

IN THE COUNTY COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

EFFIE WARD,

Plaintiff,

vs.

CASE NO.: 09-2802 CO

DIVISION: 42

D.A.N. JOINT VENTURE, III, LP,
et al.,

Defendants,

ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION

THIS CAUSE came up for hearing before the Court on August 2, 2012, upon Defendants' Motion for Reconsideration of the Court's previous denial of Defendants' Motion for Summary Judgment. The Court after hearing argument of counsel, having reviewed the file herein, and otherwise being advised in the premises, the following observations, findings of fact, and rulings are made:

1. Plaintiff filed a Third Amended Complaint alleging that Defendants violated §§ 559.72(7) and § 559.72(9) of the Florida Consumer Collection Practices Act ("FCCPA").
2. In the Third Amended Complaint, Plaintiff alleges that Defendants violated the cease and desist provision of the federal Fair Debt Collection Practices Act ("FDCPA"), § 15 U.S.C. 1692a, et seq., by failing to provide information required by the FDCPA, and that the alleged FDCPA violation constitutes a *per se* violation of § 559.72(9).

3. At the hearing on Defendants' Motion for Reconsideration, Plaintiff's counsel stated that based upon the Second District Court of Appeal's holding in *Read v. MFP, Inc.*, 85 So.3d 1151 (Fla. 2nd DCA 2012), the Plaintiff is withdrawing her claim that Defendants violated § 559.72(9) by failing to provide information required by the FDCPA and as such, that claim is dismissed.
4. Plaintiff also alleges in the Third Amended Complaint that by failing to provide the notice of assignment under § 559.715, Defendants lost any legal interest in the debt and therefore, Defendants violated § 559.72(9) when they attempted to collect the debt.
5. This Court, in reliance on *Read*, finds that to show a violation of section 559.72(9), "it must be shown that a legal right that did not exist was asserted and that the person had actual knowledge that the right did not exist." To show a violation of § 559.72(9), Plaintiff was required to point to some independent legal right that Defendants improperly asserted when they attempted to collect the debt at issue from Plaintiff. Plaintiff claims that Defendants' alleged failure to comply with § 559.715 somehow invalidates or otherwise prohibits Defendants from attempting to collect the debt, yet cannot produce any published opinion from any Florida appellate court to establish that this assertion is, in fact, the law in Florida-or was the law at the time Defendants attempted to collect the debt from Plaintiff. As such, Plaintiff cannot demonstrate that Defendants asserted the existence of a legal right that did not exist, much less that Defendants "had actual knowledge that the right did not exist." See, *Read, supra*. As such, Plaintiff's claim that Defendants violated § 559.72(9) must be dismissed pursuant to *Read*.

6. Plaintiff also alleges in the Third Amended Complaint that Defendants violated § 559.72(7) of the FCCPA by continuing to contact the Plaintiff after Plaintiff, and Plaintiff's husband, requested no further contact during a telephone conversation with an agent of Defendants.
7. At deposition, Plaintiff testified that she had on telephone conversation with an agent of Defendants which lasted "[m]aybe a couple of seconds". During that conversation, Plaintiff stated: "Please do not call me. Leave me alone." See, Deposition Transcript of Plaintiff at p. 18. She then gave the phone to her husband. *Ibid.* at p. 19. Plaintiff testified she had no further conversations with Defendant nor did she receive any further voicemail messages from Defendant. *Ibid.* at p. 22. Plaintiff's husband testified at deposition that when Plaintiff handed him the telephone, he told the caller: "Don't call here no more. Don't ever call here no more." He testified that the conversation never "got heated" nor did the collector curse or threaten him. See, Deposition Transcript of Hosea Ward at pp. 15-16. Mr. Ward had no other conversations with an employee of Defendants. *Ibid.* at p. 16. According to Mr. Ward, Defendants "left a message" after the conversation referenced above; however, he did not listen to the message. Instead, "when [he] heard the name of the thing, [he] just erased it." *Ibid.*
8. This Court finds that Defendants demonstrated on its motion for summary judgment that there were no genuine issues of material fact, and Defendants are accordingly entitled to summary judgment on Plaintiff's § 559.72(7) claim. The alleged communication at issue by Defendants, which was innocuous, after

receiving Plaintiff's verbal "cease and desist" correspondence, was as a matter of law neither so frequent nor harassing as to violate section 559.72(7) of the FCCPA.

It is hereby **ORDERED AND ADJUDGED** that Defendants' Motion for Reconsideration is **GRANTED** and as a result, Defendants' Motion for Summary Judgment is also **GRANTED** in full and Plaintiff's Motion for Partial Summary Judgment is **DENIED**.

This case is hereby **DISMISSED WITH PREJUDICE**.

Done and Ordered in Chambers in Clearwater, Pinellas County, FL on this _____ day of August 2012.

HON. JOHN CARASSAS
COUNTY COURT JUDGE

Copies furnished to all counsel of record



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