2019 WL 5549253
Only the Westlaw citation
is currently available.
United States District Court,
N.D. Georgia, Atlanta Division.

Brian STEIN, individually and
on behalf of a class, Plaintiff,
v.
TITLEMAX OF GEORGIA,
INC., Defendant.

CIVIL ACTION FILE NO:
1:19-CV-00669-WMR
|
Signed 09/13/2019

Attorneys and Law Firms

Shimshon E. Wexler, The Law Offices of Shimshon Wexler, PC, Atlanta, GA, for Plaintiff.

Alixandria Lynn Davis, Christopher A. Wiech, S. Derek Bauer, Ryan E. Harbin, Baker & Hostetler, LLP, Atlanta, GA, for Defendant.

ORDER

WILLIAM M. RAY, II, United States District Judge

***1** This matter is before the Court on the Magistrate Judge's Final Report and Recommendation ("R & R") [Doc. 20], which recommends that Defendant's Motion to Dismiss or Stay Complaint [Doc. 8] be GRANTED and that plaintiff's TILA claim be DISMISSED. Plaintiff Brian Stein has filed an objection to the R & R [Doc. 23], claiming that the complaint states a claim upon which relief can be granted and that Defendant's Motion to Dismiss should have been denied. Defendant TitleMax of Georgia, Inc. ("TitleMax") has filed a response to Plaintiff's Objections. [Doc. 25].

I. LEGAL STANDARD

In reviewing a magistrate's report and recommendation, the district court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Here, the Plaintiff has raised objections which the Court has reviewed on a *de novo* basis, as discussed fully, below.

In determining whether a complaint states a claim upon which relief can be granted, courts accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Clark v. Riley, 595 F.3d 1258, 1264 (11th Cir. 2010). A complaint must allege facts that, if true, "state a claim to relief that is plausible on its face," i.e., the allegations

must "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (internal quotation marks omitted). The plausibility standard requires that a plaintiff allege sufficient facts "to raise a reasonable expectation that discovery will revel evidence" that supports the plaintiff's claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007).

II. BACKGROUND

In the R&R, the Magistrate Judge has provided a detailed narrative of the factual allegations. [Doc. 20 at 2-9]. The Court adopts the facts as provided in the Magistrate Court's Final Report and Recommendation. Id. Additionally, the Court has also conducted its own review of the record. See Fed. R. Civ. P. 56(c)(3). Summarizing that narrative, and relevant to the matters at issue, Plaintiff Stein borrowed $100 from TitleMax on December 26, 2018, and pledged his car as collateral. In all, plaintiff agreed to pay $134.51 to TitleMax by January 25, 2019. The Pawn Agreement's TILA disclosures, which were calculated based upon the assumption that plaintiff would repay on the maturity date of January 25, 2019, provide as follows:

Annual Percentage Rate	Finance Charge	Amount Financed	Total of Payments
The cost of your credit rates as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
170.23%	$16.51	$118.00	$134.51

***2** In addition, the Pawn Agreement expressly notes the following:

Security:	You are giving a security interest in the vehicle described above.
Lien Filing Fee:	$18.00
Prepayment:	If you pay off early, you will not be entitled to a refund of the finance charge.

In addition, Section I of the Pawn Agreement states that TitleMax charges a lien filing fee that "will not exceed any fee actually charged by the appropriate state to register such lien and will only be charged if [TitleMax] actually registers such a lien."

Section 2 describes the Pawnshop Charge like this:

> The Pawnshop Charge for the initial 30-

> day period of the Pawn Transaction is 13.9900% of the principal amount advanced, with a minimum Pawnshop Charge of $10.00 for such period. The Pawnshop Charge shall be deemed earned, due, and owing as of the Pawn Date [i.e., December 26, 2018].... The Annual Percentage Rate ("APR") for the initial 30-day period of this Pawn, and each of the first two renewal periods thereafter, is 170.23%, and the amount to redeem the Vehicle during each such period is $134.51.

Section 3 of the Pawn Agreement provides that "[y]ou may repay in full at any time without additional charge, fee or penalty. If you repay in full, then you will not be entitled to a rebate and/or refund of any part of the Pawnshop Charge of this Pawn." Further, Section 3 of the Pawn Agreement gave plaintiff the opportunity to rescind the agreement "by the close of business on the business day following the date of the [A]greement."

On December 31, 2018, plaintiff returned to TitleMax to repay his pawn. He paid $134.51, leaving an account balance of $0. In the intervening four days between the date of the pawn and the plaintiff's payment—between the day after Christmas and New Year's Eve—TitleMax had not yet recorded the lien on the plaintiff's car title with the Georgia Department of Revenue. Due to plaintiff's right to rescind the agreement within one business day, TitleMax had only one full business day (Friday, December 28, 2018) to record the lien before plaintiff returned to pay the pawn.

On January 14, 2019, TitleMax received a handwritten letter from plaintiff's counsel, purporting to provide notice of a dispute and an opportunity to cure under Section 11 of the Pawn Agreement. Like the allegations made in the Complaint, the letter complained of being charged $18 for a lien that was not recorded on plaintiff's car title and being charged interest on the $18 lien fee. The next day, TitleMax acknowledged receipt of the letter and indicated, among other things, that it would investigate plaintiff's dispute. On January 31, 2019, TitleMax wrote plaintiff's counsel, indicating that it had completed its investigation. TitleMax explained that the Pawnshop Charges became due and owing on the date of the pawn, regardless of early payment. Nevertheless, in what TitleMax now calls a good faith effort to resolve the dispute, it refunded the $18 lien fee to plaintiff, though disclaiming any obligation to do so. TitleMax sent plaintiff the $18 refund check directly, via certified mail, and he signed for it.

***3** On February 5, 2019, plaintiff filed the aforementioned case in the State Court of DeKalb County, Georgia. He filed the instant one-count Complaint alleging a non-specified TILA violation three days later. On February 11, 2019, plaintiff's counsel returned the $18 check to TitleMax as "uncashed and unacceptable."

Taking the facts in the light most favorable to the plaintiff as the non-moving party, the Court, addressing each of the Plaintiff's Objections in turn, enters the following Order.

III. DISCUSSION

A. The Magistrate Judge Correctly Concluded the Complaint Did Not Allege the TILA Disclosures Were False.

As an initial matter, Plaintiff Brian Stein makes an objection that the Magistrate Judge erroneously concluded that the Complaint did not allege that the TILA disclosures were false. Plaintiff's Objection states, "The Complaint specifically alleged that the Pawn Agreement's TILA disclosures were false because a loan took place and the TILA disclosures stated that 'the amount of credit provided to you or on your behalf [is or will be] $118.' " [Doc. 23 at 6]. Plaintiff's Objection also states the disclosure was, "false because the amount of credit provided to Stein or on his behalf was always $100." [Doc. 23 at 6]. Plaintiff's Objection further states, "the TILA disclosures falsely represented that 'The dollar amount the credit will cost you [is] $16.51,' when it cost $34.51." [Doc. 23 at 6]. Finally, Stein's Objection states, "The APR of 170.23% based on a 30 day loan period was also false as the APR was really more than double that amount." [Doc. 23 at 6].

Congress enacted the TILA to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. § 1632. The TILA mandates the disclosure of certain important terms of credit agreements including the annual percentage rate ("APR") and the total finance charge. Id. The TILA disclosures are required in order to make the agreement accessible to the consumer. Rossman v. Fleet Bank, 280 F.3d 384, 389 (3rd Cir. 2002). Importantly, the accuracy of the representations contained in the disclosures is measured at the time those representations are made. Id. at 391; see also Nash v. First Fin. Sav. & Loan Ass'n, 703 F.2d 233, 239 (7th Cir. 1983); Scroggins v. LTD, Inc., 251 F. Supp. 2d 1277 (E.D. Va. 2003).

Stein's Objection argues, "the TILA disclosure and the entire contract made as if the finance charge was fixed. Really, the finance charge should not have been fixed because it was accurate only when TitleMax registers a lien. If

TitleMax does not register a lien then its TILA disclosures are false." [Doc. 23 at 11]. However, at the time TitleMax made the disclosure, the $18 filing fee was an accurate statement of the amount charged by the state of Georgia, even if Stein's subsequent early repayment rendered the lien fee void. Recording a Lien and Security Interest on a Title, Georgia Department of Revenue (last visited September 3, 2019) https://dor.georgia.gov/recording-lien-and-security-interest-title.

