IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LORI N. DEMARS, OPINION AND ORDER

Plaintiff,

04-C-743-C

v.

PLAZA ASSOCIATES, THE BUCKLE, INC. and WORLD FINANCIAL NETWORK NATIONAL BANK,

Defendants.

- -

Plaintiff Lori N. DeMars brings this civil action against defendants Plaza Associates, The Buckle, Inc. and World Financial Network National Bank, alleging that defendants tried to collect a debt in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o, and the Wisconsin Consumer Act, Wis. Stat. § 427.104. Jurisdiction is present. 28 U.S.C. §§ 1331 and 1367.

The case is before the court on defendants' motion for summary judgment. Defendants contend that because plaintiff used one middle initial in her application for a credit account with defendants and a different one in her bankruptcy filing, defendants would not have known before they sent her a collection letter that she had filed for

bankruptcy. I agree with defendants that they are entitled to rely on the bona fide error exception in the Fair Debt Collection Practices Act. Therefore, I will grant defendants' motion for summary judgment as to plaintiff's Fair Debt Collection Practices Act claim. With that claim disposed of, I will refrain from exercising supplemental jurisdiction over plaintiff's state law claims.

From the parties' proposed findings of fact and the record, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Lori N. DeMars is a Wisconsin resident. Defendant Plaza Associates is in the business of collecting debts owed to others. Defendant The Buckle, Inc. is a Nebraska corporation. It operates a retail store that issues a private label credit card. Defendant The Buckle issued plaintiff a private label credit card and sold her merchandise in exchange for charges upon such credit account. Defendant World Financial Network National Bank is a national banking association and a creditor who financed the private label credit card that defendant The Buckle issued to plaintiff. Defendant World Financial Network National Bank hires collection agencies, such as defendant Plaza Associates, when necessary to collect payment from consumers.

Before February 28, 2003, plaintiff borrowed money or purchased goods on credit

from defendant World Financial Network National Bank by purchasing goods at defendant The Buckle, Inc. retail store. On February 28, 2003, plaintiff filed a petition in bankruptcy in the United States Bankruptcy Court for the Western District of Wisconsin and listed defendant The Buckle, Inc. as a creditor in that action. Plaintiff filed for bankruptcy under the name of Lori Kathryn DeMars. On June 23, 2003, plaintiff received a discharge of her debts, including the debt owed to defendant The Buckle, Inc.

In April 2004, defendant World Financial Network National Bank referred plaintiff Lori N. DeMars's account to defendant Plaza Associates for collection. Plaza Associates runs all new accounts through a special bankruptcy "scrubbing" program that is designed to match bankruptcy filing information with newly listed accounts. This process did not match the Lori N. DeMars account with the Lori Kathryn DeMars bankruptcy. On April 15, 2004, Plaza Associates sent plaintiff Lori N. DeMars an initial letter containing standard validation language required by the Fair Debt Collection Practices Act, stating that it was a professional collection agency and that it was offering plaintiff an opportunity to settle her account with a lump sum payment for 80% of the balance due.

On April 27, 2004, a collector telephoned Lori N. DeMars; she told the collector that she had filed a bankruptcy proceeding. The collector terminated the call and all collection efforts were immediately stopped. Plaintiff's account was then placed in an AS400 status as a filed bankruptcy, defendant Plaza Associates notified the creditor and all further efforts

to collect the debt were terminated.

OPINION

A. The Fair Debt Collection Practices Act

To succeed on a claim under the Fair Debt Collection Practices Act, a plaintiff must first show that the money being collected qualifies as "debt" under the statute. 15 U.S.C. §1692a(5). Second, the collecting entity must qualify as a "debt collector." 15 U.S.C. §1692a(6). Third, a plaintiff must show that the debt collector violated 16 U.S.C. §§ 1692-1692o.

The parties skip the first two showings under the Act, that the money plaintiff owes qualifies as debt and that defendants qualify as debt collectors, and focus their arguments on whether defendants violated the statute.

(As an aside, I note that it is doubtful that defendants The Buckle, Inc. and World Financial Network National Bank qualify as debt collectors. The Fair Debt Collection Practices Act defines a "debt collector" as:

> Any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

15 U.S.C. § 1692a(6). From the proposed facts and parties' arguments, only defendant

Plaza Associates appears to have as its principal purpose the collection of debt. However, because defendants first allude to this argument in their reply brief, I will not grant their motion as to defendants The Buckle, Inc. and World Financial Network National Bank on that ground. Carter v. Tennant Co., 383 F.3d 673, 679 (7th Cir. 2004) (arguments presented for first time in reply brief are deemed waived) (citing Aps Sports Collectibles, Inc. v. Sports Time, Inc., 299 F.3d 624, 631 (7th Cir. 2002)).)

