UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CARLYNE DESIR,

Plaintiff,

v. CASE NO. 8:24-cv-02651-SDM-NHA

ANDREU, PALMA, LAVIN & SOLIS, PLLC, et al,

Defendants.
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ORDER

Alleging fraudulent misrepresentation and violations of the Fair Debt Collections Practices Act, Carlyne Desir sues (Doc. 19) Andreu, Palma, Lavin & Solis, PLLC, (APLS) Alan Jeffrey Miller, and Jeremiah Esquig. The defendants move (Doc. 37) for summary judgment. Desir responds (Doc. 38) and the defendants reply. (Doc. 39)

BACKGROUND

On September 26, 2023, Desir defaulted on two credit card accounts with Bank of America and with a combined unpaid balance of $103,789.67. (Docs. 33-1 and 33-2) The bank retained the law firm APLS. (Doc. 33-3 at ¶ 4) On September 17, 2023, and October 17, 2023, APLS sent Desir a "validation notice" for each account. (Doc. 33-3 at ¶¶ 5-6). On November 7, 2023, Desir sent "written correspondence" to APLS disputing the accounts and requesting APLS to cease communication with her. (Doc. 33-3 at ¶ 7) Before APLS received Desir's "written correspondence," APLS sent Desir "written verification" of one of Desir's defaulted accounts. (Doc.

33-3 at ¶ 8) After receiving Desir's request, APLS ceased communication with Desir. (Doc. 33-3 at ¶ 9)

On March 20, the bank, represented by APLS, sued Desir to collect one of the accounts. *Bank of America, N.A. v. Carlyne Desire* (Case No. 2024-CC-015302) (Doc. 33-3 at ¶ 12) The complaint was signed by Esquig, a lawyer employed by APLS. (Doc. 33-3 at ¶ 13)

On March 21, the bank sued Desir to collect the other account. *Bank of America, N.A. v. Carlyne Desire* (Case No. 2024-CC-002395) (Doc. 33-3 at ¶ 14) The complaint was signed by Miller, another lawyer employed by APLS. (Doc. 33-3 at ¶ 15)

DISCUSSION

Desir's FDCPA claims fail as a matter of law. Under the statute, a plaintiff must establish (1) that she was the object of collection activity arising from a consumer debt, (2) that the defendant is a debt collector as defined by the statute, and (3) that the defendant engaged in a statutorily prohibited act or omission. *Helman v. Bank of Am.*, 685 F. App'x 723, 726 (11th Cir. 2017). Desir offers no evidence that APLS or an APLS lawyer qualifies as a "debt collector" under section 1692a(6). The firm acted solely as counsel for the bank in the collection action. *Heintz v. Jenkins*, 514 U.S. 291, 296 (1995); *Vega v. McKay*, 351 F.3d 1334, 1336 (11th Cir. 2003). The undisputed affidavits show that the defendants sent the validation notices required by Section 1692g and ceased communication upon Desir's request — conduct that fully complies with the FDCPA.

Desir's fraudulent misrepresentation claims are likewise unsupported. She submits no affidavits, exhibits, or other competent evidence showing that any defendant falsely stated a material fact. *Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010). In her response, Desir asserts that the debts "were not owed to BOA at the time — they had been satisfied or assigned away," but the record contains nothing to substantiate that claim. (Doc. 38 ¶ 40).

To the extent Desir's response to the defendants' motion for summary judgment attempts to assert a new claim for violation of another statute or a common-law tort claim, those claims are not properly raised in a motion for summary judgment. *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004).

CONCLUSION

The defendants' motion for summary judgment is **GRANTED** and Desir's motion for summary judgment is **DENIED**. No later than **DECEMBER 8, 2025,** Desir may amend her complaint to raise a new statutory or common law claim. Desir may not reassert her claim under the FDCPA or her fraudulent misrepresentation claim.

ORDERED in Tampa, Florida, on December 1, 2025.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE