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

ALLEN W. HARTMAN and KIMBERLY M. HARTMAN,	01-C-60-C	
KHAY YANG and BEE YANG,	01-C-61-C	
PATRICK GUMS and SHARI GUMS,	01-C-88-C	OPINION AND ORDER
KELLY MILLARD,	01-C-104-C	
TERRY REANY and TINA REANY,	01-C-254-C	
DERRICK JONES,	01-C-415-C	
ERIC SENNHOLZ,	01-C-416-C	
MICHAEL PIPP and KRISTINE PIPP,	01-C-424-C	

Plaintiffs,

v.

MERIDIAN FINANCIAL SERVICES,

Defendant.

In these consolidated cases, plaintiffs are suing defendant Meridian Financial Services for allegedly deceptive debt collection practices that defendant undertook in connection with its attempt to collect moneys allegedly owed by plaintiffs for condominium timeshare interests. With the exception of Michael and Kristine Pipp, plaintiffs in each case have asserted causes of action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, the Wisconsin Consumer Act, Wis. Stat. § 427.104(1), and the North Carolina Debt Collection Statute, N.C. Gen Stat. § 58-70-110. Jurisdiction is present under 28 U.S.C. §§

1331 and 1367.

Before the court is defendant's motion under Fed. R. Civ. P. 12(b)(6) to dismiss that portion of each complaint alleging violations of North Carolina law. Defendant contends that plaintiffs may not maintain a cause of action under the North Carolina Debt Collection Statute because they are Wisconsin residents suing in a federal court located in Wisconsin. According to defendant, application of choice of law principles compels the application of Wisconsin, not North Carolina, law to plaintiffs' pendent statutory claims.

Defendant's motion will be granted. Plaintiffs have not cited any authority or presented any persuasive argument in support of their contention that the debt collection laws of multiple states may be applied to their claims.

In considering a motion to dismiss for failure to state a claim, the court must accept as true the well-pleaded factual allegations in the complaint, drawing all reasonable inferences in favor of the plaintiff. See Hishon v. King & Spalding, 467 U.S. 69, 72 (1984). The court may dismiss a complaint for failure to state a claim only if the plaintiff can prove no set of facts in support of its claim that would entitle it to relief. See Porter v. DiBlasio, 93 F.3d 301, 305 (7th Cir. 1996).

ALLEGATIONS OF FACT

At all times relevant to the complaint, all plaintiffs were residents of Wisconsin. Defendant Meridian Financial Services, Inc. is a North Carolina corporation with a principal business address of P.O. Box 1410, Asheville, North Carolina. Defendant is engaged in the business of collecting debts.

Defendant produced collection letters that it mailed from North Carolina to each of the plaintiffs. The form letters sought to collect alleged debts owed by the various individual plaintiffs towards timeshare interests at Peppertree at Tamarack resort in Wisconsin Dells, Wisconsin. Peppertree at Tamarack resort is owned by Peppertree Resorts Ltd. Peppertree Resorts Ltd. is a North Carolina corporation. With the full knowledge and acquiescence of Peppertree Resorts Ltd., defendant used the name "Peppertree Resorts, Ltd. Credit & Collection Department" on the letterhead and signatory portions of the collection letter. Peppertree Resorts Ltd. has no credit and collection department.

THE STATE STATUTES

Wisconsin and North Carolina have statutes that prohibit debt collectors from engaging in various forms of deceptive or coercive behavior when attempting to collect debts from consumers. Although the statutes are very similar, North Carolina imposes more stringent restrictions on debt collectors than does Wisconsin. For example, collection agencies in North Carolina must obtain a permit before engaging in debt collection activities and must display the permit number on all correspondence with debtors. See N.C. Gen.

Stat. § 58-70-1; N.C. Gen. Stat. § 58-70-50. Further, North Carolina's statute includes a provision prohibiting debt collectors from communicating with the consumer other than in the name of the person making the communication, the collection agency and the person or business on whose behalf the collection agency is acting or to whom the debt is owed. N.C. Gen. Stat. § 58-70-110(1).

Wisconsin and North Carolina both provide for actual and statutory damages. The statutory minimum for each violation in both states is $100. The statutory maximum in North Carolina is $2,000; in Wisconsin, it is $1,000. Compare Wis. Stat. § 425.304 with N.C. Gen. Stat. § 58-70-130.

OPINION

Plaintiffs have not disputed defendant's contention that, if choice of law principles are applied, Wisconsin and not North Carolina law would govern plaintiff's pendent statutory claims. Rather, plaintiffs contend that this case does not present a choice of law issue at all, arguing that they should be able to maintain theories of relief under both states' statutes so long as they are limited to a single recovery if liability is found. In support of their position, plaintiffs point out that the FDCPA contains a provision, 15 U.S.C. § 1692n, that specifically allows for the full right of action under state law; both Wisconsin and North Carolina's debt collection statutes apply to defendant's conduct; and an individual need not be a North Carolina resident in order to bring a claim under the North Carolina statute.

