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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAURA LYNN HAMMETT

Plaintiff
Vs.

No. 4:21-cv-00189-LPR
June 14, 2023
Little Rock, Arkansas

PORTFOLIO RECOVERY ASSOCIATES, LLC
Defendant

TRANSCRIPT OF RULING ON MOTION FOR SUMMARY JUDGMENT
BEFORE THE HONORABLE LEE P. RUDOFISKY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Plaintiff:

LAURA LYNN HAMMETT
Pro Se Plaintiff
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Conway, Arkansas 72032

On Behalf of the Defendant:

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Proceedings reported by machine stenography and
displayed in realtime; transcript prepared utilizing
computer-aided transcription.

1 THE COURT: Okay. I appreciate very much everybody's
2 extensive briefing on all of the various motions. I also
3 appreciate everybody's argument today. I also appreciate
4 everybody's patience while I ran down a few things that --
5 that you were all telling me. I have done all of that.

6 I have also spent a consider amount of time,
7 especially in this last week, poring over all of your
8 various submissions, both -- both sides, my consolidated
9 order, and all of the facts in the record. I am at a
10 point where I feel like I am ready to rule.

11 I am going to rule orally. Obviously, the court
12 reporter is here, and she can prepare a transcript, and
13 this transcript will be considered my written order for
14 purposes of both the summary judgment motion and the
15 motion to -- and the motion to reconsider.

16 Let me start with the defendant's summary judgment
17 motion. I am going to grant that motion for a number of
18 different reasons. Primarily, what I will tell you is,
19 after going through all of the material in the record,
20 after going through everybody's arguments, and after
21 reviewing my consolidated order, I do believe that my
22 consolidated order still gets right what the record
23 reflects in terms of what a rational juror would and would
24 not conclude about this case or -- or would certainly
25 conclude and could not conclude otherwise.

1 I don't think there is a genuine dispute over Ms.
2 Hammett owing the \$2,297.63. And I am going to adopt for
3 purposes of resolving this motion both the factual
4 background that I provided in the previous order, the
5 consolidated order, and also and in particular footnote
6 463 of that order where I specifically go through what in
7 the record makes it clear to me that no rational juror
8 could find -- could find that Ms. Hammett did not owe this
9 -- this debt. And so, therefore, there is no genuine
10 dispute.

11 I will say I recognize that, for purposes of the
12 summary judgment motion, that there is some more evidence,
13 at least arguable evidence, that relates to this question,
14 the question being under 1690 -- 15 U.S.C. §1692e(2)(A),
15 whether -- whether PRA, in -- in collecting this debt or
16 in connection with collecting this debt, was -- made false
17 or fraudulent statements -- or I guess made false or
18 misrepresentative statements about the existence -- well,
19 I guess about the character or amount of the -- of the
20 debt.

21 I will say that none of that subsequent evidence, to
22 the extent one can characterize it as evidence, suggests
23 to me that any rational juror would conclude or could
24 conclude that PRA's statements were false, meaning that
25 Ms. -- Ms. Hammett actually did not owe the debt or that

1 the debt was not the 2200 and change figure that I've --
2 that I've discussed.

3 I want to say a couple of more specific things, and
4 this actually applies to both the summary judgment and the
5 motion for reconsideration. I will say I appreciate and
6 accept Ms. Hammett's discovery that I had a drafting error
7 in footnote 463. I said at one point in that footnote
8 that Ms. Hammett in her affidavit said, quote, I am a
9 consumer in respect to any debt incurred by me on a credit
10 card issued by Capital One Bank USA in or about 2001,
11 period. And as Ms. Hammett correctly points out, that
12 period was too early and chopped off the rest of the
13 sentence. The full sentence is, I am a consumer in
14 respect to any debt incurred by me on a credit card issued
15 by Capital One Bank USA in or about 2001, comma, as I used
16 any credit card to purchase household items, food, and
17 other consumer items, period, close quote.

18 I hope that is the correct -- is the correct
19 iteration of it. I am going off of page 6 of Ms.
20 Hammett's brief in support of opposition to the
21 defendant's supplement motion for summary judgment. But I
22 agree that I should not have chopped off the sentence with
23 the period. I take responsibility for that.

24 Having said that, the last clause does not change
25 anything in my mind. It does not create more -- a more

1 favorable situation for Ms. Hammett were this to go to a
2 jury than she had before. In fact, if it does anything,
3 it hurts her, but I just don't think it makes any
4 difference one way or the -- or the other.

5 Additionally, I -- while it's sort of after the fact
6 -- after-the-fact declarations that the Eighth Circuit
7 really tells me not to consider, I will even consider that
8 Ms. Hammett changed her statement from not believing that
9 she owed the debt to saying she -- she knows she didn't
10 owe the debt. That's an incredibly conclusory statement,
11 especially given all the other statements that Ms. Hammett
12 has made in both the record and also here at -- at oral
13 argument. Whatever you want to characterize her ultimate
14 statement as a belief or -- or knowledge, she does not
15 have and has not come forward with any evidence from which
16 a rational jury could say that PRA's statements that there
17 was a debt and that it was \$2,297.63 and that she owed it
18 was false or misleading.

19 I also will add that, in addition to the evidence
20 that I cited in note 463, I do think it is worth
21 highlighting that at page 92 and 93 of Ms. Hammett's
22 deposition, when she was talking about her discussions
23 with Capital One -- and I should say, I think at least at
24 the summary judgment stage, I can include this information
25 in my finding pursuant to the residual exception of the

1 hearsay rule. I'll also note that Ms. Hammett didn't
2 object to -- to this information as hearsay, but
3 nonetheless, Ms. Hammett said "they" -- and in this
4 context, she's talking about Capital One. They did say
5 that they had a charge off for the \$2,297.63 but, you
6 know, they didn't have anything else. Then she goes on
7 and adds more to that, but it doesn't take away from what
8 she -- from what she said in what I just read.

9 That is another helpful piece of the record that
10 shows why no rational juror could conclude otherwise than
11 I'm concluding here, which is that, based on this record,
12 it is definitively established that Ms. Hammett owed the
13 \$2,297.63. And, so consequently, PRA's representation of
14 that fact was -- was not false or misleading -- or their
15 representation of those facts.

16 I will also say, while I'm not going to go into as
17 much detail, I do agree with defendant's position that the
18 complaint was limited to -- the operative complaint was
19 limited to writings. Ms. Hammett is very clear on that in
20 paragraph 316 and -- and her complaint is very thorough.
21 So this is not a situation where somebody can't write a
22 complaint and doesn't know what to say. Ms. Hammett knows
23 how to express herself in my view, and it very clearly was
24 just talking about the writings.

25 Quite frankly, I don't think ultimately that makes

1 any difference, but I will also associate myself with the
2 defendant's argument that none of those writings had as an
3 animating purpose the collection of the debt, which under
4 binding Eighth Circuit precedent means that they fall
5 outside of 15 U.S.C. §1692e(2)(A). I think the same thing,
6 quite frankly, is true of the call in February, even were
7 we to get there.

8 I will also say that I have significant concerns --
9 although I am not going to rule on this, I will flag it
10 for the Eighth Circuit. I have significant concerns that
11 under TransUnion and Spokeo, the recent Supreme Court
12 cases on this issue, that Ms. Hammett does not actually
13 have a concrete injury that flows from the oral or written
14 communications of the existence of this debt or the
15 amount.

16 Let me start with the amount. To the extent that Ms.
17 Hammett is saying that the amount of the debt is incorrect
18 but there was some debt, there's basically zero concrete
19 injury -- or there is zero concrete injury that could --
20 that could flow from that because, if it was \$1,900
21 instead of \$2,300, there's -- there's nothing that -- that
22 happened to Ms. Hammett even on her own -- on her own
23 telling. There's nothing that happened to Ms. Hammett
24 because she was told the wrong number. And that's
25 especially true, of course, since, basically, a month or

1 so or maybe a little bit after that, after she was first
2 told of the existence and the amount of the debt, it was
3 then marked down to zero by the company -- by PRA.

4 To the extent that we're not talking about just an
5 incorrect amount, but we're talking about overall whether
6 or not Ms. Hammett had the debt at all, it strikes me that
7 there's no injury directly tied to that.

8 And recall, here, we're not talking about the large
9 number of calls she got prior to -- prior to February of
10 2018. We're not talking about letters she -- that were
11 sent to her but never received by her. We are really
12 talking about the -- at most even, if one includes the
13 February 18 call, we're talking about the February 18
14 call, we're talking about the -- the dispute letter which,
15 again, as I've said before, did not have an animating
16 purpose to collect a debt. And then pretty quickly after
17 that, the debt was marked down to zero. So we're really
18 only talking about whether injury flows from the February
19 18, 2020, call.

20 And my point here is, I don't think under what Spokeo
21 and TransUnion have said that there's any sort of similar
22 in-kind traditional common law tort that would -- that
23 would -- that sort of evokes the same injuries as the
24 injuries we're talking about here.

25 Obviously, there's no monetary injury here. I mean,

1 I understand that Ms. Hammett decided to file a lawsuit,
2 but that was Ms. Hammett's choice. There was no sort of
3 litigation of collecting -- of trying to collect a debt on
4 the part of PRA. So it's not like Ms. Hammett had to --
5 had to defend a lawsuit. There's -- there's really no
6 suggestion of any injury in terms of monetary value. And
7 in terms of physical -- of physical injury or emotional
8 injury, I don't really know of any common law sort of
9 similar injury where it comes from somebody merely lying
10 to you when there are no other consequences.

11 I mean, I understand there's the tort of false --
12 false pretenses and there are misrepresentation torts, but
13 all of those, there's some kind of consequence of somebody
14 -- you know, of the person who is being faked out losing
15 money or paying money or having some other injury. And I
16 don't think there's -- there's a tight enough correlation
17 here.

18 I accept, of course, that Congress can sort of make a
19 de facto injury into a de jure injury and can sort of
20 expand -- well, maybe not expand. They can emphasize or
21 bring up something that might have only been a -- a sort
22 of very negligible injury into a statutory injury, but
23 they can't create the injuries where there were none to
24 begin with.

25 So I do have significant standing concerns here. I'm

1 not basing my ruling on that, but, obviously, that doesn't
2 matter because the Eighth Circuit has an independent
3 obligation to -- to look at jurisdictional issues here
4 anyway.

5 I think what I've said is probably enough to explain
6 why I am granting the summary judgment motion.

7 On to the motion for reconsideration. I am going to
8 deny the motion for reconsideration. And I will say,
9 basically and primarily the reason I'm denying it is
10 because almost everything that Ms. Hammett argues is not
11 new evidence. It's essentially re-argument of issues that
12 the Court has already decided. I don't think it's
13 appropriate for reconsideration. Even if it was
14 appropriate for reconsideration, I don't think any of
15 those arguments are persuasive and suggest that I made a
16 mistake.

17 As I've said -- I've already explained sort of the
18 two things that Ms. Hammett pointed out that I thought
19 were important and I've addressed them: namely, the one
20 sort of writing -- drafting error that I made and why that
21 doesn't matter; and then, number two, that instead of
22 saying she believes, now she says she knows, but I've
23 already explained why that doesn't matter either.

24 The -- again, the only other issue here is the
25 potentially new evidence of the -- I want to make sure I

1 say it right -- the Mejia case and the other documents
2 that Ms. Hammett provided very recently in the -- in the
3 last couple of days, you know, so the 2023 consent order
4 and -- and submissions around that.

5 I really don't think that is evidence of anything.
6 It obviously doesn't paint PRA in a good light and it
7 obviously suggests that -- that, in other instances at
8 least, PRA has done some things wrong, but I don't believe
9 that it really has any relevance at all to our case, at
10 least it has not in my view been sufficiently explained
11 how it directly bears on our case, and I'm -- I can't
12 assume that this happened in our case because it happened
13 in Mejia -- or I can't assume bad things happened in our
14 case because bad things happened in Mejia potentially.
15 Obviously, you know, there was a significant settlement in
16 Mejia, but also just as obviously, in terms of the consent
17 order, I understand that the defendants there did not --
18 or I should say, PRA there did not admit liability, for
19 whatever that's worth. Just, quite frankly, I don't think
20 it's very relevant to the issues here.

21 So given all of that, I am going to -- like I said,
22 I'm denying the motions for reconsideration. I'm granting
23 the defendant's supplemental motion for summary judgment.
24 And as you all know because I've said it earlier, I am
25 granting Ms. Hammett's motion to disclose the expert

1 report as I've discussed it.

2 Would you all please hold on one moment.

3 Okay. As to the summary judgment motion and the
4 motion for reconsideration, I am -- I've concluded my oral
5 order. Let me ask this -- and this is not a time for
6 re-argument. If you go beyond my question, either of you,
7 I'm going to make it very clear you shouldn't.

8 Let me start with PRA's counsel. Is there anything
9 that I didn't address in that order that specifically you
10 think I need to address?

11 MR. KOMISIN: Your Honor, the one potential
12 issue is the motion to compel arbitration contained within
13 the first motion to reconsider, Docket Number 194.
14 However, I believe, absent any showing of the terms and
15 conditions, that that's functionally been mooted at this
16 point, but that's the only potential hanging chad, so to
17 speak.

18 THE COURT: That's -- that's fair. You're
19 talking about the alternative ground from the motion for
20 reconsideration. To the -- to the extent that's still a
21 live issue, I'm going to deny it.

22 We don't have the contract. I don't see the
23 contract. The contract is not in the record. I
24 understand Ms. Hammett's arguments about it from the
25 briefing real well, but I don't think there is anything I

1 can do absent it not being -- absent it being in the
2 record. And, of course, we are way past sort of the point
3 for arbitration motions at this point.

4 Anything else, Mr. Komis in?

5 Look, the reason I'm asking you -- and I'm going ask
6 Ms. Hammett the same question. But at least from your
7 side, the reason I'm asking you is because you're going to
8 be the ones defending this order when it goes up on
9 appeal. So is there anything I haven't addressed that
10 you'd like me specifically to address?

11 MR. KOMISIN: No, Your Honor. I believe Your
12 Honor's ruling was very clear and specific, and I
13 appreciate the time you put into it.

14 THE COURT: Okay. Ms. Hammett, I'm sure you're
15 not happy. I understand that. We -- you and I obviously
16 have a disagreement on the law here that's applicable and
17 the facts, and that's fair and that will -- that will sort
18 of work itself out at the Eighth Circuit. And if the
19 Eighth Circuit sends it back, I will deal with the case
20 with all deliberate speed.

21 But I want to know if there's something -- and
22 please, this is -- again, this is not a chance to sort of
23 have -- do like a monologue, but is there something, a
24 particular piece of evidence that you think I haven't
25 sufficiently addressed; again, not whether you agree with

1 how I've addressed it, but you want me to address it one
2 way or the other?

3 MS. HAMMETT: The issue of whether it was a
4 violation of the Fourth Amendment right to privacy to
5 continue to call me and demand that I give them
6 information about myself before I knew who they were.

7 THE COURT: I am -- I am happy to address that.
8 The Fourth Amendment is not applicable to private
9 corporations. It only constrains the government.

10 Anything else?

11 MS. HAMMETT: No. I have a question that -- are
12 you asking about the Rule 11 motion?

13 THE COURT: Well, no. We're going to get to
14 that in a second. I'm asking if there's -- if there's
15 anything specifically in the -- in the decision I just
16 made on the motions I just made that you -- you think I
17 didn't talk about a particular thing that is really
18 important to talk about and you need -- you feel like you
19 need a ruling on it from me.

20 MS. HAMMETT: I understand you.

21 THE COURT: Okay. So I'm going to take that as
22 a no.

23 MS. HAMMETT: Correct.

24 THE COURT: Okay. Very good.

25 Now we can talk about other things that are still

1 pending. So Mr. -- I'm terrible. I'm sorry. It is
2 Komisin or Komisin?

