

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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SCOTT ABBOTT,  
Plaintiff,

vs.

CAPITAL CREDIT & COLLECTION  
SERVICE, INC.,  
Defendant.

MEMORANDUM DECISION AND  
ORDER GRANTING DEFENDANT  
SUMMARY JUDGMENT ON THE  
FDCPA and UCSPA CLAIMS AND  
CONDITIONALLY GRANTING  
LEAVE TO AMEND COMPLAINT

Case No. 2:09-CV-678 TS

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On May 6, 2009, this Court converted Defendant's Motion to Dismiss Plaintiff's claim under the Fair Debt Collections Practices Act (FDCPA) and the Utah Consumer Sales Practices Act (UCSPA) on the grounds that those Acts apply only to consumer debts and the debt at issue in this case is a commercial debt incurred for Plaintiff's business.

In response, Plaintiff now concedes that the FDCPA does not apply, abandons his claim under the UCSPA, and seeks leave to amend the Complaint to add a new claim.

Defendant conditionally stipulates to leave to amend because Plaintiff recently filed

a new case in state court that is identical to the proposed Amended Complaint in the present case. Defendant represents that the parties agree to allow the amended complaint to go forward in the present case if the new state court complaint is dismissed.

The Court finds that Plaintiff having conceded that the FDCPA does not apply and tacitly conceding his UCSPA claim, the Court finds that there are no genuine issues of material fact and Defendant is entitled to judgment as matter of law on those claims because the debt at issue is not a consumer debt.


Because leave to amend should be liberally granted at this early stage of the case, the Court will grant leave to amend based on the parties's stipulation to the dismissal of the identical claim in new state court action. However, because it would be waste of judicial resources and an unnecessary expense to the parties to have the identical claim in two courts, if Plaintiff chooses to go forward on his state court case, no leave to amend is required. It is therefore

ORDERED that Defendant's Motion to Dismiss (Docket No. 7), now converted to a summary judgment motion, is GRANTED and judgment shall enter in favor of Defendant and against Plaintiff on his first and second causes of action. It is further

ORDERED that Plaintiff's Motion for Leave to Amend Complaint (Docket No. 11) is GRANTED IN PART. Plaintiff may file an amended complaint herein within fourteen days following the entry of the order provided that Plaintiff first file a copy of the Notice of dismissal of the identical claims in the state court action. If Plaintiff does not file such a notice within fourteen days, leave to amend is denied because Plaintiff will be maintaining the identical claims he seeks to add to this case in a case pending in another court. If such notice is not filed within fourteen days, this case shall be closed.

DATED June 15, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge