

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

OREST BEZPALKO, II,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
GILFILLAN, GILPIN & BREHMAN,	:	
et al.,	:	
	:	
Defendants.	:	NO. 97-4923

MEMORANDUM

Reed, J.

June 15, 1998

Plaintiff Orest Bezpalko, II (“Bezpalko”) filed this suit against defendant law firm Gilfillan, Gilpin & Brehman (“Gilfillan”) and defendant John B. Taulane, III (“Taulane”) for violations of the Fair Debt Collection Practices Act (“FDCPA” or “the Act”), 15 U.S.C. § 1692 (West 1982 & Supp. 1996), as well as the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTCPL”), 73 Pa. Stat. Ann. § 201 *et seq.* (West 1996). Defendants filed counterclaims for bad faith pursuant to the FDCPA, 15 U.S.C. § 1692(k) and for damages pursuant to 42 Pa. Stat. Ann. § 2503(9) (West 1996). This Court has jurisdiction over the federal claims pursuant 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331 and supplemental jurisdiction over the state law claims pursuant 28 U.S.C. § 1367.

Currently before this Court is the motion of defendants Gilfillan and Taulane for summary judgment (Document No. 10), and the cross-motion of plaintiff Bezpalko for partial summary judgment (Document No. 12), and responses of the parties thereto. Upon consideration of these motions and the responses and various briefs relating thereto, and for the following reasons, the motion by defendants Gilfillan and Taulane for summary judgment will be granted

as to the plaintiff's FDCPA claim and will be denied as to the defendant's counterclaim of bad faith. The cross-motion by plaintiff Bezpalko for partial summary judgment as to the FDCPA claim will be denied. The state law claim of plaintiff and the state law counterclaim of defendants will be dismissed without prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

On March 10, 1997, Bezpalko had an appointment with the office of Michael Tomeo, M.D. concerning an allergic reaction which had developed on his face. Prior to receiving treatment, Bezpalko discussed with Dr. Tomeo's office the financial costs of these services. The doctor's office informed Bezpalko that his insurance would not cover any treatment without a referral from his primary care physician. Bezpalko was also advised that, without any insurance coverage, he would be personally responsible for the payment. He was told that the costs would be between \$60.00 and \$90.00, and that payment was due at the conclusion of his appointment. Agreeing to these payment conditions, Bezpalko made an emergency appointment with the doctor. A sign in Dr. Tomeo's office, which is visible to all patients, states that patients without insurance coverage are required to pay their bills at the time treatment is rendered. Bezpalko was seen by Dr. Burov, an associate of Dr. Tomeo. During his treatment, Bezpalko asked Dr. Burov to look at the warts which had formed on his hand. Dr. Burov, in addition to examining the warts, scraped away at them with a scalpel and applied a topical ointment to the area.²

¹ The following facts are based on the evidence of record viewed in the light most favorable to plaintiff, the nonmoving party, as required when considering a motion for summary judgment. See Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir.), cert denied, 115 S. Ct. 2611 (1995).

² Bezpalko claims that, in previous appointments, Dr. Tomeo would look at a condition and then advise Bezpalko of the possible treatments without immediately treating the condition. (See Aff. of Bezpalko).

At the conclusion of his treatment, Bezpalko was informed that he was required to pay \$245.00 for the services rendered. Although the parties dispute whether he complained about the costs of these services at the time of payment, Bezpalko wrote a check payable to Dr. Tomeo for the total amount of \$245.00. When Dr. Tomeo's office attempted to deposit this check on March 12, 1997, it was informed by the bank that Bezpalko had stopped payment on the check. Dr. Tomeo's office telephoned Bezpalko to discuss his outstanding bill, but the two parties were unable to settle their dispute.

On April 2, 1997, Dr. Tomeo's office retained defendant law firm of Gilfillan, Gilpin & Brehman to collect the unpaid bill from Bezpalko. Dr. Tomeo's office discussed the events surrounding Bezpalko's account personally with Taulane, then a partner at the firm. Dr. Tomeo authorized Taulane to file suit against Bezpalko if he refused to pay for the services. Taulane reviewed Dr. Tomeo's office files regarding the events between March 10 and March 12, 1997, and sent a letter to Bezpalko on April 7, 1997 regarding his payment owed to Dr. Tomeo.³ Taulane did not personally sign this letter, but instead authorized his secretary to sign

³ The letter from Taulane to Bezpalko dated April 7, 1997 reads, in pertinent part:

RE: Michael A. Tomeo, M.D.
Patient: Orest Bezpalko, II
Balance Due: \$245.00

The above physician has referred the above delinquent patient account to us for the purpose of filing suit to recover the balance due. If we do this, you may become liable not only for the amount of the bill but also the court costs of the law suit.

If you want to avoid this unnecessary expense, you may contact me at the above address to pay this bill. Otherwise, I will institute suit against you without further notice.

If you dispute the validity of this debt, you should notify me within thirty (30) days of your receipt of this letter. Otherwise, I will assume that this debt is valid. If you do notify me in writing within

it;⁴ however, Taulane was aware of the letter's contents and that it was being sent to Mr. Bezpalko.⁵

On June 30, 1997, Taulane telephoned Bezpalko and discussed Bezpalko's reasons for refusing to pay the bill. The parties were unable to reach an agreement during this conversation as to the payment.⁶ Following his discussion with Bezpalko, Taulane wanted to confirm Dr. Tomeo's intention of filing suit for the unpaid bill. Before Taulane was able to obtain this confirmation from Dr. Tomeo, Bezpalko had already initiated this lawsuit.⁷ Had Bezpalko not brought this action, Taulane would have advised Dr. Tomeo to file suit against Bezpalko.⁸ The plaintiff filed his Complaint on July 31, 1997. Defendants answered the Complaint and asserted two counterclaims on September 3, 1997.

Dr. Tomeo filed in state court on September 2, 1997 a separate but related lawsuit against Bezpalko for the underlying balance due. The District Court for Montgomery County, Pennsylvania entered a judgment for Dr. Tomeo in the amount of \$219.50.

thirty (30) days that you dispute the validity of this debt, I will provide you with verification of this debt. **This letter and any future letters from our firm are an attempt to collect a debt and any information obtained will be used for that purpose.**

(Complaint, Ex. A) (emphasis in original).

⁴ Because the secretary of Taulane signed Taulane's name to the letter, this Court finds that the initials next to Taulane's signed name are that of the secretary.

⁵ (See Aff. of Taulane).

⁶ Taulane and Bezpalko had conversed on a earlier date about a prior unpaid bill to Dr. Tomeo. On this previous occasion, the parties agreed that Bezpalko would pay for Dr. Tomeo's services in installments. Taulane called Bezpalko on June 30, 1997 in hope that the parties could reach a similar arrangement. (See Aff. of Taulane).

⁷ Taulane was unable to discuss the situation with Dr. Tomeo before he left for his honeymoon on July 13, 1997. Upon his return, Taulane discovered that Bezpalko had already proceeded with the filing of this action.

⁸ (See Aff. of Taulane).

II. LEGAL STANDARD

The standard for a summary judgment motion in federal court is set forth in Federal Rules of Civil Procedure 56. Rule 56(c) states:

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 a judgment as a matter of law.

Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In addition, a dispute over a material fact must be “genuine,” *i.e.*, the evidence must be such “that as a reasonable jury could return as a verdict in favor of the non-moving party.” Id.

The moving party has the initial burden to identify evidence that it believes shows an absence of as a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). When the non-moving party will bear the burden of proof at trial, the moving party’s burden can be “discharged by ‘showing’--that is, pointing out to the District Court--that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The non-moving party may not rely merely upon bare assertions, conclusory allegations or suspicions. Fireman’s Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982). The court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. Anderson, 477 U.S. at 255. To defeat the

motion for summary judgment, the non-moving party must offer specific facts contradicting those set forth by the movant, thereby showing that there is a genuine issue for trial. Lujan v. National Wildlife Fed'n, 497 U.S. 871, 888 (1990).

III. DISCUSSION

The threshold issue for the Court to determine is whether the dishonored check signed by Bezpalko constitutes a debt under the FDCPA. Bezpalko argues that a dishonored check is a debt for purposes of the FDCPA and that defendants violated the FDCPA by their method of debt collection. Defendants maintain that a dishonored check is not a debt under the FDCPA and thus, there can be no violation of the Act in the instance case. Alternatively, defendants argue that even if a dishonored check is found to be a debt under the FDCPA, their actions do not constitute a FDCPA violation. Lastly, defendants argue that the filing of the lawsuit by Bezpalko was in bad faith. I will consider each argument seriatim.

A. THE MEANING OF “DEBT” UNDER THE FDCPA

The FDCPA was enacted as an amendment to the Consumer Credit Protection Act, 15 U.S.C. §§ 1601-1693 (West 1982 & Supp.1996), to “eliminate abusive debt collection practices by debt collectors . . . and to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e). The FDCPA defines debt to mean:

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692a(5). To prevail under a FDCPA claim, a plaintiff must prove that the transaction at issue constitutes a debt under the Act’s meaning. See Zimmerman v. HBO

Affiliate Group, 834 F.2d 1163, 1167 (3d Cir. 1987). Courts are compelled to determine their own interpretations of the word “transaction,” because the Act itself fails to provide a definition.

In Zimmerman, the Court of Appeals for the Third Circuit established that “an offer or extension of credit” is required for a transaction to give rise to a debt under the FDCPA.⁹ Id. at 1168. In Zimmerman, the plaintiff brought a FDCPA claim against the defendant cable television company. The plaintiff alleged that the cable company violated the FDCPA when it sent letters, demanding settlement in monetary compensation, to persons suspected of signal “piracy.” Id. at 1164. The appellate court concluded that the plaintiff failed to state a claim under the FDCPA, because the defendant’s letters did not assert that the consumer was “offered or extended the right to acquire money, property, insurance, or services.” Id. at 1169. According to the Zimmerman definition of debt,¹⁰ which this Court is obligated to follow, I find that a

⁹ The Zimmerman court reasoned that the meaning of transaction is the same under the FDCPA as under other subchapters of the Consumer Credit Protection Act, *i.e.*, “one involving the offer or extension of credit to a consumer.” Zimmerman, 834 F.2d at 1168. Other courts have looked for guidance to cases interpreting analogous provisions of the Consumer Credit Protections Act. See Bloom v. I.C. Sys., Inc., 972 F.2d 1067, 1068 (9th Cir. 1992).

¹⁰ Zimmerman has been attacked by other courts for its extension of credit requirement in a debt under the FDCPA. See, e.g., Charles v. Lundgren & Assoc., P.C., 119 F.3d 739, 742 (9th Cir. 1997) (agreeing with the Seventh Circuit in Bass, the court holds that dishonored checks constitute debts under the FDCPA); Bass v. Stolper, Koritzinsky, Brewster and Neider, S.C., 111 F.3d 1322, 1326 (7th Cir. 1997) (in holding that a dishonored check is a debt under the FDCPA, the court asserts that it “must respectfully part ways” with Zimmerman on the requirement of credit-based transactions); see also Newman v. Boehm, Pearlstein & Bright, Ltd., 119 F.3d 477, 480 (7th Cir. 1997) (rejecting Zimmerman’s credit requirement in its finding that past due assessments constitute a debt under the FDCPA). These courts found that the definition of debt as set forth in the Act was unambiguous and that in accordance with its plain meaning, debt under the FDCPA includes any transaction which creates an obligation to pay. Bass, 111 F.3d at 1325-26; Charles, 119 F.3d at 742. In addition, these courts concluded that the legislative intent is embodied in this plain meaning definition of debt. Id. Some of this criticism may, in the future, be found to be deserved, and it is likely that the Court of Appeals for the Third Circuit will, at some later point, refine its definition of debt under the FDCPA. However, because the decision in Zimmerman is the law of this Circuit, I will follow it here.

dishonored check does not constitute a debt under the FDCPA.¹¹

The reasoning behind my conclusion today is similar to that laid out by the district court in Sarver v. Capital Recovery Associates, Inc., 951 F. Supp. 550 (E.D. Pa. 1996). In Sarver, the plaintiff brought suit under the FDCPA against a collection agency. The plaintiff alleged that the defendant violated the Act when it sent letters, on behalf of Rite Aid, to the plaintiff. Id. at 551 The defendant's letters were an attempt to collect debts that had accumulated because of the plaintiff's "bounced" checks tendered to Rite Aid. Id. The court analogized a check to cash, as both are negotiable instruments for payment, and held that because it does not satisfy Zimmerman's extension of credit requirement, a dishonored check is not a debt for purposes of the FDCPA. Id. at 554.

Similarly, in the instant case, there was no offer or extension of credit at the time of the transaction or thereafter. The evidentiary record indicates that there was no discussion between Bezpalko and Dr. Tomeo's office concerning an offer to extend credit. In fact, Dr. Tomeo's office advised Bezpalko, prior to his treatment, that payment was due at the time of services. In addition, a sign in Dr. Tomeo's office, visible to patients, stated that patients without insurance coverage must pay their bills at the time of services rendered. (See Aff. of Dr. Tomeo). Consequently, I concur with the reasoning and conclusion in Sarver and conclude, as a matter of law, that a dishonored check, under the direction of Zimmerman, does not qualify as a debt under the FDCPA. In accordance with the applicable law reviewed above and because there is no

¹¹ Bezpalko urges this Court to depart from Zimmerman, based on the assertion that the definition of debt in Zimmerman was merely dicta and thus is not binding on this Court. I disagree with the plaintiff's argument and instead join other district courts in the Third Circuit in their obligation to follow Zimmerman. See Dolente v. McKenna, No.95-CV-7142, 1997 WL 164266 (E.D. Pa. Apr. 7, 1997); Sarver v. Capital Recovery Assocs., 951 F. Supp. 550 (E.D. Pa. 1996); Adams v. Law Offices of Stucker, 926 F. Supp. 521 (E.D. Pa. 1996).

genuine issue of material fact in dispute, I will grant summary judgment in favor of the defendants.¹² However, even assuming that a dishonored check is a debt within the meaning of the FDCPA, the following analysis will show that defendants' collection methods did not violate the FDCPA, and thus summary judgment in favor of defendant is appropriate on this claim. (Complaint, First Claim for Relief at ¶¶ 10-12).

B. LANGUAGE OF THE APRIL 7, 1997 LETTER

I will now examine whether the language of Taulane's April 7, 1997 letter violates the FDCPA. This issue is resolved with reference to the objective "least sophisticated debtor" standard. See Graziano v. Harrison, 950 F.2d 107, 111 (3d Cir. 1991). Specifically, an FDCPA violation occurs if the language of the letter would confuse the least sophisticated debtor. Applying this standard, I find that, as a matter of law, Taulane's April 7, 1997 letter was sufficiently clear and no reasonable jury could conclude that the letter would confuse the least sophisticated debtor.

In his Complaint, Bezpalko alleges, *inter alia*, three separate FDCPA violations by defendants. Although in his cross-motion for summary judgment, Bezpalko only focuses on his third allegation, I will, in the interest of thoroughness, analyze each of Bezpalko's three allegations. Bezpalko's first claim is that defendants violated 15 U.S.C. § 1692e(3). A violation of this section occurs if there is a "false representation or implication that any individual is an attorney or that any communication is from an attorney." 15 U.S.C. § 1692e(3).

In order to comply with Section 1692e(3) of the FDCPA, an attorney must be

¹² The Court notes that the April 7, 1997 letter uses the term "debt," yet the Court has found that the substance of the transaction does not constitute a debt under the FDCPA.

“directly and personally involved in the mailing” of the letter. Avila v. Rubin, 84 F.3d 222, 228 (7th Cir. 1996) (citing Clomon v. Jackson, 988 F.2d 1314 (2d Cir. 1993)). Taulane was fully aware of the letter’s contents and that the letter was being sent to Bezpalko on April 7. (See Aff. of Taulane). Moreover, Bezpalko was aware of Taulane’s personal involvement, as an attorney in this case, as the two conversed via telephone about this matter prior to the mailing of the letter. In addition, initials were placed next to Taulane’s signed name in the letter, indicating to the reader that the letter was not signed by Taulane personally, but rather by someone signing on behalf of Taulane. Based on these facts, I find that there is no material dispute that Taulane was directly involved in Bezpalko’s file and actively participated in the mailing of this letter. I further conclude that the fact that Taulane’s secretary, under the direction of Taulane, signed his name is neither misleading nor deceptive to the reader, nor was it falsely representing that the letter was from an attorney. Therefore, I find, as a matter of law, that Taulane’s April 7, 1997 was not in violation of 15 U.S.C. § 1692e(3).

Bezpalko’s second allegation is that Taulane’s April 7, 1997 letter violated 15 U.S.C. §§ 1692e(5) and 1692e(11). Under these sections, a debt collector violates the FDCPA if there is: “[a] threat to take any action that cannot legally be taken or that is not intended to be taken” or “[a] failure to disclose in the initial written communication . . . that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.” 15 U.S.C. §§ 1692e(5) & 1692e(11).

Prior to sending his April 7, 1997 letter, Taulane received authorization from Dr. Tomeo to file a claim against Bezpalko, if necessary, to collect this payment. (See Aff. of Taulane; Aff. of Dr. Tomeo). On September 2, 1997, Dr. Tomeo filed suit against Bezpalko in

the District Court of Montgomery County, Pennsylvania, for the underlying balance due, and won a judgment against Bezpalko for \$219.50. Dr. Tomeo, pursuant to Taulane's advice, filed the state court suit and would have done so even if Bezpalko had not initiated this suit first. (See Aff. of Taulane). Thus, Taulane's threat of legal action in the letter could have legally been taken and was in fact intended to be taken, thereby satisfying Section 1692e(5) of the FDCPA. In the letter, Taulane also explicitly stated that "this letter and any future letters" would be used for litigation purposes, thereby meeting the requirements of Section 1692e(11). (Complaint, Ex. A). Based on these undisputed material facts, I conclude, as a matter of law, that Mr. Taulane's April 7, 1997 did not violate the requirements of 15 U.S.C. §§ 1692e(5) and 1692e(11).

The final claim of Bezpalko is that the April 7, 1997 letter violated 15 U.S.C.

§ 1692g(a). The language of this section reads:

a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing -

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.

15 U.S.C. § 1692g(a). In deciding issues of Section 1692g(a) violations, courts have preserved the concept of reasonableness "in a manner that protects debt collectors against liability for unreasonable interpretations of collection notices." Clomon v. Jackson, 988 F.2d 1314, 1319 (2d Cir. 1993). A letter is not necessarily misleading simply because certain essential information is conveyed implicitly, rather than explicitly. See Smith v. Transworld Sys., Inc., 953 F.2d 1025, 1029 (6th Cir. 1992) (asserting that it is implicit in the debt collector's letter that "the claim

can be wholly, or partially challenged” by the debtor). But see Baker v. G.C. Serv. Corp., 677 F.2d 775, 778 (9th Cir. 1982) (finding that a letter is not sufficient to put debtor on notice that he could dispute only a portion of the debt because the letter does not explicitly state this option).

Nowhere in the April 7, 1997 letter is it explicitly stated that a portion of the bill could be disputed. Rather, it says “if you [Bezpalko] dispute the validity of this debt, you [Bezpalko] should notify me within thirty (30) days of your receipt of this letter.” (Complaint, Ex. A). Considering the letter in its entirety, and given the circumstances surrounding the letter as well as the prior dealings between the parties, I find, as a matter of law, that the least sophisticated debtor reading this letter would have understood that any portion of the debt could be disputed and that no reasonable jury could find otherwise.

C. COUNTERCLAIM OF BAD FAITH

Defendants claim that the plaintiff violated 15 U.S.C. § 1692k(a)(3) by instituting this suit in bad faith or for the sole purpose of harassing the defendants. This section states that “[o]n a finding by the court that an action under this section was brought in bad faith and for purposes of harassment, the court may award to the defendant attorney’s fees reasonable in relation to the work expended and costs.” 15 U.S.C. § 1692k(a)(3). This FDCPA section mirrors Federal Rule of Civil Procedure 11, which provides for sanctions whenever a frivolous pleading is filed. See Green v. Hocking, 9 F.3d 18, 22 (6th Cir. 1993) (asserting that “a comparison between Rule 11 and the FDCPA reveals many similarities”). Consequently, I will look to the standards applicable to Rule 11 sanctions as guidelines for determining the appropriateness of sanctions under the FDCPA.

In terms of Rule 11 sanctions, the Court of Appeals for the Third Circuit

established in Gaiardo v. Ethyl Corp., 835 F.2d 479 (3d Cir. 1987), that counsel and his or her client are required to “Stop, Think, Investigate and Research” before filing papers with the court. Id. at 482. However, the court also asserted that sanctions under Rule 11 should be used only in exceptional cases. Id. at 483. Sanctions should not be imposed when attorneys are making a good faith request for change in existing law, “especially when they advise the court of existing law and their considered decision to seek its modification or reversal.” Id.

Because the FDCPA is subject to varying interpretations by the courts, plaintiff’s request for this Court to re-examine existing case law is neither unreasonable nor frivolous. The plaintiff does “not risk sanctions merely by making losing arguments concerning statutory language that is not clearly defined.” Friedman v. HHL Fin. Services, Inc., Civ. No. 93-1545, 1994 WL 22969, at *3 (N.D. Ill. Jan. 25, 1994). Bezpalko had argued that the definition of debt in Zimmerman is only dicta, and had urged this Court to depart from Zimmerman and join other circuit courts that have held that an extension of credit is not required for a debt under the FDCPA. Although Bezpalko’s argument was ultimately unsuccessful, it in no way reaches the height of unreasonableness or frivolousness.

Echoing the words of the appellate court in Gaiardo, I find that a violation “in these circumstances would indeed chill effective advocacy.” Gaiardo, 835 F.2d at 485. It is not the goal of our judicial system to punish those attorneys who zealously and ethically advocate for a change in an existing law. Our country’s laws at times may need to be re-examined and modified according to changes in society or new technological advances. In order for such necessary adjustments in the law to be made, attorneys must bring to the attention of the courts the need and reasoning for such a change.

I find that no reasonable jury could return a verdict in favor of defendants on their bad faith counterclaim. Accordingly, I will deny defendants' motion for summary judgment on their bad faith counterclaim. And, because there are no material facts in dispute, I will *sua sponte* dismiss with prejudice the bad faith counterclaim from the lawsuit. (Answer at ¶¶ 18-27).

D. STATE LAW CLAIM AND COUNTERCLAIM

The remaining claim of Bezpalko based on 42 Pa. Stat. Ann. § 201 and counterclaim of defendants based on 42 Pa. Stat. Ann. § 2503(9) are grounded in state law. Supplemental jurisdiction is a doctrine of discretion, not of plaintiff's right. Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995) (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726-727 (1966)). If the claims over which a district court has original jurisdiction are dismissed, the district court has the option of declining to exercise supplemental jurisdiction over the remaining state law claim. 28 U.S.C. § 1367(c)(3). In determining whether to dismiss the state law claim, the district court should consider whether either party will be prejudiced by the dismissal of the state law claim, and whether state law claims involve issues of federal policy. Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1284 (3d Cir. 1993); Glaziers & Glassworkers Local 252 Annuity Fund, et al. v. Newbridge Sec., Inc., 823 F. Supp. 1191, 1197 (E.D. Pa. 1993).

In addition, because Pennsylvania law provides that matters dismissed by a federal court for lack of subject matter jurisdiction may be refiled in the appropriate state court without regard to the limitations period, plaintiffs will not be prejudiced with respect to the applicable limitations period if they choose to refile their lawsuit. See 42 Pa. Cons. Stat. Ann. § 5103(b); Fulkerson v. City of Lancaster, 801 F. Supp. 1476, 1486 n.3 (E.D. Pa. 1992), aff'd, 993 F.2d 876

(3d Cir. 1993). Accordingly, I will exercise my discretion and dismiss without prejudice the remaining state law claim of Bezpalko and the state law counterclaim of the defendants.

IV. CONCLUSION

For the foregoing reasons, I will grant the motion of the defendants for summary judgment as to plaintiff's FDCPA claim and I will deny the motion of defendants for summary judgment as to the defendants' counterclaim of bad faith. I will, *sua sponte* dismiss with prejudice the counterclaim of defendants for bad faith under the FDCPA. Also, I will deny the cross-motion by plaintiff for partial summary judgment as to the plaintiff's FDCPA claim. And, finally, I will dismiss without prejudice the state law claim of the plaintiff and the state law counterclaim of the defendants

An appropriate Order follows.

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

OREST BEZPALKO, II,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
GILFILLAN, GILPIN & BREHMAN,	:	
et al.,	:	
	:	
Defendants.	:	NO. 97-4923

ORDER

AND NOW, this 15th day of June, 1998, upon consideration of the motion of defendants Gilfillan, Gilpin & Brehman and John B. Taulane, III for summary judgment pursuant to Federal Rule of Civil Procedure 56(c) (Document No. 12), the cross-motion by plaintiff Orest Bezpalko, II for partial summary judgment (Document No. 14), and all responses of parties thereto, and upon consideration of the pleadings, admissions of file, affidavits, and evidence attached as exhibits, and having found that there is no genuine issue of material fact, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motion of defendants Gilfillan, Gilpin & Brehman and John B. Taulane, III is **GRANTED** on the Fair Debt Collection Practices Act claim and **DENIED** on the bad faith counterclaim.

IT IS FURTHER ORDERED that **SUMMARY JUDGMENT** is hereby **ENTERED** in favor of defendants Gilfillan, Gilpin & Brehman and John B. Taulane, III and against plaintiff Orest Bezpalko, II on the Fair Debt Collection Practices Act claim (Complaint, First Claim for Relief, ¶¶ 10-12).

IT IS FURTHER ORDERED that the bad faith counterclaim of defendants pursuant to 15 U.S.C. § 1692(k) is **DISMISSED WITH PREJUDICE** (Answer, Counterclaim, Count I, ¶¶ 18-27).

IT IS FURTHER ORDERED that the cross-motion of plaintiff Orest Bezpalko, II for partial summary judgment is **DENIED**.

IT IS FURTHER ORDERED that the supplemental state law claims are, in the exercise of this Court's discretion, **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1367(c)(3), recognizing the right of plaintiff and of defendants to refile their state law claim and counterclaim respectively in the appropriate state court.

This is a final Order.

LOWELL A. REED, JR., J.