[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13842

D.C. Docket No. 6:15-cv-01043-PGB-TBS

LIZNELIA BAEZ,
on behalf of herself and all others similarly situated,

Plaintiff - Appellee,

versus

LTD FINANCIAL SERVICES, L.P.,
a Texas Corporation,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(December 7, 2018)

Before MARCUS, NEWSOM and EBEL,[*] Circuit Judges.

PER CURIAM:

Appellant LTD Financial Services, L.P., asks us to reverse a jury verdict rendered in favor of Appellee Liznelia Baez. In essence, LTD contends that Baez's legal theory did not match the Florida law that underlay her federal Fair Debt Collection Practices Act claim. We find no basis for upsetting the jury's verdict. LTD had timely notice of both the applicable law and Baez's legal theory of the case, and it cannot point to any prejudice that it suffered as a result of any supposed mismatch between the applicable law and Baez's theory. We therefore **AFFIRM** the judgment of the district court.

I

Liznelia Baez received a letter from LTD concerning credit-card debt that had been referred to LTD for collection. The letter explained, in part, that "[t]he law limits how long you can be sued on a debt" and that "[b]ecause of the age of this account, you will not be sued." But the letter also made an offer to settle the debt for a reduced amount if Baez made a series of partial payments pursuant to a

[*] Honorable David M. Ebel, United States Circuit Judge for the Tenth Circuit, sitting by designation.

payment plan. Attached to the letter was a payment coupon that the recipient was to include with any partial payment made on her account.

Baez brought a class-action suit alleging violations of the Fair Debt Collection Practices Act. In her complaint, she claimed that under Florida law "paying even a small amount on a time-barred debt could 'revive' the debt" such that LTD could sue for the entire balance. Because LTD's collection letter failed to disclose that fact, Baez's theory went, the letter was misleading, unfair, and deceptive such that it ran afoul of the FDCPA.

Florida law is actually a little different. Under Florida Statute § 95.051, a partial payment of the sort invited by LTD's collection letter will toll the statute of limitations for *non*-time-barred debt.[1] Alternatively, § 95.04 addresses time-barred debt, and requires a written and signed promise to pay—rather than a partial payment—in order to "revive" liability.[2] Here, the trouble arose when, in her complaint, Baez seemed to conflate the two statutory provisions and assert that a partial payment, without more, could revive a time-barred debt. That's not quite right, as LTD points out. Even so, the record shows that LTD had timely notice,

[1] Florida Statute § 95.051(1) states, "[t]he running of the time under any statute of limitations . . . is tolled by . . . [t]he payment of any part of the principal or interest of any obligation or liability founded on a written instrument."

[2] Florida Statute § 95.04 requires that "[a]n acknowledgment of, or promise to pay, a debt barred by a statute of limitations must be in writing and signed by the person sought to be charged."

before trial began, both of the fact that Baez was proceeding under § 95.04 and of Baez's theory of the case. Furthermore, LTD has to this date—indeed, as recently as oral argument before us—been unable to point to any prejudice that it suffered as a result of Baez's inartful pleading.

When the district court denied LTD's pretrial motion for reconsideration of its order converting LTD's motion for judgment on the pleadings to a motion for summary judgment, the court held that Baez made a "clear and consistent enunciation of her legal theory of liability from the beginning of [her] case" under § 95.04, notwithstanding her complaint's mistaken reference to a case under § 95.051.[3] In denying LTD's reconsideration motion, the district court noted that § 95.04 underlay Baez's case and that *both* parties had relied on a line of § 95.04 cases in their arguments at summary judgment. Addressing the same argument that we are now confronted with—that Baez was traveling under an incorrect legal theory—the court concluded that LTD's position was "untenable" and declined to "enter summary judgment in its favor due to [Baez's] singular mis-citation of legal authority."

