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KENNETH J. MURPHY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS, OH

Grover C. Lewis, et al.,	:	
	:	
Plaintiffs	:	Case No. C-2-97-1281
	:	
v.	:	Magistrate Judge Abel
	:	
Michael S. Marlin, et al.,	:	
	:	
Defendants	:	

OPINION AND ORDER

Plaintiffs Grover Lewis, Helen Lewis, and Michael K. Fox bring this putative class action under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692k, alleging that defendants Michael S. Marlin and Coshocton County Memorial Hospital have used unfair and deceptive debt collection practices in violation of the FDCPA and the Ohio Consumer Sales Practices Act ("OCSPA"), Ohio Rev. Code 51345.01, et seq. This matter is before the Court on plaintiffs' July 2, 1998 motion for partial summary judgment (doc. 28).

Plaintiffs argue that they are entitled to partial summary judgment against defendant Marlin on the issue of his liability under the FDCPA. Specifically, plaintiffs argue that Marlin sent them collection letters which violate 15 U.S.C. §§1692e(5), (10)

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and (11). For the reasons that follow, plaintiffs' motion is granted.

I. Facts

Defendant Marlin is an attorney licensed to practice law in the state of Ohio, and it is undisputed that he is a debt collector as defined in 15 U.S.C. §1692a(4).¹ On June 9, 1998, Marlin initiated communication with plaintiffs Grover and Helen Lewis through a letter. The body of the letter stated:

The undersigned represents Coshocton County Memorial Hospital. As I believe you are aware, on May 27, 1997, Coshocton County Memorial Hospital obtained a judgment against you in the amount of \$912.81. Subsequently, a Certificate of Judgment For Lien was duly recorded with the Clerk of Courts, Coshocton County Court of Common Pleas, on June 6, 1997 placing a lien on your property in that County.

In order to collect this judgment, my client has several remedies available. These remedies include:

1. Foreclosure and sale of your home.
2. Attachment of your bank accounts and any other assets you may have.

¹For 1995 and 1996, Marlin estimated that 50-75% of the income he earned from his debt collection practice was collection work for medical providers. (Marlin Dep., p. 45.) For 1997 and 1998, Marlin estimated that it was no more than 50%. (Id.)

If at all possible, my client would like to avoid taking any of these drastic actions against you. However, they cannot permit this account to remain unpaid. Consequently, unless you contact me within seven (7) days from the date of this letter in order to make firm arrangements to pay this judgment, I will be forced to proceed with any and all of the remedies available.

(Pls.' Compl., Ex. A.) On July 22, 1997, Marlin initiated communication with plaintiff Fox through a letter nearly identical to the one sent to the Lewises.² (*Id.*, Ex. B.)

On November 25, 1997, plaintiffs filed this action. Plaintiffs allege that Marlin violated the FDCPA in several ways, including: (1) threatening to take action that could not legally be taken or that was not intended to be taken; (2) using false representations and deceptive means to collect or attempt to collect a judgment; and (3) failing to disclose that he was attempting to collect a debt and that any information he obtained would be used for that purpose, when he sent out the collection

²Plaintiffs refer to this computer-generated letter as the "foreclosure letter." (See Pls.' Evidentiary App., p. A-2; Pls.' Compl., Exs. A and B.) Plaintiffs have filed a motion for class certification pursuant to Fed. R. Civ. P. 23(a) and (b) (2) and/or (b) (3). Plaintiffs seek to certify a plaintiff class defined as all consumers who have or will receive from defendant Marlin a standard computer generated letter, i.e., the foreclosure letter, to collect on judgments entered against them in favor of defendant Coshocton County Memorial Hospital. (Pls.' Mot. for Class Certification.)

letters, See, 15 U.S.C. §1692e (5), (10), and (11). On July 2, 1998, plaintiffs filed this motion for partial summary judgment.³

II. Standard of Review for Summary Judgment

Summary judgment is governed by Rule 56(c) of the Federal Rules of Civil Procedure which provides:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

"[T]his standard provides that the mere existence of ~~some~~ alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of ~~material~~ fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986) (emphasis in original); *Kendall v. The Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984).

