. (Docket No. 74, P 1).

(2) Defendant, FMA ENTERPRISES, INC. ("FMA"), is a corporation with its principal place of business at 11811 North Freeway, Suite 900, Houston, Texas 77060. (Docket No. 74, P 2).

(3) Defendant, LORAIN LYONS ("Lyons"), is an attorney and was employed by FMA at all relevant times as General Counsel. She is licensed to practice law in both the State of Texas and the United States District Court for the Southern District of Texas. (Docket No. 72, App. A, 1st Doc., P 3; App. E, P 2).

(4) FMA is engaged in the business of collecting consumer debts and regularly attempts to and collects consumer debts allegedly owed to persons other than FMA. (Docket No. 72, App. A, 1st Doc., P 6).

(5) FMA regularly uses the mails when attempting to collect debts incurred for personal, family, or household purposes. (Docket No. 72, App. A, 1st Doc., P 7).

(6) FMA is a debt collector as defined in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et. seq. ("FDCPA"). (Docket No. 74, P 3). (7) On or about July 25, 1995, FMA caused to be mailed to Dalton the letter attached as Appendix B to the plaintiff's memorandum in support of summary judgment (Docket No. 72). This one (1) page letter states, in pertinent part and not to scale: [FMA street address] [FMA letterhead] July 25 1995 [FMA mailing address] [Dalton's address] ACCOUNT # : E64803 AMOUNT: \$ 10083.59

