

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

JEFFREY A. HAZELTON and	:	
RANELLE HAZELTON,	:	
Plaintiffs	:	
	:	
vs.	:	No. 11-1884
	:	
INDIAN MOUNTAIN LAKE CIVIC	:	
ASSOCIATION,	:	
Defendant	:	
	:	
Adam R. Weaver, Esquire		Counsel for Plaintiffs
Maureen A. Jordan, Esquire		Counsel for Defendant

Matika, J. - July 18, 2012

MEMORANDUM OPINION

Before the Court are the Preliminary Objections of Defendant, Indian Mountain Lake Civic Association (hereinafter "IMLCA") to the Amended Complaint of the Plaintiffs, Jeffrey A. Hazelton and Ranelle Hazelton, husband and wife (hereinafter "Hazelton"). For the reasons stated herein, we grant the Preliminary Objection that the Complaint is legally insufficient and Dismiss the Complaint with prejudice.

FACTUAL BACKGROUND

On August 5, 2011, Hazleton filed an action against IMLCA which consisted of a variety of claims arising out of the

purported publishing of the Hazleton name¹ on an association website as a result of alleged delinquent association dues. These claims included: Count I - a claim for violation of the Pa. Fair Credit Extension Uniformity Act; Count II - a claim for Invasion of Privacy; Count III - a claim for False Light; and Count IV - a claim for Nuisance. IMLCA filed Preliminary Objections to the entire Complaint on the basis that Plaintiffs failed to allege facts sufficient to legally support each and every count set forth in the Complaint. Hazleton countered with their own Preliminary Objections to the Preliminary Objections of IMLCA. On December 30, 2011 Judge Richard Webb, without Opinion, denied Hazleton's Preliminary Objections in their entirety but granted the Preliminary Objections of IMLCA in their entirety. As a result of the Court granting the objections of IMLCA, the Plaintiffs were directed to file an Amended Complaint² within thirty days of the date of the filing of that Order and if the Amended Complaint was not filed, it would result in the dismissal of the case with prejudice.

¹ While both Plaintiffs, husband and wife, filed separate actions as a result of the actions of the Defendant, only Jeffrey A. Hazleton's name was included in the publication, not that of Ranelle Hazelton.

² The rationale for this order is presumably based upon the Court's finding that the Plaintiffs failed to allege facts sufficient to support each count contained in their original Complaint, however, it also gave the Plaintiffs an opportunity to cure that deficiency by the filing of the appropriate Amended Complaint.

Plaintiffs filed their "First Amended Complaint" on January 26, 2012. In this Complaint, Plaintiffs eliminated the claims of Invasion of Privacy, False Light and Nuisance. They renumbered their counts and identified two separate claims against IMLCA, one by each Plaintiff, for alleged violations of the Pa. Fair Credit Extension Uniformity Act. On February 16, 2012, Defendant, IMLCA filed timely Preliminary Objections to this First Amended Complaint, claiming that the new/additional averments set forth in the Complaint in Counts I and II, were still legally insufficient to support violations of the Act. Additionally, IMLCA raised a second issue regarding the standing of Plaintiff, Ranelle Hazleton, to maintain this lawsuit even if her claim withstood the legal insufficiency argument.

The objections, having been briefed and argued by the parties, are now ripe for disposition by this Court.

DISCUSSION

At the outset, it should be noted that the Pennsylvania Fair Credit Extension Uniformity Act³ establishes what shall be considered unfair methods of competition and unfair or deceptive acts or practices with regard to the collection of debts.⁴ §2270.4(b) of the Act sets forth the nature and criteria for

³ 73 P.S. §2270.2.

⁴ 73 P.S. §2270.1 et seq.

ascertaining the types of alleged unfair or deceptive debt collection acts or practices under this Act if committed by a creditor. In particular in the case at bar, Plaintiffs allege the IMLCA violated §2270(4)(b)(iii) in that they published the name of Plaintiff, Jeffrey A. Hazelton on it's website and identified him as a "consumer who allegedly refuses to pay a debt". This, Plaintiffs alleged, violated the Act and Defendant should be held accountable as a result. However, by virtue of the averments in the initial Complaint, it was determined by Judge Webb that the legal insufficiency of that filing warranted the grant of Defendant's Preliminary Objections. Judge Webb did, however, allow Plaintiffs to "cure the insufficiencies" by filing an Amended Complaint, which they have done. Before this Court determines whether or not the Plaintiffs have added sufficient factual averments to survive the second round of Preliminary Objections, a brief discussion of the Doctrine of Stare Decisis is appropriate here.

Back on December 30, 2011 when Judge Webb granted Defendant's Preliminary Objections, he obviously opined that Plaintiff's original Complaint did not provide a legally sufficient basis upon which Plaintiffs could sustain their various claims against IMLCA. We further believe that Plaintiffs likewise felt that they could not sustain certain claims in the original Complaint due to the legal insufficiency

issue, as they have removed certain claims for Invasion of Privacy, False Light and Nuisance from the Amended Complaint. This leaves the claims for alleged violations of the PFCEUA as the only remaining claims. The objections raised this time by the Defendant were to the issue of whether or not the Amended Complaint is likewise legally sufficient to qualify the "assessment" allegedly owed to IMLCA by Plaintiff, Jeffrey A. Hazelton as the type of debt that the PFCEUA was designed to address. By virtue of Judge Webb's ruling in granting all Preliminary Objections, the Webb Court found that the Plaintiffs were legally deficient in establishing an appropriate factual or legal basis to pursue the claims for a violation of the PFCEUA as a result of the assessment not being the type of debt that the PFCEUA addressed.⁵ Since this Court has already made a preliminary ruling on this issue, we are bound by that decision by virtue of the Doctrine of Stare Decisis. Under this Doctrine, a conclusion reached in one matter (the first set of Preliminary Objections testing the sufficiency of the claims regarding the alleged PFCEVA violations) is applicable to future substantially similar matters (a second set of Preliminary

⁵ In the case of Pollice v. National Tax Funding, L.P. , 225 F.3rd 379 (3rd Circuit, 2000) the Court found that property taxes are not "debts" under the Act as they arose not from the purchase of the property but from the fact of ownership.

Therefore, there was no transaction for purposes of the FDCPA. By analogy, homeowner's dues or assessments likewise are not assessed against a property owner by virtue of their purchase of real estate but because they in fact own it.

Objections, this time to the Amended Complaint but still challenging the legal sufficiency of the filing). ARIO v. Reliance Insurance Company, 602 Pa. 490,505 (2009). Thus, we are called upon first to ascertain whether this second set of Preliminary Objections deal with "substantially similar matters" as those which the first Preliminary Objections applied. We find that they do and follow the Doctrine of Stare Decisis and accept the decision of Judge Webb vis-à-vis the legal insufficiencies in the first Complaint. However, our inquiry doesn't end there as the Plaintiffs filed an Amended Complaint in an attempt to overcome those legal insufficiencies. We must now determine whether or not the averments set forth in the Amended Complaint are legally sufficient to allow this case to move forward.

As previously stated, Judge Webb accepted the arguments proffered by IMLCA that the assessments were not "debts". Nothing the Plaintiffs have done in amending their Complaint changes the definition or characterization of "debt" and an assessment of this nature does not fall within that definition. There is no dispute that it was the alleged delinquency status of the assessment that was published on the website of IMLCA. Accordingly, we are still of the opinion that since the Webb Court determined that an assessment is not a debt as defined or contemplated in the Act, and Plaintiffs have not convinced us

otherwise in their Amended Complaint, we conclude that they are once again legally deficient in their claims and the Preliminary Objections must be sustained⁶

Accordingly, we enter the following:

⁶ By the sustaining of the Preliminary Objections to both Counts, it renders moot the Defendant's Preliminary Objections to Plaintiff, Ranelle Hazleton's claim wherein Defendant argued Plaintiff, Ranelle Hazleton, has no standing to assert a claim in the first instance as it was her husband's name only (and not hers) that is alleged to have been published on the IMLCA website in violation of the PFCEUA.

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ORDER

AND NOW, this 18th day of July, 2012, upon consideration of the Preliminary Objections of Defendant, Indian Mountain Lake Civic Association, the briefs lodged and after argument held, it is hereby ORDERED and DECREED that the Preliminary Objection in the nature of a motion based on the legal insufficiencies of the pleadings are SUSTAINED and the Complaint is DISMISSED with prejudice. The Preliminary Objection challenging the standing of Ranelle Hazleton to pursue her claim is DENIED as moot.

BY THE COURT:

Joseph J. Matika, Judge