UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

KARENA LAPAN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

GREENSPOON MARDER P.A.,

Defendant.

Case No. 5:17-cv-130

DECISION ON DEFENDANT'S MOTION TO RECONSIDER RULING ON PERSONAL JURISDICTION AND MOTION, IN THE ALTERNATIVE, TO AMEND THE ORDER OF FEBRUARY 22, 2018 TO CERTIFY FOR INTERLOCUTORY APPEAL
(Doc. 20)

In a written decision issued on February 22, 2018, the court denied Defendant Greenspoon Marder P.A.'s motion to dismiss the complaint in this matter for failure to state a claim and for lack of personal jurisdiction. *See* Doc. 19. Defendant Greenspoon Marder P.A. ("Greenspoon") now moves for reconsideration of the court's determination that it is subject to personal jurisdiction in Vermont. Greenspoon further requests that, should reconsideration not be granted, the court's decision be amended to certify for interlocutory appeal the issues of personal jurisdiction and the applicability of the Fair Debt Collection Practices Act ("FDCPA"). Plaintiff Karena LaPan opposes both requests. For the reasons stated herein, the court will deny the motion in all respects.

I. Reconsideration

Greenspoon seeks reconsideration only on the issue of personal jurisdiction.

The relevant facts are set forth fully in the court's decision on the motion to dismiss, *see* Doc. 19, and are recapitulated here only in brief. LaPan is one of a group of timeshare owners who fell behind on their loan obligations to Eldorado Resorts Corp., a Florida corporation. Eldorado hired Greenspoon, a Florida law firm located in Orlando, to collect the amounts owing.

Greenspoon commenced a non-judicial foreclosure proceeding in Clark County, Nevada against Plaintiff and her co-owner by filing a Notice of Default and Election to Sell Under Deed of Trust in the land records of Clark County. *See* Doc. 8 at 3. LaPan's account was one of 15 alleged delinquent accounts identified in the foreclosure, and Greenspoon listed the names of the account owners and amounts due for all 15 accounts on a single Notice of Default, which was served on all account owners. Although the names and addresses of the other owners are redacted in the filings with this court, the parties agree that LaPan and her co-owner are the only Vermont residents and the other owners live in other states. LaPan contends that advising the other owners of her delinquency and the amount of her debt violated 15 U.S.C. § 1692c(b), which prohibits sharing information about a debtor with third parties, and 15 U.S.C. § 1692d(3), which prohibits publication of a list of consumers who allegedly refuse to pay. LaPan also raises state law claims arising from the same conduct and seeks certification of a class action.

Reconsideration is appropriate when there is "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992). Greenspoon does not claim any new law or evidence, asserting only clear error or manifest injustice here. Reconsideration "is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012). All of the arguments advanced on reconsideration were available to Greenspoon at hearing. While this alone would be independently sufficient grounds for denying reconsideration, Greenspoon's arguments are also unavailing on their merits.

The personal jurisdiction issue may be framed in the following manner: is subjecting a debt collector to suit in the state where the debtor resides consistent with the constitutional requirements of minimum contacts and traditional notions of fair play and substantial justice? *See International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Greenspoon voluntarily accepted the assignment of commencing legal proceedings against LaPan. The firm knew that she resided in Vermont. The firm also knew that it was potentially subject to the requirements of the FDCPA, because it referred to the statutory protections the FDCPA afforded LaPan in its communications with her. It should surprise no one that an alleged violation of the FDCPA has resulted in a lawsuit filed in LaPan's home state.

