

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 CV 3891	DATE	December 11, 2007
CASE TITLE	<i>Lamb v. Morgan Lee Receivables, Inc.</i>		

DOCKET ENTRY TEXT

The defendants' motion to dismiss, to strike, or for a more definite statement [8-1] is denied. Plaintiff Lamb's motion to supplement [21-1] is denied as moot. At the request of the defendants, their motion to withdraw [49-1] their motion for Rule 11 sanctions against Lamb's counsel is granted and the motion for Rule 11 sanctions [14-1] withdrawn. Counsel shall report for a status hearing on Tuesday, January 11, 2008, at 11:00 a.m.

■ [For further details see text below.]

Docketing to mail notices.

00:00

STATEMENT

Plaintiff Linda Lamb has sued defendants Morgan Lee Receivables, Inc. and Eric Morgan Benveniste for violating the Fair Debt Collection Practices Act. *See* 15 U.S.C. §§ 1692. According to the complaint, Morgan Lee sued Lamb in state court to collect a debt Lamb had accumulated on her Citibank credit card. Lamb alleges that Morgan Lee and Benveniste violated the Act by, among other things, (1) including in the total amount of debt they attempted to collect a \$350 charge for attorneys fees, and (2) failing to reduce her debt by the amount of payments she made after Morgan Lee filed suit. Morgan Lee and Benveniste have filed a motion to dismiss or, in the alternative to strike or for a more definite statement. They also filed a motion for Rule 11 sanctions against Lamb's counsel, but have since moved to withdraw that motion.

Motion to Dismiss

In moving for dismissal, the defendants have cited three different provisions of the Federal Rules of Civil Procedure—7(a), 12(b)(1), and 12(b)(6). Whatever Rule the defendants actually intended, the defendants' basis for dismissal is that "there was no FDCPA violation by defendant." (Motion to Dismiss at 6.) That, of course, is the ultimate question of fact to be resolved over the course of this litigation. *See Rayburn v. Car Credit Center Corp.*, No. 00 CV 3361, 2000 WL 1508238, at *4 (N.D. Ill. Oct. 10, 2000) (questions of fact preclude dismissal). The defendants' conclusory statement that they did not violate the Act is therefore not a basis for dismissal, and the motion to dismiss is denied.

Motion to Strike

Alternatively, the defendants move to strike from Lamb's complaint the allegation that Morgan Lee is a "debt collector." (Motion to Dismiss at 5.) Federal Rule of Civil Procedure 12(f) permits courts to strike from a

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pleading “an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” The defendants contend that the allegation that Morgan Lee is a debt collector should be stricken not because it meets any of the criteria set out in Rule 12(f), but rather because “Morgan Lee is not a ‘Debt Collector.’” (*Id.*) Again, a motion based upon the truthfulness of an allegation is premature at this early stage of the litigation. *See Rayburn*, 2000 WL 1508238, at *4. Accordingly, the motion to strike is denied.

Motion for a More Definite Statement

Next, the defendants move for a more definite statement under Rule 12(e). Rule 12(e) permits the court to order the plaintiff to provide a “more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.”

The court has carefully reviewed the allegations of the complaint and finds them to be adequate. The complaint identifies the statute Lamb contends the defendants violated, and detailed two ways in particular in which the defendants allegedly violated the statute: (1) by seeking attorneys fees as part of Lamb’s alleged debt in the case Morgan Lee filed in state court; and (2) by failing to reduce her debt by payments she made after the start of the lawsuit. The defendants argue that they are entitled to even more facts alleged in the complaint, but the Federal Rules adopt notice, not fact, pleading. *See Kim v. Kim*, 360 F. Supp. 2d 897, 902-03 (N.D. Ill. 2005) (degree of specificity required under Rule 12(e) must be measured against the lenient notice pleading standard, and therefore Rule 12(e) motions are disfavored).

Lamb’s complaint provides enough details to allow the defendants to formulate a response. Accordingly, the motion for a more definite statement is denied.

Also pending is Lamb’s motion to supplement her response in opposition to the motion to dismiss. However, because the court has denied the motion to dismiss, Lamb’s motion to supplement her response in opposition to it is stricken as moot. The court notes that in briefing the motion to supplement, the defendants set forth additional reasons for dismissal of Lamb’s complaint. However, the proper place to make those arguments was the briefing on the motion to dismiss, not the motion to supplement. Accordingly, those reasons for dismissal have been disregarded. *See Bannon v. Univ. of Chicago*, 503 F.3d 623, 631 n.3 (7th Cir. 2007) (a movant forfeits arguments not presented in its opening brief).

CONCLUSION

Accordingly, the defendants’ motion to dismiss, to strike, or for a more definite statement [8-1] is denied. Lamb’s motion to supplement [21-1] is denied as moot. At the request of the defendants, their motion to withdraw [49-1] their motion for Rule 11 sanctions against Lamb’s counsel is granted, and the motion for Rule 11 sanctions [14-1] is withdrawn. Counsel shall report for a status hearing on Tuesday, January 11, 2008, at 11:00 a.m.