

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

ONE BEACON INSURANCE CO., et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
DEBRA HUNTER NULL, et al.,	:	No. 04-621
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

July 19, 2004

This case arises out of the alleged unauthorized use of credit cards by Defendant Debra Hunter Null while she was employed by Pickering Valley Landscape, Inc. (“Pickering Valley”). Plaintiffs Pickering Valley and One Beacon Insurance Co. (collectively “Plaintiffs”) bring claims against Defendants Null, Douglas Romanczuk, American Express Travel Related Services Co., and MBNA America, N.A. (“MBNA”) alleging violations of state law and the federal Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1677. Presently before the Court is Defendant MBNA’s motion to dismiss Plaintiffs’ TILA claim as barred by the statute of limitations. For the reasons that follow, Defendant’s motion is granted.

I. BACKGROUND

Plaintiffs seek \$312,000.00 in damages for Defendant MBNA’s alleged violation of § 1643, which limits cardholder liability for charges that are made by third parties without actual, implied, or apparent authority. 15 U.S.C. § 1643 (2004); (Compl. ¶¶ 44-53.) Although Null allegedly began stealing from Plaintiffs in February 1998, Plaintiffs became aware of Defendant Null’s thefts on or around October 23, 2001, when Null admitted her actions to Pickering Valley management. (Compl.

¶¶ 8, 26.) Nonetheless, Plaintiffs did not initiate suit in the Court of Common Pleas for Chester County until October 21, 2003, approximately two years later. (Pls.' Resp. at 3.) On February 12, 2004, the case was removed to this Court.

II. STANDARD OF REVIEW

In considering a motion to dismiss for failure to state a claim upon which relief may be granted, courts must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). As it appears on the face of Plaintiffs' complaint that their TILA claim may be barred by the applicable statute of limitations, the limitations defense is properly raised at this stage of the proceedings. *Oldroyd v. Assocs. Consumer Discount Co.*, 863 F. Supp. 237, 240 (E.D. Pa. 1994).

III. DISCUSSION

The statute of limitations period provided in § 1640(e) runs from the date of the violation. 15 U.S.C. § 1640(e) (2004); see *Canty v. Equicredit Corp. of Amer.*, No. Civ. A. 01-5804, 2003 WL 21243268, at *2, 2003 U.S. Dist. LEXIS 8819, at *6 (E.D. Pa. May 8, 2003) (noting that the statute of limitations for TILA violation runs from "date of the occurrence of the violation"). However, as Plaintiffs admit that they became aware of Null's activities in October 2001, it is assumed, for

purposes of the instant motion only, that the limitations period began to run in October 2001. (Compl. ¶ 26; Def.’s Mot. to Dismiss at 5). Accordingly, the parties agree that this action was commenced more than one year after Plaintiffs became aware of the alleged TILA violation. Therefore, the only dispute between the parties, and the only issue relevant to the instant motion, is whether the one year statute of limitations contained in § 1640(e) applies to violations of § 1643. This dispute is readily resolved by analysis of the statutory text.

Section § 1640 provides for civil liability for violations of TILA’s requirements:

§ 1640. Civil Liability

(a) Individual or class action for damages; amount of award; factors determining amount of award

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, or part D or E of this subchapter with respect to any person is liable to such person . . .

...

(e) Jurisdiction of courts; limitations on actions; . . .

Any action under this section may be brought in any United States district court . . . within one year from the date of the occurrence of the violation.

15 U.S.C. § 1640(a)-(e). By its very terms, § 1640 applies to “any requirement imposed under this part.” The term “this part” refers to Title 15 of the United States Code, chapter 41, subchapter I, part B, which includes §§ 1631-1649. As Plaintiff seeks monetary damages for Defendant’s alleged violation of § 1643, the statute of limitations provided by § 1640(e) applies. Accordingly, Plaintiffs’ action is barred by the one year statute of limitations.

Although there are no cases within the Third Circuit specifically applying the one-year limitations period to a violation of § 1643, there is abundant authority that claims for actual and

statutory damages for violation of TILA's requirements are governed by the one year limitations period of § 1640(e). *See, e.g., Ramadan v. Chase Manhattan Corp.*, 156 F.3d 449, 500-01 (3d Cir. 1998) (holding that violation of TILA's disclosure provisions subject to one-year limitations period); *Canty*, 2003 WL 21243268 at *2, 2003 U.S. Dist. LEXIS 8819 at *7 (applying one-year limitations period to claim for damages arising from violation of § 1635(b)); *Oldroyd*, 863 F. Supp. at 240 (applying one year limitations period to violations of TILA disclosure requirements). Furthermore, the only federal court to specifically address § 1643 found that the one-year limit is applicable. *Draiman v. Amer. Express Travel Related Servs. Co.*, 892 F. Supp. 1096, 1098 (N.D. Ill. 1995). The cases Plaintiff cites do not require a contrary result. *See Crisomia v. Parkway Mortgage, Inc.*, No. 00-35085, 2002 WL 31202722, *5, 2002 Bankr. LEXIS 1112, *19 (Bankr. E.D. Pa. Sept. 13, 2002) (acknowledging that one year limitations period applies to actions for actual and statutory damages, but recognizing statutory exception under which debtor may raise TILA violations defensively after the limitations period in action to collect debt); *Littlefield v. Walt Flanagan & Co.*, 498 F.2d 1133, 1136 (10th Cir. 1974) (finding that § 1640(e) limitations period, which applies to actions for actual and statutory damages, does not apply to action seeking rescission under § 1635).

In conclusion, for the reasons discussed above, Defendant MBNA's motion to dismiss is granted because Plaintiffs' claims are barred by the applicable statute of limitations. An appropriate Order follows.

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ORDER

AND NOW, this 19th day of **July, 2004**, upon consideration of Defendant MBNA America, N.A.'s Motion to Dismiss, Plaintiff's response thereto, and Defendant's reply thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant MBNA America, N.A.'s Motion to Dismiss (Document No. 4) is **GRANTED**. Plaintiffs' complaint against Defendant MBNA America, N.A. is **DISMISSED**.
3. By **August 2, 2004**, the parties are directed to brief whether this ruling similarly applies to Plaintiff's TILA claim against Defendant American Express Travel Related Services, Co. and, if so, whether this Court should continue to exercise supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3).

BY THE COURT:

Berle M. Schiller, J.