Although I agree with plaintiffs that they have standing to assert a claim under the North Carolina debt collection statute and that both Wisconsin's and North Carolina's statutes apply in theory to defendant's conduct, I disagree that plaintiffs may pursue relief under both statutes simultaneously. "[W]hen a federal court exercises diversity or pendent jurisdiction over state-law claims, 'the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court.'" Felder v. Casey, 487 U.S. 131, 150 (1988) (quoting Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945)). Plaintiffs have not presented any authority to show that a Wisconsin state court would apply both its own and North Carolina's debt collection statutes to plaintiffs' claims that they were subject to deceptive and fraudulent debt collection practices. To the contrary, as instruments of governmental policy of the state of Wisconsin, Wisconsin courts are "obligated to find the law of [the] forum controlling unless it can be demonstrated that the law derived from another jurisdiction is more appropriate." Hunker v. Royal Indemnity Co., 57 Wis. 2d 588, 599 (1972) (citation omitted). In keeping with this obligation, Wisconsin courts will apply choice of law rules to determine whether to apply the law of the forum or that of another state when the facts of a case show substantial contacts with both states. See id.; Allstate Ins. Co. v. Hague, 449 U.S. 302, 307 (1981) (recognizing that when set of facts giving rise to lawsuit may justify, in constitutional terms, applying law of more than one jurisdiction, "the forum State may have to select one law from among the laws of several jurisdictions having some contact with the controversy.").

The only authority plaintiffs cite in support of their contention that they may pursue claims under multiple debt collection statutes is a line of district court cases that have abandoned choice-of-law principles in the context of securities cases in favor of a "territorial nexus" approach. Applying this approach, these courts have held that a plaintiff may pursue relief under the blue sky laws of multiple states simultaneously so long as the plaintiffs' allegations show a sufficient nexus between the parties and the particular state law pleaded to justify applying that law. See Barneby v. E.F. Hutton & Co., 715 F. Supp. 1512, 1533-36 (M.D. Fla. 1989); Simms Investment Co. v. E.F. Hutton & Co., 699 F. Supp. 543, 545 (M.D. N.C. 1988); Lintz v. Carey Manor Ltd., 613 F. Supp. 543, 548-551 (D.C. Va. 1985). Without offering any analysis of these cases, plaintiffs argue that their reasoning should be extended to debt collection harassment cases such as the instant cases in which the collection activity crosses state lines.

Plaintiffs' skeletal argument is insufficient to persuade me to abandon traditional choice of law principles in favor of the approach taken by a few courts in a completely different area of law. Contrary to plaintiff's contention, the state law provision of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692n, does not compel the application of more than one state's debt collection laws. That section merely provides that where a state law provides protection to the consumer equal to, or greater than, the FDCPA, it is not pre-empted by the federal statute. See 15 U.S.C. § 1692n; Federal Trade Commission Staff Commentary on the FDCPA, www.ftc.gov/os/statutes/fdcpa/commentary.htm#816. It says

nothing about whether more than one state's law should apply when the debt collection activity in question has contacts with two states.

The fact that plaintiffs may meet the jurisdictional requirements of both Wisconsin and North Carolina's statutes does not make this case any different from the myriad other cases involving bistate occurrences beginning in one state and ending in another. Yet plaintiffs have not cited nor have I discovered any cases in which the "territorial nexus" approach has been employed outside the securities context. In Davis v. Suran, 1998 WL 378420 (N.D. Ill. 1998), a case with facts very similar to the instant cases, the court rejected plaintiff's invitation to abandon choice of law principles in favor of the rationale of Lintz v. Carey Manor and its progeny, noting that the plaintiff had "not explain[ed] why the peculiar policy concerns underlying abandonment of a traditional choice of law analysis in favor of nexus inquiry in the state securities law context should extend to state debt collection laws." Id. at *2. Plaintiffs' argument in this case suffers from the same deficiency. Although plaintiffs assert in conclusory fashion that the policy goals of state securities laws and state debt collection laws are "sufficiently analogous" to allow this court to follow the territorial nexus approach, they have failed to develop their argument in any meaningful manner. Accordingly, I decline to deviate from Wisconsin's longstanding choice of law principles in favor of the novel approach plaintiffs advocate.[1]

[1]I note that the cases holding that more than one state's securities law can apply to a single securities transaction without presenting a conflict of laws problem relied heavily on scholarly commentary from Professor Louis Loss, the drafter of the Uniform Securities Act upon which many states have modeled their Blue Sky laws. I am not aware of any similar commentary with respect to state debt collection laws.

Plaintiffs have not opposed defendant's contention that, under Wisconsin's choice of law rules, Wisconsin and not North Carolina law will apply to plaintiffs' state law claims. Accordingly, that portion of each complaint asserting a cause of action under North Carolina's debt collection statute (Count III) is dismissed.

ORDER

IT IS ORDERED that defendant Meridian Financial Services' motion to dismiss Count III of the Hartman, Yang, Gums, Millard, Reany, Jones and Sennholz complaints is GRANTED.

Dated this 28th day of August, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge