

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

HELEN GOSLEE, on behalf of herself : CIVIL ACTION  
and all others similarly situated :  
  
v. :  
  
FRANKLIN MINT CORPORATION : No. 97-8055

**O R D E R - M E M O R A N D U M**

AND NOW, this 31st day of March, 1998, defendant Franklin Mint Corporation's motion for judgment on the pleadings, Fed.R.Civ.P. 12(c), or in the alternative, for summary judgment, Fed.R.Civ.P. 56, is denied. Because facts outside the pleadings are involved, the motion has been considered under Rule 56.<sup>1</sup>

There is a triable issue of material fact - whether or not defendant Franklin Mint acted as a "debt collector" under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o. Resolution will require a factfinder to determine if debt collection notices sent to plaintiff Helen Goslee sufficiently disclose that their source was the defendant creditor.

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<sup>1</sup> Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The movant has the burden of showing that there is no triable issue. The opposing party must point to specific, affirmative evidence in the record - and not simply rely on allegations or denials in the pleadings - in order to defeat a properly supported motion. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986); Charlton v. Paramus Board of Education, 25 F.3d 194, 197 (3d Cir. 1994).

If, as plaintiff contends, defendant Franklin Mint was a "creditor who, in the process of collecting [its] own debts, uses any name other than [its] own which would indicate that a third person is collecting or attempting to collect such debts," then defendant is deemed to have been a "debt collector" under the statute. 15 U.S.C. § 1692a(6). However, if, as defendant contends, the collection letters came from "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor," then defendant was not a "debt collector." § 1692a(6)(A). These are jury questions.

Plaintiff's cross-motion for partial summary judgment is denied for the same reason.

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Edmund V. Ludwig, J.