³plaintiffs have also filed two additional motions for partial summary judgment on the issue of Marlin's liability under the FDCPA for another standard computer-generated letter (referred to by plaintiffs as the "garnishment letter") and on the issue of Marlin's and Coshocton County Memorial Hospital's liability under the OCSPA. Additionally, **intervenors-plaintiffs** Janette Lyons and Veronica Carter **have** filed a motion to intervene. In this Order, the Court will address only the July 2, 1998 motion for partial summary judgment filed by plaintiffs Grover and Helen Lewis and plaintiff POX against defendant Marlin.

Summary judgment will not lie if the dispute about a material fact is genuine; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 247-248. The purpose of the procedure is not to resolve factual issues, but to determine if there are genuine issues of fact to be tried. *Lashlee v. Sumner*, 570 F.2d 107, 111 (6th Cir. 1978). Therefore, summary judgment will be granted "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial, . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broadcasting Systems, Inc.*, 368 U.S. 464, 467 (1962); accord, *County of Oakland v. City of Berkeley*, 742 F.2d 289, 297 (6th Cir. 1984).

In making this inquiry, the standard to be applied by the Court mirrors the standard for a directed verdict. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). *Anderson*, 477 U.S. at 250.

The primary difference between the two motions is procedural: summary judgment motions are usually made before trial and decided on documentary evidence, while directed verdict motions are made at trial and decided on the evidence that has been admitted. *Bill*

Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 745, n. 11 (1983). In essence, though, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.

Accordingly, although summary judgment should be cautiously invoked, it is an integral part of the Federal Rules which are designed "to secure the just, speedy and inexpensive determination of every action." *Celotex*, 477 U.S. at 327 (quoting Fed. R. Civ. P. 1).

In a motion for summary judgment the moving party bears the "burden of showing the absence of a genuine issue as to any material fact, and for these purposes, the [evidence submitted] must be viewed in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970) (footnote omitted); accord, *Adams v. Union Carbide Corp.*, 737 F.2d 1453, 1455-56 (6th Cir. 1984), cert. denied, 469 U.S. 1062 (1985). Inferences to be drawn from the underlying facts contained in such materials must be considered in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Watkins v. Northwestern Ohio Tractor Pullers Association, Inc.*, 630 F.2d 1155, 1158 (6th Cir. 1980).

Additionally, "unexplained gaps" in materials submitted by the moving party, if pertinent to material issues of fact, justify denial of a motion for summary judgment. *Adickes*, 398 U.S. at 157-60; *Smith v. Hudson*, 600 F.2d 60, 65 (6th Cir. 1979), cert. dismissed, 444 U.S. 986 (1979).

If the moving party meets its burden and adequate time for discovery has been provided, summary judgment is appropriate if the opposing party 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. *Celotex*, 477 U.S. at 322. The mere existence of a scintilla of evidence in support of the opposing party's position will be insufficient; there must be evidence on which the jury could reasonably find for the opposing party. *Anderson*, 477 U.S. at 251 (quoting *Improvement co. v. Munson*, 14 Wall. 442, 448 (1872)). As is provided in Fed. R. Civ. P. 56(e):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If **he does not so respond, summary judgment, if appropriate, shall be entered against him.**

Thus, "a party cannot rest on the allegations contained in his . . . [pleadings] in opposition to a properly supported motion for summary judgment against him." *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 259 (1968) (footnote omitted).

III. Discussion

A. Whether Marlin Violated 15 U.S.C. §§1692e(5) and (10).

Plaintiffs argue that Marlin violated 15 U.S.C. §§1692e(5) and (10) because he (1) threatened to take an action that could not legally be taken or that was not intended to be taken and (2) used false representations and deceptive means to collect or attempt to collect a judgment. In his June 9, 1997 letter to the Lewises and his July 22, 1997 letter to Fox, Marlin stated that Coshocton County Memorial Hospital had placed a lien on their properties and that the hospital's remedies included: (1) "foreclosure and sale of your home" and (2) "attachment of your bank accounts and any other assets you may have." Marlin further stated that he would "be forced to proceed with any and all of the remedies available" unless payment arrangements were made within seven **days**.

