

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

ARIEL GARTNER and COLTON GARTNER,) CI19 – 270
Plaintiffs,)
vs.) ORDER
)
AR SOLUTIONS, INC.,)
Defendant.)

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This matter came before the Court for hearing on December 17, 2021, on a Motion for Summary Judgment filed by the Defendant. Tregg Lunn appeared as counsel for the Plaintiffs. Danielle Savington and Christopher Morris appeared as counsel for the Defendant. Evidence was adduced and arguments made. At the conclusion of the hearing, the matter was taken under advisement.

The Court being fully advised in the premises, having considered the evidence, the Court's records, and arguments of counsel, finds and orders as follows. Initially, this Court recognizes that summary judgment is an extreme remedy because it may dispose of a crucial issue in litigation, or the litigation itself, and may deny a trial to the party against whom the motion is directed. *Green v. Box Butte Gen. Hosp.*, 284 Neb. 243, 818 N.W.2d 589 (2012). Summary judgment is proper when the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Hughes v. School Dist. Of Aurora, Nebraska*, 290 Neb. 47, 52, 858 N.W. 2d 590, 594 (2015). The pleadings frame the issues to be considered on a motion for summary judgment. *Id.*

In determining whether there is a genuine issue of fact, the Court must construe the facts and draw all reasonable inferences in the light most favorable to the nonmoving party. *Flamme v. Wolf Ins. Agency*, 239 Neb. 465 469-70, 476 N.W.2d 802



(1991). The party moving for summary judgment must make a prima facie case by producing enough evidence to show that the movant is entitled to judgment if the evidence were uncontroverted at trial. *Hughes*, 290 Neb. at 53. If the moving party makes a prima facie case, the burden shifts to the nonmovant to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law. *Id.* The decisive question on appeal from summary judgment is whether the nonmoving party produces sufficient evidence to present a genuine issue of material fact. *Profl Mgmt. Midwest, Inc. v. Lund Co.*, 284 Neb. 777, 788 (2012).

The Plaintiffs' claim alleges and asserts that this is an action brought by consumer for the Defendant's violations of the Fair Debt Collection Practices Act, (hereinafter referred to as the "FDCPA") 15 U.S.C. §1692 et. seq. (Plaintiff's Complaint filed January 7, 2019). More specifically, Plaintiffs' allege: 1) That during the course of attempting to collect the alleged debt, Defendant: a) made false or misleading statements in connection with the attempted collection of said debt, in violation of 15 U.S.C. §1692e; b) made false representations as to the character, amount, or legal status of the debt in violation of 15 U.S.C. §1692e(2)(A); c) attempted to collect an amount that is not due in violation of 15 U.S.C. §1692 f(1); d) used unfair or unconscionable means in an attempt to collect an alleged debt in violation of 15 U.S.C. §1692f; e) engaged in conduct, the natural consequence of which is to harass, oppress or abuse in violation of 15 U.S.C. §1692d; f) brought a legal action in a location other than where the contract was signed or the consumer resides by filing its collections lawsuit in a county where Plaintiffs did not reside and where the alleged debt was not incurred in violation of 15 U.S.C. §1692i(a)(2)(B). (Plaintiffs' Complaint filed January 7,

2019). Plaintiffs' Complaint also asserts that the same conduct violates the Nebraska Consumer Protection Act (Neb.Rev.Stat. §59-1601 et seq.)

At the hearing on the Motion for Summary Judgment, evidence was adduced showing that the Defendants had filed a Debt Collection action on December 31, 2018, against the Plaintiffs in Nemaha County, Nebraska. At the time, Plaintiffs resided in Pawnee County, Nebraska. Evidence presented by the Defendant's on their Motion for Summary Judgment established that Plaintiff Ariel Gartner incurred a debt which was transferred by the original creditor to Defendant for collection. Following unsuccessful efforts to obtain voluntary payment on that account, AR Solutions (ARS) filed a Complaint in the County Court of Nemaha County, Case No. CI18-319.

Before filing the Complaint, evidence presented established that ARS followed its own internal procedures designed to ensure compliance with the FDCPA in commencing collection actions, by performing a search in a database called TLO, to verify current address and county in which the debtor resides. Evidence further shows that ARS further followed an additional internal procedure in that its counsel, Danielle Savington, verified the TLO search prior to initiating litigation. The TLO search performed by ARS in this matter indicated Ms. Gartner resided in Nemaha County. After the complaint was filed by ARS against the Gartners in Nemaha County, an unnamed attorney sent a letter to Ms. Gartner to solicit her as a client. That complaint was never served upon the Plaintiffs, and was later dismissed by the Nemaha County Court on July 9, 2019.

The FDCPA provides in §1692k(c) that, "[a] debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a

preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.” This Court finds that the evidence presented by Defendant on this Motion for Summary Judgment establishes a prima facie case that the alleged violation of the FDCPA was not intentional, was a bona fide error, and that procedures were in place and were followed by Defendant to avoid that error consistent with the requirements of 15 U.S.C. §1692. This Court further finds that the evidence presented by Defendant on this Motion for Summary Judgment establishes a prima facie case that the conduct alleged by the Plaintiff does not violate any provision of the Nebraska Consumer Protection Act (Neb.Rev.Stat. §59-1601 et seq.).

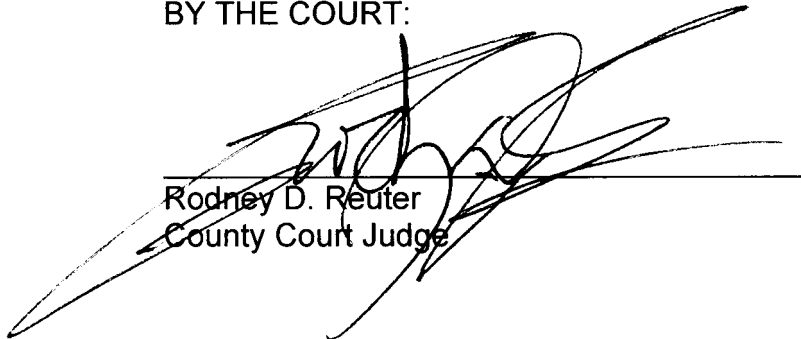
The Court finds that the movant (Defendant) produced sufficient evidence to establish that they are entitled to judgment. The burden shifts to the nonmovant (Plaintiff) to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law. The Court finds that Plaintiff failed to do so. The evidence adduced by Plaintiff does show that the complaint was filed in the wrong county, but Plaintiff failed to show any evidence that this violation was intentional and was not the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error that were followed by ARS. The Court therefore finds that Defendant is entitled to entry of summary judgment.

IT IS THEREFORE ORDERED that Defendant’s Motion for Summary Judgment is SUSTAINED. Plaintiffs’ Complaint filed January 7, 2019, is therefore DISMISSED with Prejudice at Plaintiffs’ Costs.

IT IS SO ORDERED.

DATED this 17th day of January, 2022.

BY THE COURT:



Rodney D. Reuter
County Court Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on January 11, 2022 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

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Date: January 11, 2022

BY THE COURT:

Dorothy G. Buckner

CLERK