

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JASON A. NASMAN,

Plaintiff,

OPINION AND ORDER

v.

11-cv-614-wmc

CHASE HOME FINANCE LLC,
GRAY & ASSOCIATES, LLP,
STEVEN E. ZABLOCKI,
MICHAEL M. RILEY,
BRIAN QUIRK & ROBERT M. PIETTE,

Defendants.

Plaintiff Jason Nasman alleges that each of the defendants in this suit violated the federal Fair Debt Collection Practices Act (FDCPA) by failing to provide an adequate debt verification disclosure notice, as required by 15 U.S.C. § 1692g(a)(4-5), and by failing to provide adequate verification of a disputed debt when requested, as required by 15 U.S.C. § 1692g(b).¹ Now before the court is Mr. Nasman's motion for summary judgment. The court will deny this motion and *sua sponte* grant summary judgment in favor of all defendants.

UNDISPUTED FACTS²

¹ The court has jurisdiction pursuant to 28 U.S.C. §§ 1331. Venue is proper pursuant to 28 U.S.C. § 1391.

² Based on the parties' proposed findings of fact, and affidavits and other evidence submitted on summary judgment, the following facts appear to be material and undisputed, unless otherwise noted. Here, the plaintiff failed to file any response to defendants' proposed findings of fact. (Dkt. ##34, 40.) The court expressly informed the parties that a "fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes

A. The Debt

On July 11, 2003, plaintiff Jason A. Nasman and his wife, Robin L. Nasman (“the Nasmans”), executed a note for \$162,000.00 secured by a mortgage on property located at 2147 134th Street in New Richmond, Wisconsin. Chase Home Finance LLC (“Chase”) became the servicer for the Nasmans’ loan on April 15, 2004.³ At that time, the Nasmans were not in default under the terms of their loan.

B. Notice of Debt and Request for Verification

On January 12, 2011, Gray & Associates, LLP (“Gray & Associates”), acting on behalf of Chase, sent a Fair Debt Collection Notice to the Nasmans notifying them that they owed a debt of \$144,629.99. Jason Nasman was personally served with a summons and complaint for foreclosure sometime between January 21 and January 24, 2011. Nasman drafted an answer to the complaint demanding that “Chase Home Finance, LLC produce . . . the original Promissory Note that the Plaintiff and alleged agent are using as a basis for this claim.” On February 9, 2011, Nasman hand-delivered the answer to the St. Croix County Circuit Court and mailed a copy to Chase. The deputy clerk of court also mailed another copy of the answer to Gray & Associates, advising Mr. Nasman that she had done so.

that it is in dispute.” (Dkt. #23, p.11). Therefore, the court will treat all of defendants’ proposed findings of fact as admitted, except to the extent that they contradict plaintiff’s proposed facts.

³ Chase Home Finance LLC merged with JPMorgan Chase Bank, N.A., effective May 1, 2011. Since that merger appears to have no impact on the merits of this case, that defendant will simply be referred to as “Chase.”

On February 15, 2011, Mr. Nasman also sent Gray & Associates an express demand for debt verification by certified mail. On March 2, 2011, Gray & Associates in turn requested that Chase provide them with a statement confirming the amount owed. The following day, March 3, 2011, Gray & Associates also sent a formal reply to Mr. Nasman's February 15 letter purporting to verify the disputed debt. The letter provided an itemization of each component of the debt, the name and address of the purported original creditor, and an explanation that this information had been obtained from the current creditor. (*See* dkt. #29, ex. 2, p. 7.) The letter was signed by Steven Zablocki. (*Id.*)

On March 14, 2011, Mr. Nasman returned this letter to Gray & Associates. Thereafter, Gray & Associates pursued collection efforts in St. Croix County Circuit Court. On February 16, 2012, that court granted summary judgment of foreclosure. The judgment is currently on appeal before a three judge panel in the Wisconsin Court of Appeals.

OPINION

Summary judgment is appropriate if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In deciding a motion for summary judgment, the court must view all facts and draw all inferences in the light most favorable to the non-moving party. *Schuster v. Lucent Tech., Inc.*, 327 F.3d 569, 573 (7th Cir. 2003). Even so, the nonmoving party may not simply rest on the allegations in its

complaint; rather, it must come forward with specific facts that would support a jury's verdict in its favor. *Van Diest Supply Co. v. Shelby Cnty State Bank*, 425 F.3d 437, 439 (7th Cir. 2005).

In its ruling on defendants' motion to dismiss, the court interpreted Mr. Nasman's complaint liberally to allege cognizable federal claims for violation of 15 U.S.C. § 1692g(a)(4-5) and 15 U.S.C. § 1692g(b). Even viewing all undisputed facts in a light most favorable to Nasman, however, he cannot proceed beyond summary judgment on either claim.

A. 15 U.S.C. § 1692g(a)(4-5)

Plaintiff's proposed findings of fact concede that "[d]efendants complied with FDCPA at 15 U.S.C. § 1692(g)(a)(1) through (5) to the extent of it being adequate as the initial contact document." (Dkt. #28, ¶8.) Accordingly, the court will treat this claim as voluntarily dismissed.

B. 15 U.S.C. § 1692g(b)

Mr. Nasman's other claim relies on 15 U.S.C. § 1692g(b), which states as to "disputed debts":

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

While Nasman acknowledges receipt of a letter from Gray & Associates on March 3, 2011, purporting to verify his debt, he claims that this letter was inadequate verification under § 1692g(b). Thus, Nasman’s case hinges upon a narrow legal question: what a debt verification must letter contain in order to be valid.

It is well settled law that a district court may, in its discretion, enter summary judgment *sua sponte* for the nonmoving party so long as “the losing party has a fair opportunity to present evidence in opposition.” *Acequia, Inc. v. Prudential Ins. Co. of Am.*, 226 F.3d 798, 807 (7th Cir. 2000). Having given Mr. Nasman the requisite fair opportunity to litigate the issue, the court concludes that defendants’ debt verification was adequate as a matter of law and will grant summary judgment in defendants’ favor.

The FDCPA does not explicitly define what constitutes proper debt verification, and the Seventh Circuit has not yet weighed in. Even so, this court is not without persuasive guidance on the issue. In *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999), the Fourth Circuit held that “verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed.” *Id.* at 406 (citing *Azar v. Hayter*, 874 F. Supp. 1314, 1317 (N.D. Fla.), *aff’d*, 66 F.3d 342 (11th Cir. 1995)). Other courts around the country have reached the same conclusion. *See Poulin v. The Thomas Agency*, 760 F. Supp. 2d 151, 159 (D. Me. 2011) (“[C]onfirmation of the amount of the debt and the identity of the creditor, which is then relayed to the debtor—is sufficient.”); *Forman v. Lauinger*, No. 06–40–M–DWM, 2007 WL 1580082, at *6 (D. Mont. May 31, 2007); *McCammon v. Bibler, Newman & Reynolds, P.A.*, 515 F. Supp. 2d 1220, 1225–26 (D. Kan. 2007); *Clark v.*

Capital Credit & Collection Serv's, Inc., 460 F.3d 1162, 1173-74 (9th Cir. 2006); *Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996).

In *Chaudhry*, the Fourth Circuit explained that “[c]onsistent with the legislative history, verification is only intended to ‘eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.’ There is no concomitant obligation to forward copies of bills or other detailed evidence of the debt.” *Chaudhry*, 174 F.3d at 406 (internal citation omitted). Under the standard articulated in *Chaudhry* (“confirmation in writing of the amount owed”), the verification here was more than adequate: it was a signed, written document that restated and itemized the debt, showed the identity of the original creditor, and confirmed that this information had been provided to the debt collector by the current creditor.

Mr. Nasman argues that verification is accomplished only when the debtor receives a direct communication from someone “who has personal firsthand knowledge of the debt.” He is, however, not able to cite to any law that supports his position. Moreover, even if the court were inclined to ignore the contrary position taken by the numerous cases cited above and to create its own standard for proper verification, Nasman has provided no convincing policy rationale for doing so. The court finds that the debt verification Nasman received on March 3, 2011 was valid; summary judgment will, therefore, be granted in favor of defendants on the claims asserted here under federal law.⁴

⁴ This judgment is obviously without prejudice to any claims or defenses the plaintiff may have under state law as part of the ongoing foreclosure or other state proceedings.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Jason A. Nasman's motion for summary judgment (dkt. #26) is DENIED;
- 2) Defendants Gray & Associates LLP, Steven Zablocki, Michael Riley, Brian Quirk, Robert Piette and Chase Home Finance LLC [JPMorgan Chase Bank, N.A.] are granted summary judgment *sua sponte*; and
- 3) The clerk of court is ordered to close this case.

Entered this 24th day of January, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge