KLOTZ v. CELENTANO, STADTMAUER & WALENTOWICZ, LLP et al

2019 | Cited 0 times | D. New Jersey | August 7, 2019

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

TERRY L. KLOTZ, on behalf of herself and those similarly situated,

Plaintiff, v. CELENTANO, STADTMAUER & WALENTOWICZ, LLP and JOHN DOES 1 to 10, Defendants.

Case No: 19-248 (SDW) (SCM)

OPINION

August 6, 2019

WIGENTON, District Judge.

Before this Court nt pursuant to

. Jurisdiction is proper pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b). This opinion is issued without oral argument pursuant to Rule 78. For the reasons stated below, GRANTED.

I. BACKGROUND AND PROCEDURAL HISTORY

This action concerns letters that Defendant, a collection law firm, mailed to Plaintiff on January 8, 2018 and March 26, 2018. (Compl. ¶¶ 5, 21, ECF No. 1.) The letters refer to an outstanding debt for medical services received from Hackensack University Medical Center . (Id. ¶¶ 14, 18, 27; id. Ex. A NOT FOR PUBLICATION

h alleges that Defendant continued its collection efforts. (Id. ¶¶ 30-31.)

On January 8, 2019, Plaintiff filed a one-count, putative class-action complaint alleging that Defendant violated the Fair Debt Collection Practices A Defendant filed the instant Motion to Dismiss. (ECF No. 11.) Plaintiff opposed on April 22,

2019, and Defendant replied on May 17, 2019. (ECF Nos. 17, 22.)

II. LEGAL STANDARD

ain statement of the claim showing that the Fed. R. Civ. P. 8(a)(2). Rule 8 conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual

allegations must Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted); see also Phillips v. Cty. of Allegheny s

In considering a motion to dismiss under Rule 12(b)(6), a c allegations as true, construe the complaint in the light most favorable to the plaintiff, and

determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled Phillips must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); see also Fowler v. UPMC Shadyside, 578 F.3d 203 (3d Cir. 2009) (discussing the Iqbal standard). -specific task

Iqbal, 556 U. -pleaded facts do not permit the court to infer more than the mere that the Id.

III. DISCUSSION

The FDCPA, 15 U.S.C. § 1692, et seq., provides private causes of action to consumers [.] U.S.C. § 1692(a). To that end, § 1692e of the FDCPA prohibits debt collectors from any false, deceptive, or misleading representation or means in connection with the collection of

15 U.S.C. § 1692e. 1

Additionally, § 1692f prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect any debt.

she is a consumer, (2) the defendant is a debt collector, (3) the de

Levins v. Healthcare Revenue Recovery Grp. LLC, 902 F.3d 274, 280 (3d Cir. 2018) (quoting Tatis v. Allied Interstate, LLC, 882 F.3d 422, 427 (3d Cir. 2018)). Here, the parties only dispute the sufficiency of the pleadings as they relate to the fourth element. ECF No. 11-1.)

-collection practice violated the FDCPA, courts apply the standard. Levins, 902 F.3d at 280 is lower than simply examining whether particular language would deceive or mislead a reasonable

1 Section 1692e provides a non-exhaustive list of conduct that would violate the section, such as falsely representing e cha to collect or attempt to co

debtor. Knight v. Midland Credit Mgmt., Inc. 170, 174 (3d Cir. 2018) (quoting Caprio Healthcare Revenue Recovery Grp., LLC, 709 F.3d 142, 149 (3d Cir. 2013)). It protects

abusive debt collection pract Brown v. Card Serv. Ctr., 464 F.3d 450, 454 (3d Cir. 2006). an Wilson v.

Quadramed Corp., 225 F.3d 350, 354-55 (3d Cir. 2000) whether the least sophisticated debtor would be misled by a particular communication is a

Smith v. Lyons, Doughty & Veldhuius, P.C., No. 07-5139, 2008 WL 2885887, at *3 (D.N.J. July 23, 2008) (citations omitted); see also Devito v. Zucker, Goldberg & Ackerman, LLC, 908 F. Supp. 2d 564, 568-69 (D.N.J. 2012).

