

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NANCY FRANK DUNN,	:	
	:	
Plaintiff	:	Civil Action
	:	No. 03-CV-190
vs.	:	
	:	
LEHIGH VALLEY CENTER FOR SIGHT,	:	
P.C.,	:	
	:	
Defendant	:	

\* \* \*

APPEARANCES:

DAVID F. DUNN, ESQUIRE,  
On behalf of Nancy Frank Dunn

MICHAEL D. ECKER, ESQUIRE,  
On behalf of Lehigh Valley  
Center for Sight, P.C.

\* \* \*

OPINION

JAMES KNOLL GARDNER,  
United States District Judge

This matter is before the court on the Motion of Defendant Lehigh Valley Center for Sight, P.C. to Dismiss Counts One - Three of Plaintiff's Complaint, which motion was filed March 19, 2003;<sup>1</sup> and Defendant's Motion for Sanctions Pursuant to Fed.R.Civ.P. 11 filed April 23, 2003.<sup>2</sup> For the reasons expressed below, we treat defendant's motion to dismiss as a motion for summary judgment, grant the motion, dismiss plaintiff's Complaint, and deny defendant's motion for sanctions.

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<sup>1</sup> On April 2, 2003 plaintiff filed a Response to Rule 12(b)(6) Motion.

<sup>2</sup> On April 2, 2003 plaintiff filed a Response to Rule 11 Motion.

### PROCEDURAL HISTORY

The within civil action is a Fair Credit Reporting Act ("FCRA") claim, 15 U.S.C. §§ 1681-1681v, before the court on federal question jurisdiction. See 28 U.S.C. § 1331. The case was initiated on January 14, 2003 when the plaintiff filed a Complaint with this court.

The plaintiff's three-count Complaint alleges that defendant willfully violated the FCRA (Count One), that defendant negligently violated the FCRA (Count Two), and requests unspecified injunctive relief (Count Three). Plaintiff's first and second count appear to be in the alternative. For the reason expressed below, we conclude that neither claim is meritorious.

Because the parties filed exhibits and affidavits, defendant's motion to dismiss shall be treated as a motion for summary judgment.<sup>3</sup> Rule 12(b) of the Federal Rules of Civil Procedure provides that if "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56".

### SUMMARY JUDGMENT STANDARD

Summary judgment is proper when no genuine issue of material fact is in dispute and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); Celotex Corp.

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<sup>3</sup> Because no party objected to the use of document exhibits or affidavits, all objections are waived.

v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Federal Home Loan Mortgage Corp. v. Scottsdale Insurance Company, 316 F.3d 431, 443 (3d Cir. 2003). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202, 211 (1986); see Federal Home Loan Mortgage Corp., 316 F.3d at 443. Thus, a "material" fact is one that is necessary to establish an element under the substantive law governing a claim. A fact is "genuine" if it is such that a reasonable jury could return a verdict for the non-moving party. Anderson, 477 U.S. at 248, 106 S.Ct. at 2510, 91 L.Ed.2d 211.

When considering summary judgment, the court must take the facts in the light most favorable to the non-moving party. While the non-moving party is not burdened to prove his case as he might at trial, "a party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of his pleadings, but ... must set forth specific facts showing that there is a genuine issue for trial.'" Anderson, 477 U.S. at 248, 106 S.Ct. at 2510, 91 L.Ed.2d at 212 (quoting Fed.R.Civ.P. 56(e)). As a result, plaintiff, as the non-moving party, must set forth such facts as would permit a reasonable jury to conclude that the plaintiff can establish every element of his case.

## FACTS

Based upon the pleadings, affidavits and record papers, enumerated in the light most favorable to plaintiff, the pertinent facts are as follows.

Plaintiff, Nancy Frank Dunn is the wife of her counsel, David F. Dunn, Esquire. On March 3, 2000 Attorney Dunn obtained eye care from defendant Lehigh Valley Center for Sight, P.C. ("Center for Sight").<sup>4</sup>

Attorney Dunn was insured by HealthOne, a Capital Blue Cross health maintenance organization, through coverage provided by his wife's employer.<sup>5</sup> It is uncontroverted that the Center for Sight sought payment for eight months from HealthOne, Attorney Dunn, or plaintiff.<sup>6</sup> The Center for Sight never individually contacted plaintiff to inform her of the debt for the services which defendant rendered to her husband.<sup>7</sup>

After approximately a year, the Center for Sight pursued the collection of the debt by their own means and through

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<sup>4</sup> Affidavit of Mark E. Moran, D.O., Paragraph 2. Plaintiff claims that the eye care occurred in 2001, but further investigation of plaintiff's assertions reveals that by counting back from a date certain, December 14, 2002, there was "about a year of wrangling" and an additional eight months before that when the service occurred. See Complaint, Paragraphs 5, 7 and 8. If plaintiff's facts are correct and her arithmetic is in error, then the March 2000 time frame is not in dispute.

<sup>5</sup> Affidavit of Moran, Paragraph 3; Complaint Paragraph 5. The parties dispute whether or not Attorney Dunn was referred to Center for Sight by his primary care physician or merely chose to go to the Center for Sight on his own initiative. While this fact is logically relevant to determine whether or not HealthOne was responsible for paying the Center for Sight for Attorney Dunn's care and, therefore, relevant to the justness of Attorney Dunn and plaintiff's debt, it is not material to the disposition of this case.

<sup>6</sup> Complaint, Paragraph 7; Moran Affidavit, Paragraph 7.

<sup>7</sup> Complaint, Paragraphs 10, 11 and 12.

Berks Credit & Collections, Inc ("Berks Credit").<sup>8</sup> It was not until the Center for Sight turned the debt over to Berks Credit that the debt was reported to TransUnion, Experian, and Equifax, three credit reporting agencies.<sup>9</sup>

The parties also dispute the amount which the Dunns' owed the Center for Sight. Attorney Dunn claims that the debt was \$139.00.<sup>10</sup> The Center for Sight claims that the debt was \$87.00.<sup>11</sup> Regardless of the dispute, the parties agree that when Attorney Dunn paid the Center for Sight \$100 on September 19, 2002 the claim was settled.<sup>12</sup>

Upon receipt of payment, the Center for Sight notified Berks Credit to advise the credit reporting agencies that the outstanding debt had been paid.<sup>13</sup> In the ordinary course of its business, Berks notifies credit reporting agencies of changes in the status of delinquent accounts by the second Saturday of the month in which that change occurs.<sup>14</sup> In the instant case Berks Credit received the notice from the Center for Sight on September 23, 2002 and reported the change in the Dunns' account

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<sup>8</sup> Moran Affidavit, Paragraph 8.

<sup>9</sup> Moran Affidavit, Paragraph 8.

<sup>10</sup> Complaint, Paragraph 7.

<sup>11</sup> Defendant's Motion for Sanctions Pursuant to Fed.R.Civ.P. 11, Exhibit 6; Complaint, Exhibit B.

<sup>12</sup> Moran Affidavit, Paragraph 10; Complaint, Paragraph 8.

<sup>13</sup> Moran Affidavit, Paragraph 11.

<sup>14</sup> Affidavit of Samuel J. Pierce, Paragraph 11.

to the credit reporting agencies by October 15, 2002.<sup>15</sup>

On December 14, 2002 plaintiff arranged to lease a 2003 Chrysler Sebring from Straub Chrysler-Jeep in Bethlehem, Pennsylvania.<sup>16</sup> Plaintiff negotiated for a rate of not more than \$269.23 per month, including 9 percent use tax, for 48 months.<sup>17</sup> When the credit application was processed, the dealer advised plaintiff that the lease would be \$316.85 monthly because of a negative entry on plaintiff's credit report. The negative entry was the compromised resolution of Attorney Dunn's debt on the joint insurance account owed to the Center for Sight.<sup>18</sup>

## DISCUSSION

### Marital Debt

Plaintiff contends that the debts of Attorney Dunn, her husband and counsel of record, are not her own and that those debts may not be reported on her credit report. Plaintiff's notion of the exclusion of economic unity from the institution of marriage is at odds with Pennsylvania law.

