

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ZACHARY LANGENDORFER,	:	
	:	
Plaintiff,	:	NO: 1:10-CV-00797
	:	
v.	:	
	:	OPINION AND ORDER
WILLIAM ROBERT KAUFMAN,	:	
et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on Defendants William Robert Kaufman and Kaufman & Florence's Motion for Certification to Appeal Interlocutory Order (doc. 26), Plaintiff's Response in Opposition (doc. 29), and Defendants' Reply (doc. 30). For the reasons indicated herein, the Court DENIES Defendants' motion.

I. Background

Plaintiff defaulted on a car loan that he took out in 2005 (doc. 9). His car was repossessed and sold, leaving a balance on the promissory note (Id.). So as to collect on the balance due, Defendants, an attorney and a law firm, brought a debt collection action in Warren County, Ohio, on February 19, 2009, seeking \$6,547.11 plus costs (Id.). Plaintiff's loan contract was executed in Clermont County, Ohio, and Plaintiff has resided in Clermont County at all times relevant to this case (Id.). As such, Plaintiff contends there is no real dispute that Defendants improperly filed their collection action in the wrong county, which is a violation of the Fair Debt Collection Practices Act,

("FDCPA"), 15 U.S.C. § 1692i(a)(2). Plaintiff also alleges that Defendants' actions amount to a violation of the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 et seq. (Id.).

Defendants filed their motion to dismiss contending that Plaintiff failed to file his FDCPA claim within the applicable one-year statute of limitations under 15 U.S.C. § 1692(d) (doc. 9). In their view, Plaintiff's federal claim is therefore time-barred, and the Court should therefore dismiss it, as well as Plaintiff's state law claim, because the Court should not exercise jurisdiction over the state law claim in absence of a federal claim (Id.).

By its Order of August 23, 2011, this Court denied Defendants' motion to dismiss, holding that the statute of limitations on a venue violation of the Fair Debt Collection Practices Act, 5 U.S.C. § 1692i, begins to run when the underlying state complaint is served, not when it is filed (doc. 24). The Court further found that continuing violations may extend the statute of limitations period, and that the FDCPA is subject to a discovery rule (Id.). Because the FDCPA action survived, the Court also found viable in federal court Plaintiff's state law claim pursuant to the Ohio Consumer Sales Practices Act (Id.).

II. The Parties' Contentions

Defendants now move the Court to certify pursuant to 28 U.S.C. § 1292(b) that its Order "involves a controlling question of law as to which there is substantial ground for difference of

opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation" (doc. 26). In Defendants' view, the issues regarding the statute of limitations are controlling because should the appeals court reverse the Court's Order, Plaintiff's lawsuit would be time-barred (Id.). Defendants further contend that the Court has recognized the statute of limitations question is one of first impression for this Court, that the Sixth Circuit has not yet addressed the issue, and that circuit courts are split on the issue (Id.). For these reasons Defendants contend there is therefore substantial ground for difference of opinion so that this case meets such criteria for an interlocutory appeal (Id.). Finally, Defendants contend an immediate appeal would materially advance the termination of the litigation, because if the Sixth Circuit reverses the litigation would end, and time-consuming discovery, class certification issues, and trial would all be avoided (Id.).

Plaintiff responds that even if the Sixth Circuit reverses this Court's Order, his state law claims would still survive, as they were filed within the applicable statute of limitations in any case (doc. 29). As such, no matter what the outcome of any appeal, Plaintiff contends his claim will proceed in one forum or another, and an interlocutory appeal would serve only to create delay and increase costs (Id.). Plaintiff also argues, which Defendants contest (doc. 30), that Defendants' motion is only

premised on whether filing or service triggers the statute of limitations, and not on his continuing violations or discovery theories (Id.). In Plaintiff's view, there is no real substantial ground for difference of opinion regarding this Court's conclusions because this Court noted that the authorities relied on by Defendants in support of their theory that the date of filing triggers the statute of limitations "have done so only obliquely or in dicta" (Id.). Plaintiff further contends the Court's ruling comports with fundamental principles of statutory construction, due process, and the purpose of the FDCPA (Id.). Finally, Plaintiff argues that an immediate appeal would not materially advance the ultimate termination of litigation, which would, as noted above, continue in any event, regardless of forum (Id.).

III. Conclusion

Having reviewed this matter, the Court finds Plaintiff's position well-taken. In the Court's view, an interlocutory appeal would only create delay in this matter, because even if the Sixth Circuit would reverse this Court's decision, Plaintiff's state law claims would still proceed in state court. The Court finds no substantial ground for difference of opinion regarding the issue of procedural due process, essentially, that such principle would be violated if Plaintiff's FDCPA claim could be time-barred before he ever even had notice of the existence of his claim. Finally, the Court disagrees that an immediate appeal would advance the

termination of this litigation because, again, the litigation would continue in any event. to 28 U.S.C. § 1292(b).

Accordingly, the Court DENIES Defendants William Robert Kaufman and Kaufman & Florence's Motion for Certification to Appeal Interlocutory Order (doc. 26).

SO ORDERED.

Dated: October 5, 2011

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge