

16 Fla. L. Weekly Supp. 772b

Online Reference: FLWSUPP 168SHECT

Consumer law – Debt collection – Standing – Assignment – Where there is no evidence of continuous chain of assignments from original creditor to plaintiff suing to collect credit card debt, summary judgment is entered in favor of credit card holder

LVNV FUNDING, LLC, assignee of Bank of America, v. JULES R. SHECTER. County Court, 15th Judicial Circuit in and for Palm Beach County. Case No. 502008CC005285 SBRD. June 5, 2009. Janis Brustares Keyser, Judge. Counsel: Richard A. Russell, Mann Bracken, LLC., for Plaintiff. Angelo Marino, Jr., Angelo Marino, Jr., P.A., Fort Lauderdale, for Defendant/Counter-Plaintiff.

ORDER ON DEFENDANT/COUNTER-PLAINTIFF,

JULES R. SHECTER'S MOTION FOR SUMMARY

JUDGMENT AND MOTION TO STRIKE PLAINTIFF'S

PLEADINGS AND FOR ATTORNEY'S FEES AND COSTS

THIS CAUSE came before the court on May 28, 2009, based upon the Defendant/Counter-Plaintiff's Motion for Summary Judgment, Motion to Strike Plaintiff's Pleadings, and Motion for Attorney's Fees and Costs. The plaintiff is represented by Richard A. Russell of Mann Bracken, LLC., and the Defendant/Counter-Plaintiff by Angelo Marino, Jr. Based on the arguments of counsel, the pleadings, and motions, the Court finds as follows:

The plaintiff alleged that it was an assignee of a credit card debt and that Defendant owed plaintiff money due on a Visa credit card. Based on the alleged credit card, plaintiff alleged two theories against Defendant/Counter-Plaintiff: money lent and unjust enrichment.

The Defendant filed a counterclaim against the Plaintiff for violation of Florida statutes 559.715, 559.72, 559.72(9), 501.204, and 501.2105 as well as for violations of 15 USC 1692(E) and 15 USC 1692(F) for filing suit for Unfair and Unlawful Trade Practices and Acts.

In response to plaintiff's complaint, Defendant/Counter-Plaintiff filed his Request for Admissions, Interrogatories to Plaintiff, and Request for Production on May 6, 2008. After three court orders granting plaintiff over 136 days to answer Defendant's discovery requests, plaintiff was in violation of the Court's orders. Defendant/Counter-Plaintiff moved for Summary Judgment on numerous grounds: failure to demonstrate an assignment from Bank of America or any other successor in interest, violations of Florida statute 559.715, violations of one or more acts of Florida Statute 559.72, and failure to any ability to prove plaintiff's case.

A creditor seeking to recover on an obligation has the burden of proof to show that it has the right to seek collection on the debt because it owns the consumer's obligation or State law gives it the right to sue on behalf of the owner, *Great Seneca Fin. Corp. v. Leanna*, 2006 WL 2536275 (Conn. Super. Ct. August 2006); *C & W Asset Acquisition, LLC v. Somogyi*, 136 S.W. 3d 134 (Mo. Ct. App. 2004); *Citibank (SD) v. Martin*, 807 N.Y.S. 2d 284 Civ. Ct. 2005).

Case law clearly demonstrates that a collector must show a continuous, unbroken chain of assignments

from the original creditor to the entity collecting on the debt. *In re Leverette*, 378 B.R. 793 (E.D. Tex. 2007); *Wright v. Asset Acceptance Corp.*, 2000 WL 33216031 (S.D. Ohio Jan. 3, 2000); *In re Kendall*, 380 B.R. 37 Bankr. N.D. Okla. 2007); *Rushmore Recovers X, LLC v. Skolnick*, 847 N.Y.S. 2d 823 (Dist. Ct. 2007); and *National Check Bureau, Inc. v. Cody*, 2007 WL 175762 (Ohio Ct. App. Jan 27, 2005).