In all cases where debts are contracted for necessities by either spouse for the support and maintenance of the family, it shall be lawful for the creditor in this case to institute suit against the husband and wife for the price of such necessities and, after obtaining judgment, have an

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<sup>15</sup> Pierce Affidavit, Paragraphs 10, 11.

<sup>16</sup> Complaint, Paragraphs 14, 15.

<sup>17</sup> Complaint, Paragraph 15.

<sup>18</sup> Complaint, Paragraph 20.

execution against the spouse contracting the debt alone; and, if no property of that spouse is found, execution may be levied upon and satisfied out of the separate property of the other spouse.

23 Pa.C.S.A. § 4102. “[A]bsent a specific agreement by one spouse to solely accept responsibility for the debt to the exclusion of the other spouse, both are liable as expressed in the statute.” Porter v. Karivalis, 718 A.2d 823, 827 (Pa. Super. 1998).

The Porter case held that psychological services were necessary within the meaning of 23 Pa.C.S.A. § 4102. By analogy, Attorney Dunn’s eye care falls within the category of medical necessities which serves to make the debt one collectable from either spouse. If creditors may sue to collect the debt from either spouse, then those creditors should be permitted to attempt to collect that debt using less coercive means without the aid of the court.

Consequently, defendant was entitled to report the debts of husband attorney on the credit report of wife plaintiff.

#### Fair Credit Reporting Act

Plaintiff asserts that the Center for Sight violated the FCRA when it reported Attorney Dunn’s debt to the credit reporting agencies as plaintiff’s own. The FCRA imposes a duty on “furnishers of information to consumer reporting agencies” to “provide accurate information.” 15 U.S.C. § 1681s-2(a). Because Pennsylvania law establishes that the reported debt was owed both by Attorney Dunn and his wife, plaintiff’s assertion that the

reported debt was inaccurate is meritless.

That plaintiff or her husband disputed the debt is immaterial to the decision of the Center for Sight to have Berks Credit report the debt to credit reporting agencies under the circumstances here. When a creditor receives notice of a dispute, the creditor shall

(A) conduct an investigation with respect to the disputed information; (B) review all relevant information provided by the consumer reporting agency...; (C) report the results of the investigation to the consumer reporting agency; and (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

15 U.S.C. § 1681s-2(b)(1).

Defendant waited approximately a year before turning over the debt to a collection agency. In that time defendant determined that Attorney Dunn's medical care was not going to be paid for by HealthOne. As a result, the Center for Sight sought payment from the Dunns. Payment by the Dunns would not preclude any remedy that the Dunns might have had from HealthOne if HealthOne were in error.

There is no record evidence that indicates that the Center for Sight reviewed "all relevant information provided by the consumer reporting agency." 15 U.S.C. § 1681s-2(b)(1)(B).<sup>19</sup>

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<sup>19</sup> In the within matter, plaintiff sued the entity reporting a debt to a consumer reporting agency. A consumer reporting agency ordinarily would provide information to the credit reporting agency which would place the adverse mark on plaintiff's credit report. The defendant, as a reporter of a debt, never received, nor would receive, any information from a consumer reporting agency to review. Reporters of outstanding debts, such as defendant, do not have the power to list a debt on a consumer's credit report.

Nevertheless, the Center for Sight discharged its duty under subsection (A) to investigate the nature of the dispute before it reported the debt to the credit reporting agencies.

As a result, the Center for Sight was statutorily obligated under subsection (C) to report the results of its investigation to the credit reporting agencies. Because the Center for Sight could have sued to collect the debt as opposed to attempting to collect the debt through a collection agency, the Center for Sight's conduct in this matter was more sensitive to the adverse impact of reporting negative information to credit reporting agencies than the law requires and does not create a cause of action for plaintiff.