Ohio Rev. Code §2329.66(A) provides:

Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a

judgment or order, as follows: (1) (a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Division (A)(1)(a) of this section does not preclude, affect, or invalidate the creation . . . of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the surviving spouse or surviving minor children of the judgment debtor.

According to plaintiffs, Ohio Rev. Code §2329.66(A) (1) (a) provided a homestead exemption that prevented Marlin from foreclosing upon plaintiffs' properties because they owed Coshocton County Memorial Hospital for health care services rendered. Accordingly, plaintiffs contend Marlin violated 15 U.S.C. §1692e(5) because he could not legally bring the foreclosure actions threatened in his letters.

Marlin contends that he did not violate 15 U.S.C. §1692e(5) because (1) the language used in his letters is **not** sufficiently threatening as to constitute a violation of the FDCPA and (2) he did not threaten action that could not legally be taken because Ohio Rev. Code §2329.66(A) (1) (a) is unconstitutional.

Marlin relies upon *Kleczy v. First Federal Credit Control, Inc.*, 21 Ohio App.3d 56 (Ohio App. 1984), to argue that his letter was not sufficiently threatening as to constitute a violation of the FDCPA. See *Kleczy*, 21 Ohio App.3d at 58. In response, plaintiffs argue that *Kleczy* is not controlling and that the "least sophisticated consumer" standard must be applied instead. See *Smith v. Transword Systems, Inc.*, 953 F.2d 1025, 1028-29 (6th Cir. 1992) (finding that the "least sophisticated consumer" would not be deceived by a collection agency's letter).

The Court concludes that the least sophisticated consumer would view Marlin's letters as a threat to foreclose on plaintiffs' properties unless they made payment arrangements with Marlin within seven days. "An unsophisticated consumer, getting a letter from an 'attorney' knows the price of poker has just gone up. And that clearly is the reason why the dunning campaign escalates from the collection agency, . . ., to the attorney, who is better positioned to get the debtor's knees knocking." *Avila v. Rubin*, 84 F.3d 222, 229 (7th Cir. 1996). In his collection letter, Marlin states that his client has "several" remedies available, but he lists only two: (1) foreclosure and sale of plaintiffs' homes and (2) attachment of plaintiffs' bank accounts and any other assets they may have.

a debtor. See *Crossley v. Lieberman*, 868 F.2d 566, 571 (3d Cir. 1989) (finding attorney liable under 15 U.S.C. §§1692e(5) and (10) and stating that the phrase, "I will be compelled to proceed with suit against you" was meant to frighten the debtor into paying her debt); see also *Piples v. Credit Bureau of Lo&port, Inc.*, 886 F.2d 22, 25-26 (2d Cir. 1989) (finding violations of 15 U.S.C. §§1692e(5) and (10) and stating that the "clear import of the language, taken as a whole, is that some type of legal action . . . is about to be initiated and can be averted from running its course only by payment") .

Having concluded that Marlin threatened to foreclose on plaintiffs' properties or attach plaintiffs' assets unless payment arrangements were made with him, the Court must decide whether Marlin's assertion that Ohio Rev. Code §2329.66(A)(1)(a) is unconstitutional provides him with a defense to plaintiffs' claims under 15 U.S.C. §§1692(e)(5) and (10). Pursuant to Ohio Rev. Code 52329.66(A)(1)(a), judgment creditors holding judgment liens for unpaid medical and health care charges may not seek to foreclose the lien until the property to which the lien is attached is sold or otherwise transferred by the owner. The statute does not require, however, other judgment creditors to wait until the

property is sold or otherwise transferred by the owner before seeking to enforce and/or foreclose their judgment liens.

Marlin contends that Ohio Rev. Code §2329.66(A)(1)(a) denies judgment creditors holding judgment liens for unpaid medical and health care charges equal protection and due process under both the United States and Ohio Constitutions because the statute treats them differently than all other judgment creditors, and there is no rational basis for such disparate treatment. In making this argument, Marlin notes that a similar statute, which was enacted contemporaneously with Ohio Rev. Code §2329.66(A)(1)(a), was held to be unconstitutional for the same reason. See *Community Physical Therapy v. Wayt*, 93 Ohio App.3d 612, 615 (Ohio App. 1994) (ruling that Ohio Rev. Code §§2716.021 and 2716.051, concerning a limitation on a percentage attachment as it applies to health care services rendered or supplied, violates the Equal Protection and Due Process Clauses of the United States and Ohio Constitutions),

In response, plaintiffs argue that a statute is presumed to be constitutional and that Marlin was not free to make a threat that violated state law in the absence of a ruling that the statute was unconstitutional. Plaintiffs also note that the *Wayt* court did not rule on the constitutionality of Ohio Rev. Code §2329.66(A)(1)(a)

and that three separate Ohio courts of appeals have rejected the *Wayt* court's ruling with respect to Ohio Rev. Code §§2716.021 and 2716.051.⁴ See *St. Ann's Hospital v. Arnold*, 109 Ohio App.3d 562, 567-69 (Ohio App. 1996); *Wooster Community Hospital v. Anderson!* 108 Ohio App.3d 290, 294, 296 (Ohio App. 1996); *Lima Memorial Hospital v. Dardio*, No. 1-95-38, 1995 WL 641285, at *2 (Ohio App. Oct. 18, 1995) (unreported).

The Court concludes that Marlin's argument that Ohio Rev. Code §2329.66(A)(1)(a) is unconstitutional does not provide him with a defense.⁵ Marlin's liability under 15 U.S.C. §1692e(5) does not depend on whether Marlin believed he was not "legitimately prohibited by law" from bringing a foreclosure action against plaintiffs or whether he believed that Ohio Rev. Code §2329.66(A)(1)(a) was unconstitutional. At the time Marlin sent the collection letters to plaintiffs, Ohio Rev. Code §2329.66(A)(1)(a) clearly prohibited him from foreclosing on their properties and no Ohio court had ruled that the statute was unconstitutional. Marlin's reliance on *Wayt* is misplaced because

⁴Plaintiffs further note that the debtor in *Wayt* was *pro se* and that no brief was filed in opposition to the challenge to the statute's constitutionality.

⁵The Court notes that Marlin is not raising the "bona fide error" defense with respect to plaintiffs' claims under 15 U.S.C. §§1692e(5), (10), or (11).

the court analyzed Ohio Rev. Code §§2716.021 and 2716.051, not Ohio Rev. Code §2329.66(A)(1)(a).⁶ Accordingly, the Court concludes that Marlin's letters to the Lewises and Fox violated 15 U.S.C. §1692(e)(5) in that he threatened to take an action that could not legally be taken. *Cf. Seabrook v. Onondaga Bureau of Medical Economics, Inc.*, 705 F. Supp. 81, 84 (N.D. N.Y. 1989) (finding that debt collector's reliance on a statute that did not become effective until after a letter was sent out was not a defense to 15 U.S.C. §1692e(5)).

Plaintiffs also contend that Marlin violated 15 U.S.C. §1692e(5) because he threatened to foreclose on plaintiffs' properties or attach their assets even though he had no intention to do so. In his affidavit, Marlin states that he "has or had always intended to take any and all actions to collect debts on behalf of his clients if such actions were not legitimately prohibited by law, and if such actions were in the best interests of his clients." (Marlin Aff., ¶5.) Marlin also states that he did not bring a foreclosure action against plaintiffs Grover and Helen Lewis because he was contacted by Grover Lewis, and Marlin

⁶Although Marlin argues that the reasoning used by the *Wayt* court would also apply to Ohio Rev. Code §2329.66(A)(1)(a), Marlin has not tested his argument by challenging the **constitutionality** of Ohio Rev. Code §2329.66(A)(1)(a) through a declaratory judgment action and/or a foreclosure action.

determined that there was not sufficient equity in the Lewises' property to warrant bringing a foreclosure action. (*Id.*, ¶6.) Marlin did not garnish the Lewises' wages because neither one was employed. (*Id.*) Marlin further states that he did not take any actions against Fox because he was contacted by Fox and a payment arrangement was made with Fox's attorney. (*Id.*, ¶7.)

