

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Gamble :  
 :  
v. : No. 3:02cv693(JBA)  
 :  
Citifinancial and :  
Landers :

Ruling and Order

Plaintiff Barbara Gamble commenced this lawsuit on April 19, 2002 (at least the thirty-second suit she has filed in the District of Connecticut since January 7, 2002, see Ruling on IFP [Doc. #2] at 1-2) against Defendants Citifinancial and Paula Landers, alleging fraud, breach of contract, and violation of right to privacy and confidentiality all in connection with defendant's use of personal information contained in plaintiff's consumer credit report in making plaintiff an offer of pre-approved credit. Although Ms. Gamble has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action, the Court concludes that sua sponte dismissal is mandated by 28 U.S.C. § 1915(e)(2)(B) because Ms. Gamble's sole allegation implicating the Court's original jurisdiction fails to state a claim on which relief may be granted. As to Ms. Gamble's claims under state statutory or common law (including fraud, breach of contract, and invasion of

privacy), the Court declines supplemental jurisdiction under 28 U.S.C. § 1367(c)(3), noting that there is no basis stated in the complaint for diversity jurisdiction under 28 U.S.C. § 1332.

## **I. Factual Background**

Ms. Gamble's complaint lists both herself and defendant Ms. Landers as residents of Connecticut. Compl. ¶¶ A1-A2. Under the heading "Jurisdiction", Ms. Gamble drew a line and wrote nothing. Id. ¶ B2. Describing the nature of her case, Ms. Gamble states:

"Breach of Contract and Invasion of the Right to Privacy.... Citifinancial, Inc. ... collected non-public personal information about me ... which information is contained in my consumer credit report with a credit reporting agency and ... used [it] ... in connection with [an] offer of credit....

Citifinancial mailed to me a pre-approved account statement which shows that a ... \$5,500 ... loan has been pre-approved for my immediate use.... Most businesses want to please their customers and will do what they can to make sure that you're satisfied....

I have acknowledge[d] that, for a fee, businesses can look at these records and use the information to decide whether to give you credit.... However, if access to non-public personal information about you to those businesses who need only to know that information to provide products or services to you, but has fail[ed] to meet all of its conditions is known as 'embezzlement' as well as 'fraud' and is a invasion of the right to privacy and confidentiality.

Id. ¶ C. Ms. Gamble attached to her complaint Citifinancial's "Pre-Approved Account Statement" dated April 8, 2002 and corresponding letter signed by Ms. Landers as Branch Manager for Citifinancial. The letter includes the following text:

The enclosed statement shows that a \$5,500 loan has been pre-approved for your immediate use. This pre-approved status means no lengthy application is required. Simply complete the attached Confirmation of Receipt and return it in the enclosed return envelope.

The "Pre-Approved Account Statement" contains this "Special Notice": "BARBARA A. GAMBLE - Our central office has authorized me to offer you a pre-approved loan for \$5,500." The reverse side sets out the "Terms of Pre-Approved Offer" in smaller print, stating,

Information contained in your consumer credit report with a credit reporting agency was used by us in connection with this offer of credit. You received this offer because that credit report indicated that you satisfied the criteria for creditworthiness used to select consumers to receive this offer. Among other criteria to qualify for this offer, you must in fact have the credit qualifications on which the offer was based, you must be the owner of residential real estate property in which you live, payments must be current on any first mortgage loan secured by your residential real property, and you must have a minimum verifiable annual income of \$20,000. The credit may not be extended, if, after you respond to the offer, we determine that you do not meet the criteria used to select your name for this offer, or any applicable criteria bearing on creditworthiness, or you have opened any loan account with us in the last 75 days.

## **II. Analysis**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted...." 28 U.S.C. § 1915(e)(2)(B). The Court "construe[s] pro se complaints liberally and [applies] a more flexible standard in determining the sufficiency of a pro se complaint than [it] would in reviewing a pleading submitted by counsel." Platsky v. C.I.A., 953 F.2d 26, 28 (2d Cir. 1991) (citing, inter alia, Haines v. Kerner, 404 U.S. 519, 520-521 (1972)). Thus, "when an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte under § 1915 (e)(2)(B)(i) even if the complaint fails to 'flesh out all the required details.'" Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998)(quoting Nance v. Kelly, 912 F.2d 605, 607 (2d Cir. 1990) (per curiam). The Court exercises caution in dismissing a case under § 1915(e) because a claim that the court perceives as unlikely to be successful does not necessarily fail to state a claim. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (Although "it may appear on the face of the pleadings that a recovery is very remote and unlikely[,] that is not the test" for whether a complaint states a claim.); Neitzke v. Williams, 490 U.S. 319, 329 (1989).

