

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 670	DATE	8/22/2007
CASE TITLE	Chavez v. Bowman, Heintz, Boscia & Vician, et al.		

DOCKET ENTRY TEXT

Defendants' Motion to Dismiss [18] is denied.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Plaintiff, Mariano Chavez, brought a three-count Complaint against Defendants – Bowman, Heintz, Bosica & Vician, an Illinois Partnership and Indiana Corporation (“BHB&V”); and partners at BHB&V, Gerald Bowman, James Boscia, Glenn Vician, Thomas Burris, and Paul Ellison. The Complaint alleges that the Defendants engaged in unlawful credit and collection practices, in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et. seq.* Currently before the Court is the Defendants’ 12(b)(6) Motion to Dismiss.

On August 1, 2006, BHB&V filed a complaint in the Circuit Court of Cook County, Illinois, on behalf of its client, Palisades Collections, LLC, against Chavez. (Compl. ¶ 11). The state-court complaint sought to collect a credit card debt incurred for personal, family, or household expenses in the amount of \$1,821.19. (Compl. ¶¶ 11-12). After being served with the state-court complaint, Chavez entered into an oral settlement agreement with BHB&V, promising to make installment payments of \$250 a month. (Compl. ¶ 14, Ex. 2). Between December 26, 2006 and January 10, 2007, BHB&V received the installment payments from Chavez, totaling \$1,038.00. (Compl. ¶¶ 23-26). On January 16, 2007, BHB&V, on behalf Palisades, filed a motion before the Circuit Court of Cook County, Illinois, seeking a default judgment in the amount of \$1,821.19, more than Chavez owed as he made payments toward discharging the debt. (Compl. ¶¶ 27-31). Upon receiving the motion for default judgment, Chavez contacted BHB&V. (Compl. ¶ 33). On January 30, 2007, BHB&V accepted Chavez’s offer of a lump-sum settlement in the amount of \$820.00. (Compl. ¶ 33). On February 2, 2007, BHB&V received \$820 in full satisfaction of Chavez’s debt. (Compl. ¶ 34). On February 5, 2007, the Plaintiff (Chavez) filed the instant Complaint in this Court, alleging that Defendants violated the FDCPA. Plaintiff alleges that the Defendants violated: (1) Section 1692e(2)(A) of the FDCPA – which forbids the false representation of the character, amount, or legal status of any debt – by falsely representing the amount of the debt Plaintiff owed at the time BHB&V filed its motion for default judgment; (2) Section 1692e(10) of the FDCPA – which forbids the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer – because BHB&V

STATEMENT

purportedly used a false or deceptive means to collect the debt by misstating the amount of the debt in the motion for default judgment; and (3) Section 1692f of the FDCPA because BHB&V used an unfair or unconscionable means to collect Plaintiff's debt based on the misstatement of the debt amount contained in its motion for default judgment. (Compl. ¶¶ 42-55). On February 7, 2007, the state-court collection case was dismissed with prejudice.

_____ The Defendants seek to dismiss Plaintiff's FDCPA claims and argue that: (1) because the Plaintiff's challenges are grounded in alleged misrepresentations were made in the course of the state-collection case, this Court lacks jurisdiction under the *Rooker-Feldman* and *Colorado River* doctrines; (2) the state-law litigation privilege affords Defendants immunity to Plaintiff's claim; and (3) Plaintiff cannot maintain an FDCPA action where the alleged violation stems from a statement made solely in a state-court pleading, citing the Seventh Circuit's recent opinion in *Beler v. Blatt, Hasenmiller, Leibsker & Moore, LLC*, 480 F.3d 470, 473 (7th Cir. 2007) (*Beler*).

First, the Defendants argue that the Court should decline to exercise jurisdiction over Plaintiff's Complaint because regulating the contents of documents filed in a state-court proceeding would be inconsistent with the exercise of the federal court's jurisdiction. The Defendants' assertion that the *Rooker-Feldman* and *Colorado River* abstention doctrines serve as a basis for dismissal is unfounded. Under the *Rooker-Feldman* doctrine an individual is precluded from petitioning the federal court only when they seek review of a state-court judgment entered against them. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414 (1923); *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 465 (1983). However, where, as here, "the alleged injury is distinct from the state court judgment and not inextricably intertwined with it, the *Rooker-Feldman* doctrine does not apply." *Long v. Shorebank Development Corp.*, 182 F.3d 548, 555 (7th Cir. 1999), quoting *Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 702 (7th Cir. 1998)). The state-court action sought payment on a debt. The instant action seeks redress for alleged violations of the FDCPA; therefore, the Court does not lack jurisdiction under the *Rooker-Feldman* doctrine. Nor does the *Colorado River* doctrine require dismissal of this action. In *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), the Supreme Court held that judicial economy would justify federal court abstention when a pending state-court proceeding would resolve the federal issues. *Colorado River Water Conservation Dist.*, 424 U.S. at 817-20. Therefore, if parallel state and federal proceedings exist, the federal matter should be stayed, pending resolution of the state-court matter. *Selmon v. Portsmouth Drive Condominium Ass'n*, 89 F.3d 406, 409 (7th Cir. 1996). The state and federal court actions here at issue, a contract action and a FDCPA claim action, are not parallel; and the *Colorado River* doctrine is not a proper basis to stay or dismiss this matter.

The Defendants' second argument – that the litigation privilege affords them immunity – is contrary to the weight of case law. The Seventh Circuit has not addressed the litigation privilege in the context of FDCPA litigation but has rejected the application of the litigation privilege in the context of Americans with Disabilities Act ("ADA") and Title VII litigation, *Steffes v. Stepan Co.*, 144 F.3d 1070, 1075 (7th Cir. 1998) ("recognition of the litigation privilege sought by the appellees could interfere with the policies underlying the anti-retaliation provisions of Title VII and the ADA."). Further, both the Sixth and the Fourth Circuits have rejected this argument in the context of the FDCPA. *Todd v. Weltman, Weinberg & Reis, Co. L.P.A.*, 434 F.3d 432, 437 (6th Cir. 2006), cert. denied, 127 S. Ct. 261 (2006) (rejecting the attorney's request to apply the state's common-law litigation privilege and bar the plaintiff's FDCPA claim as, "[t]he purpose of this immunity is to preserve the integrity of our judicial system, not to assist a self-interested party who allegedly lies in an affidavit to initiate a garnishment proceeding."). The Fourth Circuit reached the same conclusion in *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 230 (4th Cir. 2007) ("The statutory text makes clear that there is no blanket common-law litigation immunity from the requirements of the FDCPA."). Thus, again, this does not serve as a basis for dismissal of Plaintiff's claims.

STATEMENT

Finally, the Defendants seeks to dismiss the Plaintiff's Complaint on the ground that the FDCPA is not intended to task federal courts with policing documents that are filed in state court. The Seventh Circuit's recent opinion in *Belser* indicated that the FDCPA is not an enforcement mechanism for other rules of state and federal law and noted, as *dicta*, that "it is far from clear that the FDCPA controls the contents of pleadings filed in state court." *Belser*, 480 F.3d at 474. However, here, the Court need not decide whether the FDCPA applies to the type of misrepresentations at issue in Plaintiff's Complaint – rather than the more technical ones addressed by the Court in *Belser* – because there are issues of fact, inappropriate to resolve on this motion to dismiss, specifically, whether BHB&V's statements were the result of a bona fide error. Under Section 1692k(c), "[a] debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. §1692k(c).

Thus, for the foregoing reasons, Defendants' Motion to Dismiss is denied.