

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X
SUKRI SHRESTHA, :
 :
 Plaintiff, :
 : Civil Action No.
 v. : 3:99CV00554 (AWT)
 :
 LAURENCE P. NADEL, :
 :
 Defendant. :
-----X

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff brings this action against an attorney to redress alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. The defendant has moved for summary judgment and the plaintiff also seeks summary judgment. For the reasons set forth below, the defendant's motion is being granted and the plaintiff's motion is being denied.

I. Legal Standard

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the facts as to which there is no such issue warrant judgment for the moving party as a matter of law. Fed. R. Civ. P. 56(c). See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Gallo v. Prudential Residential Servs., 22 F.3d 1219, 1223 (2d Cir. 1994). Rule 56(c) "mandates the entry of summary judgment . . . against a party

who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." See Celotex Corp., 477 U.S. at 322.

When ruling on a motion for summary judgment, the court must respect the province of the jury. The court, therefore, may not try issues of fact. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Donahue v. Windsor Locks Bd. of Fire Comm'rs, 834 F.2d 54, 58 (2d Cir. 1987); Heyman v. Commerce & Indus. Ins. Co., 524 F.2d 1317, 1319-20 (2d Cir. 1975). It is well-established that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge." Anderson, 477 U.S. at 255. Thus, the trial court's task is "carefully limited to discerning whether there are any genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined . . . to issue-finding; it does not extend to issue-resolution." Gallo, 22 F.3d at 1224.

Summary judgment is inappropriate only if the issue to be resolved is both genuine and related to a material fact. Therefore, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. An issue is "genuine

. . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248 (internal quotation marks omitted). A material fact is one that would "affect the outcome of the suit under the governing law." Id. As the Court observed in Anderson: "[T]he materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." Id. Thus, only those facts that must be decided in order to resolve a claim or defense will prevent summary judgment from being granted. When confronted with an asserted factual dispute, the court must examine the elements of the claims and defenses at issue on the motion to determine whether a resolution of that dispute could affect the disposition of any of those claims or defenses. Immaterial or minor facts will not prevent summary judgment. See Howard v. Gleason Corp., 901 F.2d 1154, 1159 (2d Cir. 1990).

When reviewing the evidence on a motion for summary judgment, the court must "assess the record in the light most favorable to the non-movant and . . . draw all reasonable inferences in its favor." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Delaware & Hudson Ry. Co. v. Consol. Rail Corp., 902 F.2d 174, 177 (2d Cir. 1990)). Because credibility is not an issue on summary judgment, the

nonmovant's evidence must be accepted as true for purposes of the motion. Nonetheless, the inferences drawn in favor of the nonmovant must be supported by the evidence. "[M]ere speculation and conjecture" is insufficient to defeat a motion for summary judgment. Stern v. Trustees of Columbia Univ., 131 F.3d 305, 315 (2d Cir. 1997) (quoting Western World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 (2d. Cir. 1990)). Moreover, the "mere existence of a scintilla of evidence in support of the [nonmovant's] position" will be insufficient; there must be evidence on which a jury could "reasonably find" for the nonmovant. Anderson, 477 U.S. at 252.

Finally, the nonmoving party cannot simply rest on the allegations in its pleadings since the essence of summary judgment is to go beyond the pleadings to determine if a genuine issue of material fact exists. See Celotex Corp., 477 U.S. at 324. "Although the moving party bears the initial burden of establishing that there are no genuine issues of material fact," Weinstock, 224 F.3d at 41, if the movant demonstrates an absence of such issues, a limited burden of production shifts to the nonmovant, which must "demonstrate more than some metaphysical doubt as to the material facts, . . . [and] must come forward with specific facts showing that there is a genuine issue for trial." Aslanidis v. United States Lines, Inc., 7 F.3d 1067, 1072 (2d Cir. 1993)(quotation

marks, citations and emphasis omitted). Furthermore, "unsupported allegations do not create a material issue of fact." Weinstock, 224 F.3d at 41. If the nonmovant fails to meet this burden, summary judgment should be granted. The question then becomes: is there sufficient evidence to reasonably expect that a jury could return a verdict in favor of the nonmoving party. See Anderson, 477 U.S. at 248, 251.

II. Facts

The plaintiff received medical services from Anesthesia Associates of New Haven, P.C. ("Anesthesia") in connection with cardiac surgery. The plaintiff did not pay his \$4,125 bill. Anesthesia referred the matter to a debt collection firm, State Credit Adjustment Bureau, Inc. ("State Credit"). When State Credit was unsuccessful in its collection efforts, the matter was referred to the Laurence P. Nadel, P.C. (the "P.C."), a professional corporation engaged in the practice of law. The defendant ("Nadel") is the president, member, owner and sole staff lawyer of the P.C. The P.C. brought suit against the plaintiff, on behalf of Anesthesia, to obtain a judgment and collect the debt. After Nadel initiated the collection action in Superior Court, the plaintiff wrote to him, by a letter dated July 20, 1998, requesting that Nadel take no further action against him because he was in poor financial condition. When the case was not dropped, the plaintiff filed a pro se

appearance. On September 4, 1998, the court entered judgment in favor of Anesthesia, in the sum of \$4,125 plus costs, and the plaintiff was ordered to pay \$25 per week.

The plaintiff did not comply with the order for weekly payments. Nadel obtained a court order permitting execution against a bank account in the name of the plaintiff, which was served by the sheriff on the New Haven Savings Bank (the "Bank"). In accordance with Connecticut law, the Bank forwarded an exemption form to the plaintiff. On February 5, 1999, the plaintiff completed the exemption form, stating that the funds in his account were exempt because he could only afford to pay \$25 per month. Also, by a letter dated February 11, 1999, Attorney Joanne Faulkner informed Nadel that the funds in the plaintiff's bank account were exempt from execution. A copy of this letter was forwarded to Anesthesia. The day after Anesthesia and its attorney, i.e. the defendant, learned of the claimed exemption, the execution was released and the funds were made available to the plaintiff.

III. Discussion

"The FDCPA is designed to eliminate abusive debt collection practices; to insure that debt collectors who do not use abusive practices are not competitively disadvantaged; and to promote consistent state action to protect consumers against debt collection abuses. See 15 U.S.C. § 1692e. The FDCPA is

remedial in nature and should be liberally construed." Cordova v. Larson, . . . 1997 WL 280496 at *2 (D. Conn. Apr. 30, 1997).

The plaintiff claims that the defendant seized exempt funds in violation of §§ 1692(d), 1692(e)(2),(4) and (5), and 1692f(1) of the FDCPA. This claim by the plaintiff is premised on his contention that it was not necessary for him to submit an exemption form in order for the funds in his bank account to be exempt because the defendant knew or should have known that the plaintiff's funds were exempt even if no exemption form was submitted. The issue of whether, under Connecticut law, such an exemption must be claimed by the debtor, was addressed in a case previously brought by the plaintiff against State Credit concerning the very execution on a bank account at issue here. The court there stated:

Property is not automatically exempted; it may be exempted provided the debtor follows proper procedure. Connecticut provides a simple procedure for judgment debtors to claim exemption when their bank accounts are seized. See Conn. Gen. Stat. § 52-367b. When a bank receives an execution on an account, the bank is required to forward the execution and a simple exemption form to the account owner. See id. Upon receipt of such notice, the bank forwards the claim to the clerk of the court, who schedules a hearing on the matter. See id. This procedure for claiming exemptions is contrary to the assertion that exemptions are self-executing. Accordingly, debtors are required to follow the statutory requirements to claim exemptions.

[State Credit] did not violate the FDCPA by

attempting to take and keep plaintiff's exempt funds. Since exemptions are not self-executing, defendant had no reason to know that plaintiff's bank account contained exempt funds. [State Credit] is not required to rely on a debtor's assertion of his financial status, but rather is entitled to a hearing. [State Credit] did not know what property was exempt until plaintiff followed the statutory procedures to claim it. Once the exemption was properly claimed, the execution was released in a timely manner. Therefore, [State Credit] did not use any false representation or deceptive means to collect plaintiff's debt.

Shrestha v. State Credit Adjustment Bureau, Inc., 117 F. Supp. 2d 142, 145-46 (D. Conn. 2000). The plaintiff's claims against Nadel in this case rest upon the same factual allegations that were asserted in his suit against State Credit. As a matter of law, the funds were not exempt at the time of the seizure. Rather, they were funds for which an exemption could be claimed. Therefore, the defendant did not violate the FDCPA.

The plaintiff also contends that the defendant communicated with a collection agency, State Credit, about the plaintiff's debt in violation of § 1692c(b). The record shows that the defendant represented Anesthesia. Section 1692c(b) permits a communication concerning a debtor between a debt collector and the attorney for the creditor. However, even if the court were to conclude that State Credit was the defendant's client, § 1692c(b) also permits such communication between a debt collector and the attorney of the debt

collector. Therefore, the defendant is also entitled to summary judgment on this claim.

IV. Conclusion

The Defendant's Motion for Summary Judgment (Doc. #26) is hereby GRANTED. The Plaintiff's Motion for Summary Judgment (Doc. #37) is hereby DENIED. Judgment shall enter for the defendant. This Clerk shall close this case.

It is so ordered.

Dated this 21st day of March, 2001 at Hartford,
Connecticut.

Alvin W. Thompson
United States District Judge