If the summary-judgment orders weren't enough, LTD got further notice of Baez's theory in the joint pre-trial statement. Both parties made statements there

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[3] *See Cadle Co. v. McCartha*, 920 So. 2d 144 (Fla. 5th Dist. Ct. App. 2006).

acknowledging that the debt was time-barred, and Baez alleged that LTD "should have informed the consumer that providing a partial payment could revive the collector's ability to sue." The stipulation's repeated description of the debt as time-barred naturally places this suit under § 95.04, which governs time-barred debt. Bottom line: Although the complaint referenced a case decided under § 95.051 regarding non-time-barred debt, by the time of summary judgment—and certainly before trial—all knew that this was a § 95.04 case. Although Baez might not have made the argument that a "partial payment" made pursuant to LTD's collection letter would constitute a § 95.04-compliant signed writing (for instance, via return of the payment coupon with a signed check) quite as clearly as LTD would prefer, the district court carefully—and correctly—told the parties and the jurors that the case fell under § 95.04. Based on the evidence presented, a reasonable jury properly instructed regarding § 95.04's requirements (as this jury was) could find liability in this case. We find no sound basis for second-guessing the jury's determination here.

Tellingly, LTD does not argue that it suffered any real prejudice because of confusion about Baez's legal theory. LTD never asked for additional discovery or for the trial to be postponed. Nor did it tell the district court that it was harmed in any way by the court's interpretation of Baez's claim. LTD's fundamental complaint seems to be that between the filing of the complaint and the end of trial,

Baez's legal theory evolved from "a partial payment can revive liability for time-barred debt" to "the partial payment invited here can constitute a written, signed acknowledgement sufficient to revive liability for a time-barred debt." But this sort of evolution occurs in virtually every case; rarely will a case proceed all the way through trial without some metamorphosis. Here, where LTD can point to no injury, we affirm the district court's judgment in favor of Baez.

II

LTD appealed myriad other issues. The majority of its contentions are meritless, and we find no need to address them in detail. For completeness, however, we briefly address—and deny—LTD's laundry list of arguments.

First, the district court did not err when it denied LTD's motion for judgment on the pleadings, nor did it err when it converted that motion into a motion for summary judgment. If a motion to dismiss requires a district court to look outside the pleadings, as the court had to do here, the motion should be converted into a Rule 56 motion for summary judgment. *See Starship Enters. of Atlanta, Inc. v. Coweta Cty., Ga.*, 708 F.3d 1243, 1252 n.13 (11th Cir. 2013). And, if there was no error in the conversion, then there is nothing to review. A motion for summary judgment cannot be reviewed or appealed after a case proceeds to trial. *Lind v. United Parcel Serv., Inc.*, 254 F.3d 1281, 1286 (11th Cir. 2001) ("We

… will not review the pretrial denial of a motion for summary judgment after a full trial and judgment on the merits.").

Next, the district court did not err by giving the jury an accurate statement of Florida law in a jury instruction. LTD concedes that the jury instruction that it now contests correctly states the law; it claims, however, that the instruction inaccurately reflects Baez's legal theory—because it references partial payment rather than a signed writing. But as already explained, LTD had timely notice of both Baez's theory and the applicable Florida law through the entirety of the trial, and giving the jury an instruction that properly explained Florida Statute § 95.04 was clearly not an error.

LTD also raises six arguments regarding the denial of its Rule 50 motion for judgment as a matter of law: (1) that Baez submitted a defective legal theory (which we will not address again here); (2) that the evidence was insufficient to establish that the obligations were "debt" as defined by the FDCPA; (3) that the evidence was insufficient to establish that Florida law applied; (4) that even if Florida law applied, the evidence was insufficient to establish that the debts were time-barred; (5) that the inclusion of required language in the collection letter shows FDCPA compliance; and (6) that LTD cannot be required to provide legal advice in collection letters to debtors. All six of these claims are meritless.

Having considered them carefully, we reject them. The district court did not err in denying LTD's Rule 50 motion.

Finally, LTD presents a number of contentions under the class-certification umbrella. LTD (again) alleges that the debt was not proven to be consumer debt for each class member, that the district court abused its discretion in concluding that each account was time-barred, that the district court erred in concluding that the proposed classes were manageable, and that Baez did not show she would be an adequate class representative. We cannot say that the district court abused its discretion in certifying the class. *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1305 (11th Cir. 2012).

The judgment below is **AFFIRMED**.