In the instant matter, Plaintiff alleges inter alia that false, deceptive, and misleading representations because its collection letters suggested that Plaintiff was ed Compl. ¶ 33.) Even assuming that Plaintiff id. ¶ 29), the common law doctrine of necessaries presents an exception to the general rule that a person is not liable for the debts of another in the absence of an express agreement. See Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 417 A.2d 1003, 1010 (N.J. 1980). In Jersey Shore Medical Center-Fitkin Hospital v. Estate of Baum, the Supreme Court of New Jersey declared that

both spouses are liable for necessary expenses incurred by either spouse in the course of the marriage. As long as the marriage

subsists, the financial resources of both spouses should be available to pay a creditor who provides necessary goods and services to either spouse. That conclusion comports with our belief that in most marriages a husband and wife consider themselves as a financial unit in paying necessary expenses incurred by either marital partner. However, a judgment creditor must first seek satisfaction from the income and other property of the spouse who incurred the debt. If those financial resources are insufficient, the creditor may then seek satisfaction from the income and property of the other spouse. Id. at 1005. The Supreme Court further [t]here is no doubt that the cost of hospital and medical care qualifies as a necessary expense Id. (citing Capodanno v. Capodanno, 275 A.2d 441 (N.J. 1971)). Given that the Debt at issue here relates to a necessary expense, i.e., medical care, and because Mr. Klotz did not have an estate that could otherwise pay the Debt, 2

this Court concludes that under the doctrine of necessaries, Defendant could seek satisfaction of the Debt from Plaintiff as th spouse. 3 Notwithstanding spousal liability under the doctrine of necessaries, Plaintiff also takes advised that we represent the above named Hospital with respect to your indebtedness Ex. A at 1 (emphasis added)). Relying on Hochberg v. Lenox, Socey, Formidoni, Giordano,

Cooley, Lang & Casey, P.C., No. 16-5307, 2017 WL 1102637, at *4 (D.N.J. Mar. 24, 2017), Plaintiff argues that she has a plausible claim under the FDCPA 2

Defendant asserts that Mr. Klotz did not have an estate, which it confirms with a letter from Bergen County id. Ex. A.) Because the non- estate is a matter of public record, this Court may consider it on a motion to dismiss without converting the motion to one for summary judgment. See Mayer v. Belichick, 605 F.3d 223, 230 (3d Cir. 2010) (eciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic do 3 A complaint cannot be amended through the brief of a party opposing a motion to dismiss. See, e.g., Pa. ex rel. Zimmerman v. PepsiCo, Inc. amended by the briefs in opposition to a mo Talley v. United States, No. 11-1180, 2014 WL 282680, at *5 (D.N.J. Jan. 24, 2014). allegation, which she raises for the first time in her opposition brief, -

to that she was directly liable for the Debt, rather than indirectly Hochberg also concerned a attempt to collect medical debt incurred by one spouse, namely, Ms. Hochberg. Hochberg, 2017 WL 1102637, at *1. After the law firm initiated a collection action against both spouses in state court, Mr. Hochberg sued the firm in federal court. Id. In concluding that Mr. Hochberg had sufficiently stated a claim under the FDCPA, the district court noted that the state- court complaint had and/or services rendered . . . to [Plaintiff and Ms. Hochberg] upon the promise by [Plaintiff and

Id. at *3. Nowhere . . . did Defendants clarify that Ms. Hochberg, rather than Plaintiff, received the benefit of the goods and services at issue, or that Plaintiff was only liable for the Debt as her husband, through the doctrine of necessaries. Id. at *4. Unlike in Hochberg, the collection notices in the instant matter clearly reflect that the

services were rendered to Mr. Klotz, who is listed as the patient and March 26, 2018 letters. As such, this Court finds that there is nothing objectively misleading

in letters Because Plaintiff has failed to sufficiently allege that Defendant violated a provision of the FDCPA, the Complaint will be dismissed.

IV. CONCLUSION

For the reasons set forth above Motion to Dismiss is GRANTED. An appropriate Order follows.

s/ Susan D. Wigenton_____ SUSAN D. WIGENTON UNITED STATES DISTRICT JUDGE Orig: Clerk cc: Steven C. Mannion, U.S.M.J.

Parties