

Martin v Palisades Collection, LLC

2013 NY Slip Op 33204(U)

January 8, 2013

Supreme Court, New York County

Docket Number: 116099/10

Judge: Donna M. Mills

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

FRAN MARTIN, et al.,

INDEX NO. 116099/10

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. NO. 004

PALISADES COLLECTION, LLC, et al.,

Respondents.

FILED

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion for _____

JAN 14 2013

NEW YORK COUNTY CLERK'S OFFICE PAGES NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1, 2, 5


Answering Affidavits- Exhibits 3, 4

Replying Affidavits 6

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 1/8/13



J.S.C.

Check one: FINAL DISPOSITION

DONNA M. MILLS, J.S.C.
NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

----- X

FRAN MARTIN, Individually and On
Behalf of All Other New York
Residents Who Have Been Sued In
the New York Courts, or Have Been
Threatened With Such Suit, By
Defendants to Collect on Consumer
Credit Card Debt on Credit Cards
Issued by Heritage Chase And As
To Which There Has Been No Credit
Card Activity in the Prior Three
Years, Despite the Fact that Such
Lawsuits Are Time-Barred Under the
Delaware Statute of Limitations As
Made Applicable By New York's
Borrowing Statute,

Index No. 116099/2010

DECISION AND ORDER

Plaintiff,

- against-

PALISADES COLLECTION, LLC, and
KIRSCHENBAUM & PHILLIPS, P.C.,

Defendant.

FILED
JAN 14 2013
NEW YORK
COUNTY CLERK'S OFFICE

DONNA M. MILLS, J.S.C.:

Plaintiff moves for reargument on the ground that the court erred in denying its motion for disclosure of all debtors actually sued by either of defendants for Chase Heritage credit card debt that was time-barred under the applicable three-year statute of limitations, regardless of whether such debtors had been threatened with suit prior to being sued. Plaintiff also seeks clarification that the production must include only time-barred claims.

Additionally, plaintiff seeks a protective order and

production of "all documents that concern the accounts."

A motion for leave to reargue, pursuant to CPLR 2221, is addressed to the sound discretion of the court and may be granted only upon a showing "that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision [citation omitted]" (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

The motion is granted, and, upon reargument, plaintiff's motion is granted in part and denied in part. Defendants are directed to identify and produce documents relating to no more than fifty debtors on time-barred credit card debt issued by Chase a/k/a Heritage Chase, who were actually sued, and no more than fifty such debtors, who were threatened with suit by defendants Palisades Collection, LLC (Palisades) and/or the law firm Kirschenbaum & Phillips, P.C. (the Kirschenbaum firm), but not actually sued.

Not all cases where an action is brought to collect a time-barred debt are violations of the FDCPA (see *People v Boyajian Law Offices, P.C.*, 17 Misc 3d 1119[A], 2007 NY Slip Op 52077[U] (Sup Ct, NY County 2007); *Harvey v Great Seneca Financial Corp.*, 453 F 3d 324, 330 [6th Cir 2006]; *Freyermuth v Credit Bureau Services, Inc.*, 248 F3d 767, 770 [8th Cir 2001]; but see *Diaz v Portfolio Recovery Associates, LLC*, 2012 WL 1882976 * 1 [US Dist Ct ED NY 2012] [upholding the sufficiency of a complaint to

collect a time-barred debt, that alleged that the defendant had not meaningfully reviewed the complaint and knew there was no factual basis for such action]; *Kimber v Fed. Fin. Corp.*, 668 F Supp 1480 [MD Ala 1987] [holding that filing a time-barred suit without having first determined after a reasonable inquiry that the limitations period had been tolled, was a violation of the FDCPA]).

Thus, regardless of whether the mere filing of a lawsuit on a time-barred debt violates the FDCPA, without any allegations of a prior threat or other prohibited communications, plaintiff's discovery demand for complaints actually filed on time-barred Chase/Heritage credit card accounts is "reasonably calculated to lead to the discovery of information bearing on the claims" (*Abrams v Pecile*, 83 AD3d 527, 528 [1st Dept 2011]). Thus, the court erred in denying plaintiff's motion for disclosure of persons who had actually been sued on time-barred Chase Heritage credit card debt.

Accordingly, it is

ORDERED that plaintiff's motion for reargument is granted; and it is further

ORDERED that, upon reargument, the motion of plaintiff Fran Martin for an order pursuant to CPLR 3124 is granted only to the extent of compelling the Kirschenbaum firm to produce documentation and respond to interrogatories compiling no more

than 50 individuals that it threatened with suit in connection with the Chase accounts but did not actually sue, and fifty individuals, against whom an action was actually commenced, either on behalf of Palisades or any other client, on time-barred debt, no earlier than one year prior to the commencement of this action, and up to the present, and is otherwise denied.

Dated:

E N T E R:



J. S. C.
DONNA M. MILLS, J.S.C.

FILED
JAN 14 2013
NEW YORK
COUNTY CLERK'S OFFICE