An earlier debt buyer can assign to the current collector only the rights it itself acquired from its assignor, *Wright v. Asset Acceptance Corp.*, 2000 WL 33216031 (S.D. Ohio Jan. 3, 2000); *Rushmore Recovers X, LLC v. Skolnick*, 847 N.Y.S. 2d 823 (Dist. Ct. 2007).

Nevertheless, there is no evidence that Bank of America and/or Visa had any relationship in the record, that Bank of America and/or Visa sold Defendant's debt to plaintiff and/or plaintiff's predecessor. There is no evidence of a chain of title never mind a continuous chain of title. There is no evidence that Defendant's alleged debt was part of the sale since there are no documents with these alleged assignments that mention Defendant's debt. There is no evidence Defendant's alleged debt was ever part of any alleged sale, never mind the fact that there is no continuous evidence of title of any debt. Plaintiff has admitted all of the Requests for Admissions for failure to respond to them in over a year as well as other discovery.

Therefore, based on the above reasons and findings of fact:

It is ORDERED AND ADJUDGED that:

Defendant's Motion for Summary Judgment as to all of Plaintiff's claims is granted and Plaintiff shall take nothing from this action.

* * *

16 Fla. L. Weekly Supp. 783b

Online Reference: FLWSUPP 168PALIS

Consumer law – Debt collection – Standing – Assignment – Where there is no evidence of continuous chain of assignments from original creditor to plaintiff suing to collect credit card debt, summary judgment is entered in favor of credit card holder

PALISADES COLLECTION, LLC., Plaintiff, v. ROSAINE THOMAS, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COWE 08-05098 (82). April 14, 2009. Alan R. Marks, Judge. Counsel: Scott L. Fishman, Jacobson, Sobo, & Moselle, for Plaintiff. Angelo Marino, Jr., for Defendant.

ORDER ON DEFENDANT/COUNTER-PLAINTIFF'S

MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE came before the court on March 02, 2009, based upon the Defendant/Counter-Plaintiff's motion for summary judgment. The Plaintiff is represented by Scott L. Fishman of Jacobson, Sobo, & Moselle, and the Defendant by Angelo Marino, Jr. Based on the arguments of counsel, the pleadings, and motions, the court finds as follows:

The Plaintiff alleged that it was an assignee of a credit card debt owed to Citibank that was issued to the Defendant. The Plaintiff filed three counts against the Defendant which appear to be for money owed on a credit card, breach of contract, and account stated.

The Defendant filed a counterclaim against the Plaintiff for violation of Florida Statutes 559.715 and 559.72, violation of Florida Statute 559.72(9) for filing suit in violation of statute of limitations, and for Unfair Trade Practices.

After plaintiff filed suit, Defendant filed her Request for Admissions to Plaintiff on April 16, 2008. After two orders granting Plaintiff over 150 days to answer the request for admissions, the Court granted Defendant's motion to deem the answers admitted. In response to Defendant's request to produce, Plaintiff produced various assignments from different entities that allegedly owned the debt and assigned it ultimately to Plaintiff. Defendant moved for summary judgment on numerous grounds: failure to demonstrate a continuous and uninterrupted chain of title, violations of Florida Statutes 559.712, no cause of action for quantum meruit, and statute of limitations.

A creditor seeking to recover on an obligation has the burden of proof to show that it has the right to seek collection on the debt because it owns the consumer's obligation or State law gives it the right to sue on behalf of the owner, *Great Seneca Fin. Corp. v. Leanna*, 2006 WL 2536275 (Conn. Super. Ct. August 2006); *Midwest Health Mgmt., Inc. v. Walker*, 208 S.W. 3d 295 (Mo. Ct. App. 2006); *C & W Asset Acquisition, LLC v. Somogyi*, 136 S.W. 3d 134 (Mo. Ct. App. 2004); *Citibank (SD) v. Martin*, 807 N.Y.S. 2d 284 (Civ. Ct. 2005).

Case law clearly demonstrates that a collector must show a continuous unbroken chain of assignments from the original creditor to the entity collecting on the debt. *In re Leverette*, 378 B.R. 793 (E.D. Tex. 2007); *Wright v. Asset Acceptance Corp.*, 2000 WL 33216031 (S.D. Ohio Jan. 3, 2000); *in re Kendall*, 380 B. R. 37 (Bankr. N.D. Okla. 2007); *Rushmore Recoveries X, LLC v. Skolnick*, 841 N.Y. S. 2d 823 (Dist. Ct. 2007); and *National Check Bureau, Inc. v. Cody*, 2007 WL 174762 (Ohio Ct. App. Jan. 27,

2005).

An earlier debt buyer can assign to the current collector only the rights it itself acquired from its assignor, *Wright v. Asset Acceptance Corp.*, 2000 WL 33216031 (S.D. Ohio Jan. 3, 2000); *Rushmore Recoveries X, LLC v. Skolnick*, 841 N.Y. S. 2d 823 (Dist. Ct. 2007).

According to the documents produced by Plaintiff, there were multiple transfers of title allegedly from one assignee to another. The records reveal no continuous transfer of title from Citibank to Plaintiff, Palisades Collection, LLC. There was a break in the chain of title. Moreover, one of the assignees, Cliffs Portfolio Acquisitions I, LLC., never transferred its ownership of the debt to Plaintiff, Palisades Collection, LLC. The assignment between Cliff's Portfolio Acquisitions I, LLC, and plaintiff stated in part: "Assignor shall retain title and ownership of such Receivables." Because the evidence in the light most favorable to the Plaintiff fails to demonstrate a continuous chain of title and that Plaintiff is not the real party in interest, the court need not consider the other grounds of the motion for summary judgment.

In summary, Plaintiff did not demonstrate that there was a continuous and uninterrupted chain of title and that it had title to the debt. Therefore Defendant's motion for summary judgment against the plaintiff shall be granted.

ORDERED AND ADJUDGED THAT Defendant/Counter-plaintiff's motion for final summary judgment against the plaintiff is granted, and the plaintiff shall take nothing from the defendant.

* * *

16 Fla. L. Weekly Supp. 763b

...
Marino, Jr., P.A., Fort Lauderdale, for Defendant.

FINAL SUMMARY JUDGMENT AGAINST THE PLAINTIFF

This case came to be heard on defendant's motion for a final summary judgment against the plaintiff, LVNV FUNDING, LLC, a successor in interest to Sears, on June 15, 2009. After due notice of hearing, an argument of counsel, the court finds the following:

In January of 2008, plaintiff filed a complaint against defendant in the amount of 10,633.45, attorney's fees, and costs based on an establish credit account in the name of the Defendant. Defendant filed a counterclaim against plaintiff and also denied the allegations of plaintiff's complaint. In addition, as one of her affirmative defenses, Defendant alleged that plaintiff failed to comply with Florida Statute 559.715.

Florida Statute 559.715 deals with the assignment of a consumer debt, and states in part:

This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment within 30 days after the assignment. . .

Florida courts have demanded strict compliance with the statute, *UMLIC-VP v. LEVINE*, 10 Fla. L. Weekly Supp. 336 (2003), and *CACH, LLC v. QUARTERMAINE*, 15 Fla. L. Weekly Supp. 843b (2008).

In the present case, plaintiff was unable to produce any evidence that it complied with Florida Statute 559.715. Therefore, it is hereupon,

ORDERED that Defendant's motion for a final summary judgment is granted because the plaintiff has failed to comply with the with written notice provision of Florida Statute 559.715, which this court holds is a condition precedent to a debt collection action predicated upon an assignment of debt. Plaintiff shall take nothing from this action, and its claims are dismissed with prejudice.

* * *

<http://www.floridalawweekly.com/newssystem/showfile.php?fromsearch=1&file=../supfil...> 12/11/2009