Greenspoon cites a number of district court cases and cases from outside this circuit in which courts have declined to exercise personal jurisdiction over defendants alleged to have committed defamation torts. Those cases are of limited value since LaPan's claims are for violations of the FDCPA, not for defamation. Nevertheless, the most on-point binding defamation case is *Calder v. Jones*, 465 U.S. 783, 789–90 (1984), in which a California plaintiff sued Florida writers for defamatory statements written in Florida and published in a newspaper with national circulation. The Supreme Court held that the Florida defendants' Florida activities were a proper basis for the exercise of specific jurisdiction by a California court because their actions were "expressly aimed at California." *Id.* at 789. The crucial point was that the Florida writers knew that their actions would be felt in California. Greenspoon emphasizes that LaPan was the only Vermont recipient of the notice of default in this case, whereas the newspaper in *Calder* had wide circulation in California. This distinction does not change the analysis, which focuses on the location where the defendant knows the injury will be felt. Greenspoon mailed the notice of default at issue here to LaPan's Vermont address; it clearly aimed its actions at Vermont and knew that the effects of its actions would be felt in Vermont. *Accord Eades v. Kennedy, PC Law Offices*, 799 F.3d 161, 168 (2d Cir. 2015) (reversing a district court's determination that it lacked personal jurisdiction over a debt collector law firm that mailed one debt collection notice, made one debt collection phone call, and mailed a summons and complaint to debtors in the forum state).

The court remains of the view that there was no error or injustice in its decision on the question of personal jurisdiction, which permits the Plaintiff to seek recourse in Vermont for an injury felt in Vermont as a result of a communication directed at Vermont, rather than burdening her access to justice with the expense and inconvenience of litigating her claims in Nevada or Florida.

II. Certification for Interlocutory Appeal

Greenspoon asks the court to amend its decision to certify for interlocutory appeal not just the question of personal jurisdiction, but also the question of the applicability of the FDCPA in the circumstances of this case.

Certification for interlocutory appeal is appropriate when a district court's decision involves a controlling question of law on which there is substantial ground for difference of

opinion and immediate appeal may materially advance the termination of the litigation. *See* 28 U.S.C. § 1292(b).

Here, the issues of personal jurisdiction and the applicability of the FDCPA are both controlling questions of law; if Greenspoon were to prevail on either of them, it would win the lawsuit.

The court does not agree that there is substantial ground for difference of opinion on the personal jurisdiction issue. If, as the complaint alleges, a violation of the FDCPA has occurred and the violation involved at least one direct and purposeful contact by the collection firm with the debtor in Vermont, then minimum contacts are present. The court finds little authority for Greenspoon's position that due process requires that default notices have been sent to other timeshare owners. When the letter is directed into the state and does not land there by accident as in a national sales campaign, a single letter causing harm is sufficient. *See Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) ("[A]lthough physical presence in the forum is not a prerequisite to jurisdiction, physical entry into the State—either by the defendant in person or through an agent, goods, *mail*, or some other means—is certainly a relevant contact." (emphasis added, internal citations omitted)).

Whether a non-judicial foreclosure proceeding counts as debt collection for purposes of the FDCPA is a closer question and one which this Circuit has not addressed. Greenspoon has cited cases in which judicial foreclosure is not considered to be debt collection. But even if there is substantial ground for difference of opinion on this issue, an immediate appeal is just as likely to prolong this litigation as it is to advance its termination. Appeal on this issue will be better undertaken after a final judgment on the merits. At that point, with the benefit of discovery and a summary judgment motion or a trial, the factual record will be complete. There will be no likelihood of more than one appeal. The delay required to prepare the case and resolve it on the merits is minor compared to the potential delay in permitting appeal prematurely and returning to the present position in a year's time or longer. Because of the serious risk of the delay of piecemeal review, the court cannot conclude that interlocutory appeal will materially advance the termination of the present litigation. Interlocutory appeal of the issue of the applicability of the FDCPA to non-judicial foreclosure proceedings is thus not appropriate.

CONCLUSION

Greenspoon's motion to reconsider or in the alternative certify for interlocutory appeal (Doc. 20) is **DENIED** in all respects.

Dated at Rutland, in the District of Vermont, this 24 day of July, 2018.

Geoffrey W. Crawford, Chief Judge
United States District Court