

MATTHEW L. CHIPEGO,
DOUGLAS BEACHEL,
CONSTANCE C. CHURCHILL and
JOSEPH W. EWING,
Plaintiffs

v.

FIVE STAR BANK,
Defendant

No. 3:16cv2475
(Judge Munley)

Before the court is the instant case which plaintiffs style as a class action. For the reasons that follow, we will *sua sponte* dismiss the class action allegations.

Plaintiff Matthew L. Chiwege instituted the instant lawsuit on December 14, 2016 with the filing of a complaint. The two-page complaint contains the words “CLASS ACTION” in the caption, but the complaint itself contains no class action allegations. (Doc. 1, Compl.).

Plaintiff bought an automobile on June 14, 2013 and financed the purchase through Defendant Five Star Bank. (*Id.* ¶¶ 3-4). The Bank

eventually repossessed the vehicle, claiming default by plaintiff. (Id. ¶ 5). The complaint alleges that the defendant bank's repossession and collection tactics violated a federal statute, to wit, 15 U.S.C. § 1692f(6). Specifically, plaintiff alleged that the bank utilized a commercially unreasonable repossession and the bank failed to follow contractual requirements for duties of a lender in repossession of a vehicle. (Id. ¶¶ 7-8). The original complaint sought damages, counsel fees and costs. (Id. ¶ 9).

As noted, this original complaint contains no class action allegations. Although not explicitly mentioned in the original complaint, jurisdiction in the federal system is evidently premised on the existence of a federal question as plaintiff bases his suit on 15 U.S.C. § 1692f(6).

Plaintiff filed an amended complaint on January 4, 2017. This complaint does not assert a cause of action under 15 U.S.C. § 1692f(6). Rather, it bases its claims on New York law and Pennsylvania law. Jurisdiction in the federal system is based upon the Class Action Fairness Act of 2005 as codified in pertinent part in 28 U.S.C. § 1332(d). (Doc. 4, Am. Compl. ¶ 4).

The amended complaint adds three plaintiffs. All of whom have

claims against the defendant bank regarding the financing of automobiles, repossession of the vehicles and the notice provided post-repossession.

(See generally Doc. 4, Am. Compl.).

Discussion

Class action proceedings are governed by certain rules, including rules found in the Local Rules of Civil Procedure of the United States District Court for the Middle District of Pennsylvania (hereinafter “L.R.”). See L.R. 23.1-23.3. These rules require placing the legend “Complaint - Class Action” next to the caption of the complaint. L.R. 23.1

Further, the rules govern the contents of the complaint. The rules require a separate section in the complaint with the heading “Class Action Allegations”. L.R. 23.2. This section of the complaint must indicate under which subsection of Rule 23 of the Federal Rules of Civil Procedure the plaintiff asserts a class action is appropriate. L.R. 23.2(a). This section must also include appropriate allegations to justify that the case is maintainable as a class action including: the size of the alleged class; the basis upon which the plaintiff or his claims are adequate to represent the class; the alleged questions of fact and law claimed to be common to the class; and allegations thought to support the finding required by Rule 23(b)

if that is the rule under which the plaintiff seeks to proceed. L.R. 23.2(b).

Plaintiff's original complaint completely failed to meet the requirements of L.R. 23.2. The Amended Complaint makes averments that seemingly attempt to meet the requirements of rule 23.2.

The Local Rules, however, contain one more requirement for class actions. "Within ninety (90) days after filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under subdivision (c)(1) of Fed.R.Civ.P. 23, as to whether the case is to be maintained as a class action[.]" L.R. 23.3.

Plaintiffs have not filed a motion for class action determination and the time for such filing has passed.¹ Thus, for failure to file a timely motion, the court *sua sponte* determines that this case will not proceed as a class action.

Four plaintiffs are involved with the amended complaint, two Pennsylvania plaintiffs seeking to enforce a Pennsylvania statute and two New York plaintiffs seeking to enforce New York statute. As we have dismissed the class action claims under which the plaintiffs asserted this

¹The plaintiff filed this case on December 14, 2016, thus the motion for class action determination was due on or about March 14, 2017.

court's jurisdiction, the plaintiffs are hereby directed to show cause within seven (7) days from the date of this order regarding the basis of this court's jurisdiction. Failure to respond timely will result in dismissal of the action.

Date: April 6, 2017

BY THE COURT:

s/ James M. Munley

**JUDGE JAMES M. MUNLEY
United States District Court**