Plaintiffs argue that the evidence before the Court clearly demonstrates that Marlin threatened to take action against them he did not intend to take. Even though Marlin states that he "will be forced to proceed" with the available remedies unless payment arrangements with him are made within seven days, Marlin admits that: (1) he does not decide whether further action is economically feasible until after he sends out the collection letters; (2) he does not always take action within seven days of sending out the collection letters; and (3) he does not recall ever foreclosing on someone's home to collect a debt. (Marlin Dep., pp. 70-76.)

In his affidavit, Marlin states that on many occasions he has taken no action to collect a debt on behalf of his client because of the following: "(1) a payment agreement is or was made with the debtor; (2) it is or was determined that taking or attempting to

take action or further action against the debtor is or was not economically feasible and/or sensible; or (3) it is or was determined that the debtor is or was uncollectible (i.e. the debtor's location is or was unknown, the debtor has or had no assets which a creditor can reach, etc.)." (Marlin Aff., ¶4.) At his deposition, Marlin testified that he does not determine whether it is economically feasible to take action until after he sends out the collection letters:

Q. How long would it take you, for example, to find out whether it was economically feasible to take action after sending out Exhibit A or B?

A. If we were going to go full bore, I would have to order a title search, do some research as to whether or not--the amount of liens and so on and so forth to determine fully if it's economically -feasible. And in some situations I might be able to determine by the amount of the judgment that it was not depending on the circumstances.

Q. Do you recall ever doing that?

A. Doing which.

Q. Ordering a title search.

A. No.

Q. Do you recall ever checking the liens on the property to determine whether or not

it was economically feasible to go forward?

A. No.

(Marlin Dep., pp. 73-74.)

Marlin further testified that he cannot always determine whether it is economically feasible to take action or whether a debtor is collectible within seven days of sending out a collection letter:

Q. Would the information that you refer to in paragraph 4 of your affidavit, would that always be able to be completed within seven days after sending out that letter?

A. Not necessarily.

Q. Why wouldn't it necessarily be able to be completed within seven days?

A. Because sometimes I didn't have a chance to look at the file that quickly. Sometimes it requires follow-up.

(*Id.*, p. 76.) Finally, when asked why he included a seven-day limitation in the letters, Marlin testified that he "wanted [plaintiffs] to understand that this is something that now has to be dealt with." (*Id.*, p. 72.)

Viewing the evidence in the light most favorable to Marlin, the Court concludes that Marlin did not intend to foreclose on

plaintiffs' homes when he sent the collection letters. The clear import of the collection letters is that some type of legal action, either foreclosure or attachment, would be taken against plaintiffs unless firm arrangements were made within seven days. Although Marlin asserts that he intended to foreclose on plaintiffs' properties, the evidence shows that he did not determine whether foreclosure would be economically feasible or whether plaintiffs were collectible until after he sent out the collection letters. The evidence also shows that Marlin has never foreclosed on someone's home to collect a debt, that he has never ordered a title search or checked the liens on a house to determine whether foreclosure was economically feasible, and that he would not necessarily be able to determine whether foreclosure was economically feasible within seven days of sending out the collection letters.

Moreover, Marlin was aware that Ohio Rev. Code §2329.66(A)(1)(a) prohibited him from foreclosing on plaintiffs' properties to satisfy their debts to Coshocton County Memorial Hospital and that no court had ruled that the statute was unconstitutional. Accordingly, a jury could not reasonably conclude that Marlin intended to foreclose on plaintiffs' properties when he was not permitted by law to do so, he had not

determined whether it was economically feasible to do so, and he had not challenged the constitutionality of Ohio Rev. Code §2329.66(A)(1)(a) prior to sending out the collection letters. Based on the foregoing, the Court concludes that Marlin also violated 15 U.S.C. §1692e(5) by threatening to take actions against plaintiffs he did not intend to take.

Section 1692e(10) provides that "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer" is a violation of the FDCPA. Marlin knew that he was not permitted to foreclose on plaintiffs' properties, and he had no intention of foreclosing against plaintiffs within seven days of sending out the collection letters. Put simply, the threatened foreclosure action "was merely a tactic to frighten unsophisticated debtors into action." *Ogles v. Rothche*, No. 93C4183, 1993 WL 460841, *7 (N.D. Ill. Nov. 5, 1993) (unreported). Because Marlin threatened an action he could not take and he did not intend to take, the Court concludes that Marlin violated §1693e(10) as well. *See, id.; Lieberman*, 868 F.2d at 571; *Piples*, 886 F.2d at 25-26.

B. Whether **Marlin Violated 15 U.S.C. §1692e(11)**.

Prior to December 30, 1996, 15 U.S.C. §1692e(11) provided that "the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that **purpose**" was a violation of the FDCPA. The Sixth Circuit has ruled that the disclosure requirements, as set forth prior to December 30, 1996, apply to "all communications made to collect a debt," including post-judgment letters and follow-up notices. See, *Frey v. Gangwish*, 970 F.2d 1516, 1519-20 (6th Cir. 1992) (rejecting the defendant's argument that the disclosure requirements of §1692e(11) do not apply to follow-up notices).

On December 30, 1996, the FDCPA was amended to provide that "[t]he failure to disclose in the initial written communications with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector . . ." was a violation of the **FDCPA. 15 U.S.C. §1692e(11)**.

Marlin sent a letter threatening foreclosure or attachment to the Lewises on June 9, 1997, and he sent a similar letter to Fox on July 22, 1997. The amended version of §1692e(11) applies to these letters. Marlin also sent letters to Fox on October 29, 1996 and December 2, 1996. Plaintiffs filed this action on November 25, 1997. Because the FDCPA contains a one-year statute of limitations, any violation of the FDCPA based on the October 29, 1996 letter is time-barred by the statute of limitations found in 15 U.S.C. §1692k(d). The prior version of §1692e(11) applies to the December 2, 1996 letter.

Plaintiffs contend that Marlin violated 15 U.S.C. §1692e(11) in his December 2, 1996, June 9, 1997, and July 22, 1997 letters because he failed to disclose that (1) he was attempting to collect a debt and (2) any information obtained would be used for the purpose of collecting a debt. With regard to the December 2, 1996 letter to Fox, the Court concludes that Marlin violated 15 U.S.C. §1692e(11) because he failed to disclose that any information obtained would be used for the purpose of collecting a debt. See, *Frey*, 970 F.2d at 519-20.

With regard to the June 9, 1997 letter to the Lewises, the Court concludes that Marlin violated 15 U.S.C. §1692e(11) because he failed to disclose in his initial written communication with the

Lewises that any information obtained would be used for the purpose of collecting a debt. Plaintiffs' complaint alleges that Marlin "initiated communication" with the Lewises through the June 9, 1997 letter. (Pls.' Compl., ¶13.) In his answer, Marlin admitted the allegations contained in paragraph 13 of plaintiffs' complaint. (Def. Marlin's Answer, ¶13.) There is no evidence indicating that Marlin communicated with the Lewises before June 9, 1997. Although Marlin admitted in his answer that he initiated communication with Fox through the July 22, 1997 letter, the record clearly shows that Marlin's initial communication with Fox occurred prior to **July 22, 1997**. Accordingly, Marlin was not required to disclose in the July 22, 1997 letter to Fox that any information obtained would be used for the purpose of collecting a debt.

Although the Court concludes that Marlin violated 15 U.S.C. §1692e(11) by failing to disclose in the December 2, 1996 and June 9, 1997 letters to plaintiffs that any information obtained would be used for the purpose of collecting a debt, the Court concludes that he did not fail to disclose that he was attempting to collect a debt. There is no requirement that a collection letter quote "verbatim the language of §1692e(11)." *Dutton v. Wolpoff and Abramson*, 5 F.3d 649, 656 (3d Cir. 1993); see also *Piples*, 886 F.2d

at 26. If it is clear from the face of the letter that it was intended to obtain payment of a debt, then the disclosure requirement of §1692e(11) is satisfied. *Id.* The letters at issue clearly convey that Marlin is an attorney attempting to collect a judgment on the behalf of Coshocton County Memorial Hospital and that the judgment must be paid. Accordingly, Marlin did not violate 15 U.S.C. §1692e(11) by failing to disclose that he was attempting to collect a debt.

IV. Conclusion

For the reasons set out above, the Court HOLDS that plaintiffs' July 2, 1998 motion for partial summary judgment (doc. 28) is GRANTED.

Mark R. Abel
United States Magistrate Judge