

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Gregory Fisher,	:	C.A. No. 05-06-0001
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Dell Financial Services, LP,	:	
	:	
Defendant.	:	

**Upon Defendant's Motion to Dismiss**

**Date of Hearing: September 28, 2005**

**Date Decided: September 28, 2005**

**The Defendant's motion is granted.**

**Maggie Clausell, Esquire, 1679 South DuPont Highway, Suite 21, Dover, Delaware 19901, Attorney for Plaintiff.**

**John G. Harris, Esquire,, Reed Smith, LLP, 1201 Market Street, Suite 1500, Wilmington, Delaware 19801-1163**

**Trader, J.**

In Count 2 of plaintiff's civil action, the plaintiff alleges that the defendant violated the Fair Debt Collection Practices Act. The defendant has filed a motion to dismiss Count 2 on the grounds that Dell Financial Services is a creditor and not a debt collector and that the Fair Debt Collection Practices Act does not apply to creditors. I agree. The defendant's motion to dismiss Count 2 is granted.

In paragraph 14 of Count 2, the plaintiff alleges that "Dell Financial Services violated 15 U.S.C. §1692e(2) of the Fair Debt Collection Practices Act, when it wrongfully assigned plaintiff's account to a collection agency, LTD Financial Services, when plaintiff had made all of payments as agreed".

In paragraph 15 of Count 2 the plaintiff alleges "[e]mployees of LTD Financial Services repeatedly called the plaintiff's home in attempt to collect the balance on Dell Financial Services' account." The plaintiff further alleges that the account was not past due but was paid in full.

The defendant contends that the Fair Debt Collection Practices Act applies to a debt collector and does not apply to creditors. The defendant's contention is correct.

When considering a motion to dismiss on the grounds of failure to state a claim upon which relief can be granted, all well-pleaded facts will be assumed to be true and all inferences will be viewed in the light most favorable to the non-moving party. *Wal-Mart Stores v. Aig Life Ins. Co.*, 868 2d 312 (Del. Super. 2004). A complaint will not be dismissed unless it appears to a reasonable degree of certainty that the plaintiff will not be entitled to relief under any set of facts which could be proven in support of his claim. *Rabkin v. Philip A. Hunt Chemical Corp.*, 498 A.2d 1099 (Del. 1985). But to show entitlement to relief, a complaint must aver either the necessary elements of a cause of

action, or facts which would entitle the plaintiff to some form of relief under the alleged theory. *American Ins. Co. v. Material Transit*, 446 A.2d 1101, 1104 (Del. Super. 1982).

The purpose of FDCPA is “to eliminate abusive debt collection practices by debt collectors. . . .” 15 U.S.C. §1692e.

15 U.S.C. §1692a(6) provides as follows: “[t]he term ‘debt collector’ means 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. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.”

15 U.S.C. §1692a(4) provides as follows: “The term ‘creditor’ means any person who offers or extends credit creating a debt or to whom debt is owed, but such terms does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.”

It has been held that FDCPA applies to only debt collectors and not to creditors that hire them. *Gary v. Goldman & Co.*, 180 F. Supp. 2d 668, 672 (E.D. Pa. 2002). In *Castro v. Revere Collection Agency*, 1991 WL 147529 at (E.D. Pa. July 25, 1991), the court ruled that the text, legislative history, and case law lead inescapably to the conclusion that the FDCPA is applicable only to debt collectors and not to creditors who hire him because Congress has made it clear that creditors are not generally covered by

the FDCPA. The court additionally ruled that common law agency principles are inapplicable and may not be applied to impose liability on a creditor.

In essence, “[b]ecause they are specifically excluded from the FDCPA definition of ‘debt collector,’ creditors and similar entities that do not regularly collect debts for third parties generally fall outside the purview of the FDCPA when collecting their own consumer debts. This exclusion reflects the FDCPA’s purpose of protecting consumers against the abuses by independent or ‘third-party’ debt collectors (or those perceived as such), who may lack any incentive to preserve their good will with the debtor”. 54 *Consumer Fin. L.Q. Rep.* 211 (2000).

“To preserve their exemption, creditors should use the same name in collection as they use during the other aspects of the credit relationship. The FDCPA prohibits use by an exempt creditor of a name that creates the false impression that a third party is collecting the debt.” 54 *Consumer Fin. L.Q. Rep.* 211, 212. (citing 15 U.S.C. §1692 a(6), 1692e(14)). Since the plaintiff does not contend that Dell Financial Services is using LTD Financial Services as a pseudonym, Dell Financial Services is exempt from a claim under the FDCPA.

Since I conclude that FDCPA applies only to debt collectors and not to creditors, the defendant’s motion to dismiss as to Count 2 is granted.

IT IS SO ORDERED.

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Merrill C. Trader  
Judge