#### Injunctive Relief

In Count III plaintiff seeks injunctive relief. Under proper circumstances injunctive relief may be awarded to remedy a violation of the FCRA. However, injunctive relief is not a separate cause of action, distinct from the counts for FCRA violations. Because we concluded that plaintiff has no cause of action for either intentional or negligent violation of the FCRA, she is not entitled to injunctive relief. Accordingly, Count III of plaintiff's Complaint is meritless, and we dismiss it.

#### Motion for Sanctions

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Accordingly, we conclude that this element is not relevant to an analysis of whether defendant appropriately followed the requirements of the FCRA.

In its motion for sanctions, defendant seeks the dismissal of the Complaint and attorneys' fees incurred in the filing of its motion for sanctions. Because our dismissal of plaintiff's Complaint is the severest of sanctions, we decline to award attorney's fees here. Accordingly, we deny defendant's motion for sanctions in that regard.

#### CONCLUSION

Because the parties filed exhibits and affidavits in connection with defendant's motion to dismiss plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6), we treat defendant's motion to dismiss as a motion for summary judgment, as provided in Rule 56.

Because Pennsylvania law permits a creditor to sue both husband and wife for a debt contracted by one of them for necessities and makes both spouses liable for such bills, and because husband's bill for eye care falls with the category of medical necessities, we reject wife plaintiff's contention that defendant medical provider violated the federal Fair Credit Reporting Act by turning her husband's bill over to a collection agency, which in turn reported it to three credit reporting agencies as a joint marital debt.

Because we conclude that defendant did not violate the Fair Credit Reporting Act, we grant defendant's motion for

summary judgment and dismiss Counts One and Two of plaintiff's Complaint seeking damages for both willful and negligent violation of the act.

Because defendant did not violate the Fair Credit Reporting Act, plaintiff is not entitled to injunctive relief for such violation. Accordingly, we dismiss Count III of plaintiff's Complaint seeking injunctive relief.

And because our dismissal of plaintiff's Complaint is the severest of sanctions, we decline to award attorney's fees here. Accordingly, we deny defendant's motion for sanctions in that regard.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NANCY FRANK DUNN,	:	
	:	
Plaintiff	:	Civil Action
	:	No. 03-CV-190
vs.	:	
	:	
LEHIGH VALLEY CENTER FOR SIGHT,	:	
P.C.,	:	
	:	
Defendant	:	

O R D E R

NOW, this 30<sup>th</sup> day of September 2003, upon consideration of the Motion of Defendant Lehigh Valley Center for Sight, P.C. to Dismiss Counts One - Three of Plaintiffs' Complaint, which motion was filed March 19, 2003; upon consideration of the Memorandum of Law in Support of the Motion of Defendant, Lehigh Valley Center for Sight, P.C. to Dismiss Counts One - Three of Plaintiff's Complaint filed March 19, 2003; upon consideration of the Response to Rule 12(b)(6) Motion filed by plaintiff on April 2, 2003; upon consideration of the Response to Rule 11 Motion

filed by plaintiff on April 2, 2003; upon consideration of Plaintiff's Memo of Law Regarding Motions Filed by Defendant under Rule 12(b)(6) and Rule 11 filed April 2, 2003; upon consideration of Defendant's Motion for Sanctions Pursuant to Fed.R.Civ.P. 11 filed on April 23, 2003; it appearing that the parties filed exhibits and affidavits to their motions for the court's consideration; it further appearing that Rule 12(b) of the Federal Rules of Civil Procedure provides that if "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56", Fed.R.Civ.P. 12(b); and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that pursuant to Fed.R.Civ.P. 12(b), the Motion of Defendant Lehigh Valley Center for Sight P.C. to Dismiss Counts One - Three of Plaintiff's Complaint shall be treated as a motion for summary judgment.

IT IS FURTHER ORDERED that the defendant's motion for summary judgment is granted.

IT IS FURTHER ORDERED that plaintiff's Complaint is dismissed.

IT IS FURTHER ORDERED that Defendant's Motion for Sanctions Pursuant to Fed.R.Civ.P. 11 is denied.

BY THE COURT:

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James Knoll Gardner

United States District Judge