Plaintiff argues that the April 15, 2004 letter sent to her by defendant Plaza Associates is a *per se* violation of § 1692e of the Act because even if the collector had no knowledge of the bankruptcy filing, it is unlawful to seek payment of a debt discharged in bankruptcy. For support, plaintiff cites Turner v. J.V.D.B. & Assoc. Inc., 330 F.3d 991, 995 (7th Cir. 2003) (§ 1692e applies even when false representation unintentional). In Turner, the debt collector sent a debtor a validation letter, attempting to collect $97.80 in debt. Id. at 994. The court found that the letter was false on its face because the debt had been discharged in bankruptcy. Id. at 995. Plaintiff argues that the letter Plaza Associates sent her after she had filed in bankruptcy was the same kind of violation of § 1692e of the Act.

However, as defendants argue and the court pointed out in Turner, defendants can avoid liability under § 1692k(c) of the statute by "proving by a preponderance of the evidence that (1) the violation was unintentional, resulting from a 'bona fide error,' and (2) that error occurred 'not-withstanding the maintenance of procedures reasonably adapted to

avoid any such error.'" Turner, 330 F.3d at 995-96 (quoting Jenkins v. Heintz, 124 F.3d 824, 828 (7th Cir. 1997)). Defendants contend that because plaintiff filed for bankruptcy under a name different from the one that she used for opening a credit account with them, they had no way to match the names despite the procedures they had in place. It is undisputed that plaintiff filed for bankruptcy under the name of Lori *Kathryn* DeMars, that defendant World Financial Network National Bank referred Lori *N.* DeMars's account to defendant Plaza Associates for collection and that defendant Plaza Associates's bankruptcy "scrubbing" program did not match the Lori N. DeMars account with the Lori Kathryn DeMars bankruptcy. It is undisputed also that on April 15, 2004, defendant Plaza Associates sent plaintiff Lori *N.* DeMars a validation letter and that after a collector telephoned Lori N. DeMars twelve days later and learned that she claimed to have filed bankruptcy, all collection efforts were immediately stopped. Thus, there is sufficient evidence to show that defendants did not send a validation letter in violation of § 1692e of the Act intentionally and that they had procedures in place to avoid such errors.

Plaintiff attempts to argue that defendants knew about her bankruptcy filing but decided to send collection letters anyway because the potential benefit of sending such letters outweighs the cost of noncompliance with the Act. For example, plaintiff argues that sending a collection letter to bankrupt debtors may force them to inform the collector of their bankruptcy or pay their debt. In addition, plaintiff contends that defendants could

have had better procedures to detect bankrupt debtors before sending out collection letters. Plaintiff's arguments are nothing more than pure speculation.

The undisputed evidence supports the conclusion that defendants did not know of plaintiff's bankruptcy until after they sent the collection letter. After the collector telephoned plaintiff and discovered she had filed for bankruptcy, defendants stopped all collection efforts. Only twelve days elapsed between defendants' sending of the collection letter and following up with a phone call. If, as plaintiff argues, the collection letter was intended to coax her into paying the debt despite having filed for bankruptcy, one would assume that defendants would have waited longer than twelve days to receive payment before following up with a phone call. Moreover, defendants' procedures for detecting bankrupt debtors were reasonable. It is perfectly understandable that a bankruptcy detection program would not catch a discrepancy in a debtor's middle initials. Plaintiff fails to explain why the discrepancy in her middle name even exists. A reasonable bankruptcy detection program should not have to assume that debtors will use different names in their bankruptcy filing and their various credit accounts. Because no reasonable juror could believe that defendants sent plaintiff the collection letter knowing that she had filed for bankruptcy and that their procedures to avoid sending such letters erroneously were unreasonable, I will grant defendants' motion for summary judgment as to plaintiff's claim under the federal Fair Debt Collection Practices Act.

B. Wisconsin Consumer Act

Where, as here, all of plaintiff's federal claims will be dismissed before trial, the decision to exercise pendent, now supplemental jurisdiction over state law claims is a matter of discretion for the court. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Groce v. Eli Lilly & Co., 193 F.3d 496, 500 (7th Cir. 1999) (district court has discretion to retain or decline jurisdiction over state law claims). In all but the rarest instance, however, the court is to decline to do so. Wentzka v. Gellman, 991 F.2d 423, 425 (7th Cir. 1993). I decline to exercise supplemental jurisdiction in this case and I will dismiss plaintiff's state law claims against all of the defendants. She may pursue those claims in state court if she wishes.

ORDER

IT IS ORDERED that

1. The motion for summary judgment of defendants Plaza Associates, The Buckle, Inc. and World Financial Network National Bank is GRANTED as to plaintiff Lori N. DeMars's Fair Debt Collection Practices Act claim;

2. Supplemental jurisdiction will not be exercised over plaintiff's state law claims;

3. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 3rd day of August, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge