

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NADER SALIB, :
Plaintiff, : CIVIL ACTION NO.
 : 3:01-CV-1083 (JCH)
v. :
 :
I.C. SYSTEM, INC., : JULY 24, 2002
Defendant. :

**RULING ON DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT (DKT. NO. 10)**

The plaintiff, Nader Salib, brings this case pursuant to the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq, the Connecticut Unfair Trade Practices Act (“CUTPA”), Conn.Gen.Stat. § 42-110a et seq, the Consumer Credit Reports Act (“CCRA”), Conn.Gen.Stat. § 36a-695 and the common law. The plaintiff alleges that the defendant, I.C. System, failed to properly investigate a debt allegedly owed by the plaintiff and, as a result, continued to misreport the status of the debt to consumer reporting agencies.

The plaintiff moved for the transfer and consolidation of this action with the pending case of Salib v. I.C. System, Inc., Case No. 3:99-cv-2311 (TPS) (“previously filed action”), currently before Magistrate Judge Smith on consent for

all purposes, because the two cases are based on a common nucleus of operative facts. The defendant opposed the transfer and sought summary judgment on the grounds that the plaintiff's case unlawfully splits a cause of action and that the claims brought in this case should have been brought in the previously filed action.

Unable to transfer a case to a magistrate judge for all purposes without the consent of both parties, which consent was not obtained, the court denied plaintiff's motion on May 20, 2002. For the reasons stated below, defendant's motion for summary judgment is also DENIED.

I. BACKGROUND

The plaintiff, Nader Salib ("Salib"), received chiropractic treatment from a Dr. O'Connell and was charged \$220 for the services. After an unsuccessful attempt to process the charges through Salib's insurance, Dr. O'Connell placed the debt for collection with the defendant, I.C. System, Inc. According to the defendant, the doctor represented that the debt was valid and owed and did not indicate to the defendant that Medicaid/Title XIX was involved.

I.C. System notified Salib of the debt. Salib responded by sending a letter to I.C. System, claiming that the debt was disputed. Salib informed I.C. System

thereafter via telephone that the debt was covered by Medicaid and therefore could not be collected. Both before and after this communication with Salib, I.C. System reported to credit agencies that the debt was unpaid and disputed.

In this action, Salib claims that, because the debt was covered by Title XIX, I.C. System could not collect it and therefore should not have reported it at all. Salib claims that I.C. System's failure to investigate whether or not the debt was covered by Title XIX violated its obligations under the Fair Credit Reporting Act.

In the previously filed action, Salib brought claims arising out of the same disputed debt under the Fair Debt Collection Practices Act. Ruling on plaintiff and defendant's cross motions for summary judgment, Magistrate Judge Smith held that liability under those claims hinged "upon whether the defendant knew or should have known that the information it was conveying to the credit reporting services was false." Ruling on Cross Motions, Salib v. I.C. System, Inc., Case No. 3:99 CV 2311.

II. DISCUSSION

A. The Rule Against Claim-Splitting

The rule against claim splitting is well-established. The rule "prohibits a

plaintiff from prosecuting its case piecemeal, and requires that all claims arising out of a single wrong be presented in one action.” Myers v. Colgate-Palmolive Company, 102 F.Supp.2d 1208, 1224 (D.Kan. 2000)(citations omitted). A district court has the authority, “as part of its general power to administer its docket, [to] stay or dismiss a suit that is duplicative of another federal court suit.” Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000).

The rule against claim-splitting requires that two causes of action must be joined in one suit if “the evidence necessary to prove one cause of action would establish the other.” United States v. The Haytian Republic, 154 U.S. 118, 124 (1894). The Second Circuit has held that claim splitting will lead to preclusion where “the same or connected transactions are at issue and the same proof is needed to support the claims in both suits, or, in other words, whether the facts essential to the second suit were present in the first suit.” Curtis, 226 F.3d at 139. A dispositive motion based on improper claim-splitting “need not—indeed, often cannot—wait until the first suit reaches final judgment.” Hartsel Springs Ranch v. Bluegreen Corp., No. 00-B-1653, 2002 WL 1554456 at *3, n.1 (10th Cir. July 16, 2002). As a result, “in the claim-splitting context, the appropriate inquiry is

whether, assuming that the first suit were already final, the second suit could be precluded pursuant to claim preclusion.” Id.

“Because of the obvious difficulties of anticipating the claim or issue-preclusion effects of a case that is still pending,” a district court has a number of options when faced with duplicative litigation, including to “stay the second suit, dismiss it without prejudice, enjoin the parties from proceeding with it, or consolidate the two actions.” Citibank, 226 F.3d at 138. If claim-splitting is involved, simple dismissal is also appropriate because “plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.” Id. at 138-39.

B. Salib’s claims under the FCRA and the FDCPA

In the two lawsuits pending before this district court, Salib has made substantially similar, though not identical, allegations against I.C. System. The material facts forming the basis for liability in both actions are intertwined. In this action, brought under the Fair Credit Reporting Act (FCRA), liability hinges on whether or not I.C. System failed to conduct an investigation with respect to Salib’s claim that the debt was not owing. I.C. System’s obligation to investigate under the

FCRA is not triggered unless a credit reporting agency, not the plaintiff, notified it of the dispute. Young v. Equifax Credit Information Services, Inc., No. 00-31254, 2002 WL 1277584 at *7 (5th Cir. June 11, 2002).

In the previously filed action, liability under the Fair Debt Collection Practices Act (FDCPA) depends on whether the defendant knew or should have known that the information it was conveying to the credit reporting services was false. A number of factors, including whether or not a credit reporting agency notified I.C. System of the dispute, could potentially affect the determination of liability under the FDCPA.

As a result, it is not possible for the court to anticipate whether the facts necessary to prove plaintiff's cause of action under the FCRA will be established in the context of his FDCPA claim. Therefore, the court cannot determine whether "the facts essential to the second suit [are] present in the first." Curtis, 226 F.3d at 139. Because the court cannot predict the preclusive effect of the previously filed action involving plaintiff and defendant, defendant's motion for summary judgment (Dkt. No. 10) is DENIED.

III. CONCLUSION

For the reasons stated above, defendant's motion for summary judgment (Dkt. No. 10) is DENIED. Because the previously filed action may have a preclusive effect on this case, however, the court hereby orders this case, pending the outcome of the previously filed action, dismissed without prejudice to the plaintiff moving to reopen within 30 days following judgment in the previously filed action.

SO ORDERED

Dated at Bridgeport, Connecticut this 24th day of July, 2002.

_____/s/_____
Janet C. Hall
United States District Judge