NOT FOR PUBLICATION WITHOUT APPROVAL OF THE APPELLATE DIVISION
COMMITTEE ON PUBLICATION

GEORGINA C. SANDOVAL and TODD M. NORTH, on behalf of themselves and those similarly situated,

Plaintiffs,

v.

MIDLAND FUNDING, LLC; MIDLAND CREDIT MANAGEMENT, INC.; and JOHN DOES 1 to 10, (fictitious names unknown),

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-2920-22

Judge Anthony V. D'Elia

Civil Action

OPINION

FILED

JUN 09 2023

ANTHONY V. D'ELIA, J.S.C.

Decided on: June 9, 2023

The Defendant moved to dismiss Plaintiff's Complaint and Plaintiff's Class Action Claims and also their individual claims. After hearing Oral argument and considering issues, the Court issues the following Opinion.

PROCEDURAL HISTORY.

This State litigation is premised upon Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. See. 1692 et seq. The Plaintiffs Complaint was filed by Georgina Sandoval and Todd North, individually and on behalf of a class of individuals who were sent "N001 form letters" ("Letter") by the Defendant Midland Funding LLC and Midland Credit Management Inc. ("Midland" or "Defendants") between May 17, 2017, and January 7, 2019.

Plaintiffs allege that the Letter was misleading as follows: "You are hereby notified that a negative report on your credit record may be submitted to a credit reporting agency if it failed to meet the terms of your credit obligations". Plaintiffs' claims that this statement was false because, prior to sending the Letter, Defendant had "already reported Plaintiff's accounts to one or more of the three major reporting agencies". Plaintiffs claim that the putative class includes approximately 11,612 account holders in the State of New Jersey.

Plaintiff initially filed this action in Federal Court in May of 2018. The Complaint was subsequently amended on a number of occasions and Plaintiff filed a motion seeking to proceed as a class action in February of 2021.

On July 7, 2021, the Hon. Susan D. Wiggenton U.S.D.J. entered an Order denying Plaintiff's motion, holding that Plaintiff's proposed class was defective. Plaintiff chose not to seek reconsideration, nor did Plaintiff appeal that decision.

On December 20, 2021, Defendant moved for summary judgment arguing, inter alia, that the Plaintiff suffered no injuries as a result of said Letters. On January 4, 2022, Plaintiff cross moved to dismiss the entire matter without prejudice – arguing that the Federal Court then lacked subject matter jurisdiction to hear Plaintiff's case because Plaintiff did not suffer any injuries.

On June 10, 2022, Judge Wiggenton granted the Defendant summary judgment and dismissed Plaintiff's Federal Complaint and also granted Plaintiff's cross-motion to dismiss with prejudice due to lack of standing.

In doing so, Judge Wiggenton in part relied upon the then recent opinion of Trans Union LLC v. Ramirez, 141 S.Ct. 2190 (2021), (decided on June 25, 2021). In that Opinion the Supreme Court clarified that a Plaintiff, to have federal standing, under

FDCPA, must demonstrate (1) "that he or she suffered an injury in fact that is concrete, particularized, and imminent; (2) that the injury was likely caused by the Defendant and (3) that the injury will likely be redressed by judicial relief". Trans Union supra, at pg. 2203.

In Trans Union, the U.S. Supreme Court clarified and rejected the proposition that a Plaintiff automatically satisfies an injury in fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right, because Article III standing requires a "concrete injury" in the context of a statutory violation. Ibid. at pg. 2205.

Significantly, that opinion was decided in June of 2021. It was not until the Defendant moved for summary judgment that the Plaintiffs then, in that Federal action, cross-moved "conceding" that they suffered no "concrete harm" in light of the Trans Union case and sought to have the Federal Complaint dismissed without prejudice. [1]

[1] It is noted that Judge Wigenton, in her June 2022 Opinion also granted the Defendant's request for summary judgment and dismissed Plaintiff's Complaint with prejudice. That portion of the Judge's ruling was an adjudication of the merits. As Judge Wigenton later, on September 1, 2022, entered judgment that the Federal Court never had jurisdiction because the Plaintiff lacked standing, the Order granting summary judgment does not have a dispositive effect on this pending State Court matter. See cases cited by Defendant in its Reply Brief of February 27, 2023, pg. 10.

On September 1, 2022, Judge Wiggenton entered a "Whereas Opinion" in which she addressed the standing issue in light of Trans Union LLC v. Ramirez. There, she confirmed that the Plaintiffs suffered no concrete harm as defined under the Trans Union Opinion to confer Article III standing but clarified (perhaps in not the clearest language possible) that "Plaintiff's Complaint is dismissed without prejudice for lack of subject – matter jurisdiction and the Court's June 10, 2022, Opinion is vacated".

DEFENDANT'S ARGUMENT

Defendant asserts that Plaintiff's claims, (both the putative class claims and the individual claims), accrued more than 5 years prior to the date this State proceeding was filed (September 1, 2022). Thus, all such claims are plainly barred by the FDCPA one year statute of limitation.

For the reasons that follow, this Court considers the arguments as to the Class Action claims and the individual claims separately. It is significant to that the Federal Court decided on July 7, 2021 to deny certification of Plaintiff's proposed class. No appeal was taken from that decision. That was not a final judgment on the merits, and relying upon the cases cited in the Reply Brief at pg. 10, this Court finds that that ruling is dispositive as to the Plaintiffs. As this Complaint was filed more than a year later in September 1, 2022, the Class action claims in this matter are time barred. While they may potentially have been tolled until July 7, 2021, the Class action claims were not then filed within a year after that date and are thus barred.

With regard to Plaintiff's individual claims, however, the Court finds that at least up and until Judge Wiggenton dismissed Plaintiff's federal case with prejudice in June of 2022, the Plaintiff was actively pursuing individual claims which had been filed within the one-year time limitation for claims which accrued in 2017. As of June of 2021, when

Trans Union was decided, perhaps the Defendant could claim that the Plaintiff lacked standing, but it was not until Judge Wigenton actually decided that issue in June of 2022 that the Plaintiff's individual claims were dismissed. (First with prejudice and then, in her "Whereas Opinion" of September 1, 2022, when Plaintiff's individual claims were dismissed without prejudice by Judge Wiggenton). Therefore, the equities are in the Plaintiff's favor for those individual claims. If Plaintiff had filed the individual claims in State Court while the Federal matter was still pending; not yet dismissed by Judge Wigenton, then clearly the State claims would have been duplicative of the then open Federal matter. Thus, the equities weigh strongly in the Plaintiff's favor so as to deny Defendant's motion to dismiss Plaintiff's individual claims by application of the statute of limitations. Indeed, Judge Wiggenton initially dismissed Plaintiff's federal Complaint with prejudice in June of 2022; then on the very same day that she reversed field and dismissed Plaintiff's Complaint without prejudice, the Plaintiff filed the within State proceeding. Thus, the Plaintiff proceeded expeditiously and, once Plaintiff's claims were dismissed without prejudice, immediately filed this action.

Plaintiff argues that the Plaintiff's class claims are tolled for statute of limitation purposes pursuant to American Pipe v. Utah, 414 U.S. 538 (1974). Plaintiff also argues that Plaintiff's individual claims are tolled. Plaintiff argues that, for equitable reasons, the statute of limitations should not bar either the class claims or the individual claims of Plaintiff.

CLASS ACTION CLAIMS AND TOLLING

It is well settled that tolling of class action claims ends when class certification is denied. See: Mungiello, 2016 N.J. Super, Unpb. LEXIS 2496 at *8; See: also, Staub v.

Eastman Kodak Co., 320 N.J. Super 34, 37 (App. Div. 1999) (holding that American Pipe Tolling applies from the filing of putative class action until "denial of class certification").

It is undisputed that Judge Wiggenton denied Plaintiff class certification in the Federal matter on July 7, 2021, and that Opinion was not appealed or reversed.

While Plaintiff's counsel argues that any and all decisions by Judge Wiggenton were rendered "null and void" due to her later finding that Plaintiff did not have standing to sue, the Plaintiff provided no legal support for that argument. As noted by Defense counsel, Federal Courts have the power to issue rulings even though it ultimately lacked subject matter jurisdiction. See: E.G. Rackemann v. LISNR, Inc. 17-CV-624, 2018 U.S. Dist. LEXUS 112467 at *6 (S.D.In. July 6, 2018) (holding that a Federal Court has the power – despite lacking subject matter jurisdiction to issue an award of attorney's fees after dismissal for lack of jurisdiction); Robinson v. Hornell Brewing Co., No. 11-2183, 2012 U.S. Dist. LEXUS 176699 at *21-22 (D.N.J. December 12, 2012). (holding that Federal Court had power to issue a decision denying class certification under the Class Action Fairness Act, but then it lacked subject matter jurisdiction to continue the lawsuit because it had denied class certification).

In light of those opinions which are compelling, this Court finds that Judge Wiggenton's July 7, 2021, decision denying class certification is a binding ruling and that the Plaintiff is bound by that finding despite Judge Wiggenton deciding, in 2022, that the Federal Court lacked subject matter jurisdiction because of Plaintiff's inability to prove a concrete injury (as that term was then defined in the Trans Union Opinion).

This State action was not filed until September 1, 2022, more than one year after Plaintiff's class certification was rejected by the Federal Court. Therefore, the tolling

period for Class Certification ended on July 7, 2022; one year after the date class certification was *denied*.

Even if this Court were to assume that tolling applied to Plaintiff's class claims, the statute of limitation bars such claims under the above analysis.

The Court does not believe that China Agratech v. Resh is applicable in this matter, as argued by the Defendant.

In that matter, the Supreme Court made clear that an individual Plaintiff who did not participate in an earlier, timely filed class action, could wait out the statute of limitation to then piggyback on an earlier timely filed class action by filing a new class action claim. The Supreme Court specifically held that:

> American Pipe does not permit a Plaintiff to wait out the statute of limitations to piggyback on an earlier timely file class action. The efficiency and economy of litigation that support tolling of individual claims, does not support maintenance of untimely successive class actions...American Pipe, supra at 1806.

INDIVIDUAL CLAIMS AND TOLLING

Defendant argues tolling should not operate to permit Plaintiff's individual claims because it was the individual Plaintiffs who, in federal court, abruptly changed their position when responding to motions for summary judgment in 2022 and begrudgingly admitted that Plaintiff suffered no "concrete harm" sufficient to establish subject matter jurisdiction in federal court. Defendant points to Judge Wiggenton's comments that the Plaintiff appeared to be "forum shopping" by taking that position and obtaining a dismissal of the federal court matter without prejudice.

As noted, it was not until September 1, 2022 that the Federal Court matter was ultimately dismissed without prejudice and the Plaintiff immediately (on the same day) filed this state court action.

Plaintiff's Individual Claims also arise under FDCPA and the limitation period for such claims are one year. 15 U.S.C. sec. 1692k(d). That period is, however, subject to equitable tolling. See: Rotkiske v. Klemm, 890 F. 3d 422, 428 (3d Cir. 2018) aff'd 140 S. C. t. 355 (2019) ("We have already recognized the availability of equitable tolling for civil suits alleging an FDCPA violation").

The party who seeks to invoke equitable tolling bears the burden of establishing the factual foundation. Kelly v. Rowj, 2022 N.J. Super Unpub. LEXUS 427, at *10-11 (App. Div.) (March 16, 2022). The purpose of equitable tolling is to provide "relief from inflexible, harsh or unfair application of a statute of limitations" but, because it is an equitable principle, the doctrine "does not excuse claimants from exercising reasonable insight and diligence required to pursue their claim". Binder v. Price Waterhouse and Co., LLT., 393 N.J. Super 304, 313 (App. Div. 2007).

New Jersey State Courts have applied equitable tolling under three circumstances: (1) where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass (2) where a Plaintiff has in some extraordinary way been prevented from asserting his right and (3) where a Plaintiff has timely asserted his right mistakenly by either a defective pleading or in the wrong forum Id. at 312.

Defendant argues that the Plaintiffs pursued their federal claims for approximately two years during it was dismissed without prejudice in September of 2022 and should be barred from invoking equitable tolling because it was the Plaintiff's mistake,

stubbornness, and insistence on proceeding in federal court before abruptly changing their position and admitting that the federal court lacked subject matter jurisdiction, which caused Plaintiffs to violate the one-year statute of limitation.

The Court finds that the Plaintiff's conduct was more nuanced than that, however. Until the Trans Union Opinion (in June of 2021), it was not as clear as Defendant argues that the Plaintiff lacked the type of injury justifying subject matter jurisdiction in the federal court. And it was not until Judge Wiggenton was presented with the motions in 2022 that the issue was addressed. The federal case was not dismissed until June of 2022. Until that date, the individual Plaintiff's had engaged in extensive litigation with the Defendants and mediation and while the Trans Union Opinion of June of 2021 might have raised questions as subject matter jurisdiction in the federal court, as the matter was not dismissed without prejudice until September of 2022, the Plaintiff was reasonably pursuing the Individual claim which had been filed in Federal Court. Indeed, if the Plaintiff had filed a State complaint based upon the same allegations, before the federal matter had been dismissed without prejudice, then one could reasonably assume the Defendant would have moved to dismiss the State claim as being duplicative of the then – still pending federal matter.

Equities favor the Plaintiff for the above reasons and also because the Plaintiff immediately filed the State claims on the same day that Judge Wiggenton permitted that Complaint to be filed, by dismissing the federal matter without prejudice on September 1, 2022.

For the above reasons, equities favor the Plaintiff, and the Plaintiff has established that the statute of limitation purposes (for the individual claims only) would toll until September 1, 2022.

For the above reasons, the Plaintiff's putative class claims are dismissed by application of the statute of limitations, but Plaintiffs' individual claims will not be dismissed.

The Court will schedule a Case Management Conference to discuss further proceedings. The parties should note that the matter is now calendared as a Track 4, "Complex Commercial" matter. The parties may confer and, by consent, have it removed from the Track 4 listing and be placed into a more appropriate listing after this ruling.

So ordered,

Hon. Anthony V. D'Elia, J.S.C.