Ms. Gamble's complaint is difficult to understand, but mindful of the liberal pleading standards applicable to pro se complaints, the Court construes Ms. Gamble's complaint broadly to conclude that, in addition to possibly alleging state statutory and common law actions, her complaint alleges a violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 (2002), which provides a private right of action against entities requesting credit information that fail to follow the provisions of the FCRA with respect to the release and use of consumer credit information. See 15 U.S.C. §§ 1681b(f) and 1681n and o. Under the FCRA, there are circumstances pursuant to which a consumer's credit report may be obtained without the consent or even the knowledge of the consumer. See e.g., 15 U.S.C. § 1681b(c) and (f); see also Cole v. U.S. Capital, Inc., No. 02C1858, 2002 WL 31415736 (N.D. Ill. Oct. 25, 2002), Swift v. First USA Bank, No. 98C8238, 1999 WL 965449, at \*1-5 (N.D. Ill. Sept. 30, 1999).

15 U.S.C. § 1681b(c)(1)(B) provides:

A consumer reporting agency may furnish a consumer report relating to any consumer ... in connection with any credit ... transaction that is not initiated by the consumer only if -

(B)(i) the transaction consists of a firm offer of credit ...;

(ii) the consumer reporting agency has complied with subsection (e) of this section; and

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e) of this section, to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph.

15 U.S.C. § 1681a(1)(1)(A) and (B) in turn provide:

The term "firm offer of credit ..." means any offer of credit ... to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit ..., to meet specific criteria bearing on credit worthiness ... that are established -

and (A) before selection of the consumer for the offer;

(B) for the purpose of determining whether to extend credit ... pursuant to the offer.

(2) Verification -

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness ... of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness ....

Plaintiff's complaint could be read to allege the following violation of the FCRA: 1) Citifinancial obtained

information in plaintiff's consumer report from a credit agency without plaintiff's knowledge or consent and then used the information to determine that she was eligible for and to make her a pre-approved offer of credit; 2) Citifinancial had no right to obtain and use plaintiff's credit information unless it first paid plaintiff a fee; and 3) Citifinancial did not pay plaintiff any fee in exchange for obtaining and using the information in consumer report.

So construed, plaintiff's allegations fail to state a claim under the FCRA because defendant's pre-approved account statement and attendant letter clearly establishes that defendant's pre-approved offer of credit constitutes a "firm offer" as defined by the FCRA. Taken together, the documents appended to plaintiff's complaint and thus incorporated clearly reveal that: 1) Ms. Gamble was offered a pre-approved loan for \$5,500 based on information in her consumer credit report; 2) Ms. Gamble received the offer because, based on information in her consumer report, she satisfied the specific criteria generally used to select consumers to receive the offer; 3) The loan offer was further conditioned on plaintiff being determined, based on information in her response to the offer, to meet specific criteria bearing on credit worthiness (including, among other things, actually having the credit

qualifications on which the offer was based, being the owner of residential real estate property in which one lives, and having a minimum verifiable annual income of \$20,000); and 4) Such further conditions were established before the selection of plaintiff for the offer and for the purpose of determining whether to extend credit pursuant to the offer. Accordingly, defendants' pre-approved offer of credit is a "firm offer" as defined by the FCRA, and, as such, defendants were permitted by FCRA to obtain plaintiff's credit information without her knowledge or consent and to use such information without payment of a fee to plaintiff for the purpose of evaluating plaintiff's eligibility for and making of the loan offer, and therefore plaintiff's complaint must be dismissed.

Because the Court cannot "rule out any possibility, however unlikely it might be, that an amended complaint would succeed" in stating a claim under some federal consumer protection statute, Ms. Gamble will be afforded one opportunity to file an amended complaint no later than twenty days from the date of this order. Gomez v. USAA Federal Sav. Bank, 171 F.3d 794, 795-96 (2d Cir. 1999). Pro Se plaintiff Gamble is advised that any such amendment must comply with Fed. R. Civ. P. 8(a)(1), which requires "a short and plain statement of the grounds upon which the court's jurisdiction



depends . . . . "

**III. Conclusion**

For the reasons set out above, plaintiff's complaint [Doc. #3] is DISMISSED, with leave to file an Amended Complaint within twenty (20) days of the date of this Order. It is certified that any appeal in forma pauperis from this order would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a).

IT IS SO ORDERED.

/s/

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Janet Bond Arterton, U.S.D.J.

**Dated at New Haven, Connecticut, this 19<sup>th</sup> day of November, 2002.**