The Magistrate Judge recognized that, since the plaintiff did not allege that the Pawn Agreement's disclosures were actually false, a different question arises of whether accurate and candid initial disclosures can retroactively be rendered inaccurate by subsequent events. The plaintiff argues there was a possibility that the plaintiff would pay the loan off before the lien fee was paid, and therefore TitleMax should have written its disclosures as an estimate. However, the plain language of Section 1634 of the TILA states: "If any information disclosed in accordance with [the TILA] is subsequently rendered inaccurate as the result of any act occurrence, or agreement subsequent to the delivery of the required disclosures the inaccuracy resulting thereof does not constitute a violation of ... [the TILA]." 15 U.S.C. § 1634. Therefore, the plaintiff's early repayment of the loan subsequent to the delivery of the disclosures did not render the TILA disclosures inaccurate.

***4** Although the Complaint alleged that the Pawn Agreement's disclosures were a false representation of the parties' legal obligations after-the-fact, it did not allege the TILA mandated disclosures were a literally false representation of the parties' legal obligations at the time of signing, which is what the law requires. Therefore, the Court is unable to find clear error in the Magistrate Judge's view of the lack of allegations in the Complaint and accordingly **OVERRULES** this objection.

B. The Magistrate Judge Correctly Interprets and Applies TILA

The plaintiff's second objection is that the Magistrate Judge incorrectly applied the TILA in concluding the lien fee need not be paid for it to be excluded from the finance charge. The plaintiff interprets 15 U.S.C. § 1605(d)(1) to support his contention that: "The plain language of the statute means that if a fee will not be paid it may not be excluded." [Doc. 23 at 14]. Specifically, the plaintiff relies on staff commentary for Regulation Z, citing "... charges prescribed by law which actually are or will be paid ..." to mean a lien filing fee cannot be excluded if, at the time of the TILA disclosures, a lien filing fee is not actually or will not be paid.

However, the plaintiff's attempt to selectively pick and narrowly read the plain language of the TILA and regulation Z does not comport with the language of section 1634's subsequent event safe harbor or the phrase "will be paid," found in the TILA section 1605(d)(1). Using

the plaintiff's interpretation, the Court would be ignoring the rest of the statute and its purpose, which is to focus on the accuracy of disclosures at the time those representations are made. Rossman v. Fleet Bank, 280 F.3d 384, 391 (3rd Cir. 2002). The TILA is not meant to govern the ins-and-outs of the credit industry. HR. Rep. No. 1040 (1967), as reprinted in 1968 U.S.C.C.A.N. 1962, 1963. Several circuit court decisions agree that the TILA's main purpose is to ensure accurate, conspicuous, and candid representations in initial disclosures. See Rossman, 280 F.3d at 393-96; Rendler v. Corus Bank, 272 F.3d 992, 996 (7th Cir. 2001); De Mando v. Morris, 206 F.3d 1300, 1303 (9th Cir. 2000); Nash, 703 F.2d at 239.

Upon analyzing the statute in its entirety, the Court rejects the plaintiff's attempt to skirt the plain language of the TILA and Regulation Z and disregard the TILA's true purpose. The Court has found that TitleMax's initial disclosures comport with TILA's disclosure requirements and were accurate representations of the parties' legal obligations at the time TitleMax made those representations. Therefore, the Court is unable to find clear error in the Magistrate Judge's interpretation and application of the TILA and accordingly **OVERRULES** this objection.

IV. CONCLUSION

In sum, after reviewing, *de novo*, the portions of the R&R to which Plaintiff raised specific objections and reviewing the remaining parts of the R&R for plain error according to United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), the Court receives the R & R [Doc. 20] with approval and adopts its findings and legal conclusions as the Opinion of this Court. Accordingly, Plaintiff's Objections are **OVERRULED** [Doc. 23] and the Defendant's Motion to Dismiss or Stay Complaint [Doc. 8] is hereby **GRANTED**. Judgment is hereby entered in favor of the Defendant and the Clerk is directed to terminate this case.

IT IS SO ORDERED, this 13th day of September, 2019.

All Citations

Not Reported in Fed. Supp., 2019 WL 5549253

End of Document