UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MELISSA J. CROTEAU, on behalf of herself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Cause No.: 2:03 CV 257
PATRICIA L. DEARING and JAMES GALLOWAY,	)	
Defendants.	)	

ORDER

This is an action for violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*. The matter is currently before the Court on the parties' cross-motions for summary judgment. Plaintiff Melissa Croteau moves the Court to find as a matter of law: 1) that Defendants are debt collectors; and 2) that the dunning letter sent by Defendants is confusing. [Doc. 37]. In response, Defendants request that this Court hold that they are not debt collectors as a matter of law. [Doc. 44]. Because Defendants are debt collectors under the FDCPA, Croteau's motion is GRANTED as to this issue and Defendants' motion is DENIED. However, because questions of material fact remain as to whether the dunning letter was confusing, the remainder of Plaintiffs motion is DENIED.

BACKGROUND

Plaintiff Melissa Croteau is an individual currently residing in Chesterton, Indiana. Defendant Patricia L. Dearing is an attorney licensed to practice law in the State of Louisiana and engages in the collection of consumer debts in this and other states. Defendant James Galloway is an employee and general manager of collections for Dearing.

On October 10, 2002, Defendants sent Croteau a form collection letter by United States mail in an attempt to collect a debt allegedly owed Navy Federal Credit Union by Ms. Croteau (the "dunning letter"). The dunning letter stated that Croteau owed "$8029.86 + Interest." The dunning letter was the first communication by Defendants in connection with the collection or attempted collection of Croteau's debt owed to Navy Federal Credit Union. Defendants did not have any further written communications with Croteau within five days of sending the dunning letter to her.

Croteau contends that the Defendants violated the FDCPA when they represented in their dunning letter that the amount of Croteau's alleged debt was "$8,029.86 + Interest." (Plf. Cmp. at Ex. A). The dunning letter goes on to state:

> The Law Corporation has been hired by NAVY FEDERAL CREDIT UNION to collect $8029.86, which is past due and is now owing to the NAVY FEDERAL CREDIT UNION.
>
> Unless we receive a certified check or money order <u>MAILED TO THIS OFFICE,</u> for the full amount owed made payable to NAVY FEDERAL CREDIT UNION, we will consult with our client regarding the remedies available to it.

(*Id*.(emphasis in original)). Croteau alleges that this formula only loosely describes the alleged debt and does not "state the amount of the debt." Croteau also alleges that Defendants' letter is confusing and misleading.

The dunning letter was signed by Defendant Galloway, "General Managers – Collections," on the letterhead of "Patricial L. Dearing, J.D." Nowhere in the letter is there any mention of an L.L.C. or any other legal entity. "James Galloway" and "Patricia L. Dearing" are the only names that appear on the letter. In fact, in responding to a request for admission, Defendants admitted to having sent dunning letters similar to Croteau's dunning letter to other

Indiana residents in an attempt to collect debts owed to the Navy Federal Credit Union. Specifically, Croteau requested that the Defendants admit:

> There are more than fifty (50): a. natural persons; b. ***to whom defendant sent a collection letter*** to in the state of Indiana which did not state a specific sum of interest which was due or a method by which interest could be calculated (similar to that attached to Plaintiff's Complaint as Exhibit A); c. during the period of June 19, 2002 through June 23, 2003; d. ***in connection with an attempt to collect on a non-business debt on behalf of NFCU***.

See Plf. Ex. 1 at 1. (emphasis added)). Defendant answered with one word: "admit." (*Id*.). Defendants did not qualify their admission by stating that the letter was sent by an entity other than defendants or in any other manner. (*Id*.). The caption placed on Defendants' Response to Requests for Admission clearly identified the defendants as "Patricia L. Dearing" and "James Galloway." (*Id*.).

In response to Croteau's motion for summary judgment, Defendants contend that they did not send the letters. Instead, they name "Patricia L. Dearing, L.L.C." as the entity that sent the letters, and that Patricia Dearing and James Galloway are merely employees of the L.L.C. (Def. Resp. at Ex. 1).

DISCUSSION

Summary judgment is proper where the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Williams v. Waste Mgmt. of Illinois*, 361 F.3d 1021, 1028 (7th Cir. 2004). The court construes all facts and draws all reasonable inferences in the light most favorable to the

nonmoving party. *Butera v. Cottey*, 285 F.3d 601, 605 (7th Cir. 2002).

A. <u>Defendants Are Debt Collectors</u>

The FDCPA 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. § 1692(a)(6). Defendants admitted in their Answers to Plaintiff's Requests to admit that they sent more than 50 collection letters for the purpose of attempting to collect a non-business debt on behalf of Navy Federal Credit Union. Fed. R. Civ. P. 36 governs requests for admissions and provides that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Fed. R. Civ. P. 36(b); *Soo Line R. Co. v. Saint Louis Southwestern Railway Co.*, 125 F.3d 481, 483 (7th Cir. 1997) ("Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them."). Thus, the facts admitted in Defendants responses conclusively establish that Defendants meet the definition of a debt-collector under the FDCPA.

Nevertheless, Defendants now assert that they did not send the letters, but rather "Patricia Dearing, L.L.C.," a company for whom they work, sent the letters. Defendants' after-the-fact attempt to change their clearly stated admission is improper. Judicial admissions "may not be controverted at trial or on appeal." *Keller v. U.S.*, 58 F.3d 1194, 1199 n.8 (7th Cir. 1995). Indeed, admissions "are not evidence at all , but rather have the effect of withdrawing a fact from contention." *Id*. Thus, Defendants' admission that they, the individual defendants, sent over 50

letters to collect a debt cannot be controverted by their later statement that they were only sending debt collection letters on behalf of Patricia L. Dearing, L.L.C.

B. <u>There Is A Question of Material Fact Pertaining to the Dunning Letter</u>

Plaintiff next requests that this Court find that the dunning letter she received from Defendants violated the FDCP as a matter of law. We deny summary judgment because there are questions of fact as to whether Croteau was actually confused by the letter.

15 U.S. C. § 1692(g)(1) requires that a dunning letter state the amount of the debt. *Chuway v. Nat'l Action Fin. Servs.*, 362 F.3d 944, (7th Cir. 2004). The Act requires that the letter state the full debt, not just the balance of the debt. *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, (7th Cir. 2000). Further, "it is not enough that the dunning letter state the amount of the debt that is due. It must state it clearly enough that the recipient is likely to understand it." *Chuway*, 362 F.3d at 948. When reviewing dunning letters, courts use the "unsophisticated debtor" standard which "assumes that the debtor is uninformed, naive, or trusting and that statements are not confusing or misleading unless a significant fraction of the population would be similarly misled." *Veach v. Sheeks*, 316 F.3d 690, 692-93 (7th Cir. 2003). If it is apparent from the face of the letter that it is unclear, to prevail on summary judgment, the plaintiff must simply testify that she was in fact confused by the letter. *Chuway*, 362 F.3d at 948.

The Seventh Circuit has provided ample guidance in determining whether or not the "amount of debt" as stated in a dunning letter is confusing. For example, in *Miller*, Judge Posner

provided debt collectors with specific language to use in order to avoid violating the FDCPA.[1] *Miller*, 214 F.3d at 876. Since *Miller*, the Seventh Circuit has considered other letters which do not use the *Miller* language, but still are within the bounds of the FDCPA. *See, e.g., Taylor v. Cavalry Investment, L.L.C.*, 365 F.3d 572 (7th Cir. 2004) (letter stated discrete amounts for "PRINCIPLE BAL," "INTEREST OWING," and "TOTAL BAL DUE"); *Olson v. Risk Mgmt. Alternatives, Inc.*, 366 F.3d 509 (7th Cir. 2004) (letter contained differing, but discrete amounts for "Balance" and "Now Due").

Unlike the letters at issue in *Taylor* and *Olson*, the dunning letter sent in this case is unclear on its face. The letter states that the "amount" is "$8029.86 + Interest." However, the letter goes on to state that it seeks to collect "$8029.86, which is past due and is now owing." Thus, it is unclear to the Court whether or not the amount of debt includes interest and what amount of interest, if any, exists.

Nevertheless, the defendants correctly state that because Croteau has not presented an affidavit or other testimony establishing that she was confused by the dunning letter, there is a genuine issue of material fact and summary judgment is not appropriate. Croteau replied to Defendants' argument by correctly stating that where the letter is unclear on its face, she did not have to present extrinsic evidence of confusion. *See Chuway*, 362 F.3d at 948. While this is correct, it does not address Defendants' contention that Croteau was required to present evidence

---

[1]"As of the date of this letter, you owe $_____ [the exact amount due]. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-88- [phone number]." *Miller*, 214 F.3d at 876

of ***her own confusion***. As the Court in *Chuway* stated, "If it is apparent just from reading the letter that it is unclear, . . . and the plaintiff testifies credibly that she was indeed confused . . ." then she is entitled to judgment. *Chuway*, 362 F.3d at 948.

The problem here is that the plaintiff has not bothered to attach an affidavit to her summary judgment or present the Court with other evidence to prove that she was in fact confused by the dunning letter. We note that Defendants have not requested that the Court grant summary judgment in their favor by holding that the letter was not confusing. Instead, Defendants merely argue that there is a question of material fact regarding whether or not the letter is confusing. Based on the evidence as presented to the Court in the summary judgment paperwork, we agree. Accordingly, we do not find that Croteau's failure to present the Court with any evidence of her own confusion is fatal to her claim as a whole. We simply cannot grant summary judgment for Croteau in face of this significant material question: Was she, in fact, confused by the dunning letter?

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment [Doc. 37] is GRANTED IN PART in that Defendants are debt collectors under the meaning of the FDCPA and DENIED in all other respects. Defendants Motion for Summary Judgment [Doc. 44] is DENIED.

SO ORDERED.

ENTER: February 8, 2005

s/ Philip P. Simon
Philip P. Simon, Judge
United States District Court