3 MR. KOMISIN: It's Komisin, Your Honor.

4 THE COURT: Komisin. Look at that. Okay. I
5 don't feel that bad because everybody butchers my last
6 name.

7 So, Mr. Komisin, I think there are some outstanding
8 motions, but I don't really know if they're sort of moot
9 now, at least -- at least some of them. For example, I
10 think there is a motion to -- to quash a subpoena.

11 Do you recall that one?

12 MR. KOMISIN: I believe that's been ruled upon,
13 Your Honor. I can pull up the docket entry, but if I'm
14 not mistaken, it's the subpoena that was issued to
15 Verizon, Ms. Hammett's cellphone provider. Ms. Hammett
16 stated that she spoke with them and that they said they
17 have nothing responsive to give. And so, essentially,
18 that -- it's ruled as a moot motion. I can find that
19 order that --

20 THE COURT: No. I think I -- I think I'm
21 talking about something different. I think I'm talking
22 about Document 133. There's a motion to quash from Jana
23 Perry about some kind of audio recording in Searcy county.

24 MR. KOMISIN: Yes. I believe that's mooted by
25 Your Honor's ruling. And I think the subpoena was in all

1 candor for evidence in a separate case anyway. But I
2 believe with the summary judgment being granted, there's
3 no longer any plausible scenario where that evidence could
4 be beneficial here.

5 THE COURT: Ms. Hammett, your thoughts.

6 MS. HAMMETT: Not unless we're moving forward,
7 that would be moot.

8 THE COURT: I'm going to find then that Document
9 133, the motion to quash, is moot.

10 So I think then that leaves, Ms. Hammett, your
11 sanctions motion, correct?

12 MS. HAMMETT: Correct.

13 THE COURT: That one, if I remember correctly, I
14 said we are -- we're -- we're not moving forward on until
15 14 days after I lift the stay, which I would lift after
16 I've decided summary judgment.

17 Mr. Komisin, any reason I shouldn't at this point, at
18 least after I enter the text orders, any reason I
19 shouldn't lift the stay and then have you respond to the
20 sanctions motion within 14 days?

21 MR. KOMISIN: No, Your Honor.

22 THE COURT: All right. Ms. Hammett, any problem
23 with me proceeding that way?

24 MS. HAMMETT: If I'm understanding you, you're
25 just giving them 14 days?

1 THE COURT: Well, yeah. So I'm going to enter
2 -- I'm going to enter the text orders that will dispose of
3 this case in terms of summary judgment and also dispose of
4 the other motions. I'm going to enter them either today
5 or tomorrow morning, and then I will lift the stay and
6 give them 14 days to respond to your sanctions motion, at
7 which point I will either decide it on the briefs or I
8 will ask for another hearing.

9 MS. HAMMETT: Yes. That sound reasonable.

10 THE COURT: Okay. Anybody else have any other
11 motion or anything we need to talk about?

12 Let me start with Mr. Komis in.

13 MR. KOMISIN: Your Honor, I believe there's one
14 last motion. It's Ms. Hammett's motion in limine to limit
15 Dr. Adhia's proposed testimony, Docket Number 70. I
16 believe Your Honor took that under advisement until the
17 remaining pending motions were resolved. PRA's position
18 is that has been mooted by --

19 THE COURT: I think that's probably right, but
20 let me ask Ms. Hammett for her thoughts.

21 MS. HAMMETT: That's been mooted.

22 THE COURT: Okay. So then to the extent I
23 haven't already done something on it, I will find that to
24 be mooted.

25 MS. HAMMETT: I have a question, just because

1 I'm not an attorney and this is all new to me.

2 So if you moot something but then the appellate court
3 says, come back, and, you know, we're going to redo this,
4 then do I have to -- do I have to do those motions all
5 over again?

6 THE COURT: You do. You do.

7 MS. HAMMETT: Or do we take the moot out?

8 THE COURT: No. You'll need to do them all over
9 again. I mean --

10 MS. HAMMETT: Oh.

11 THE COURT: That's -- that's just the way those
12 things go.

13 MS. HAMMETT: Oh. Then I'd have to consider for
14 a moment whether that is actually good for either the
15 Perry -- Perry quashing that, because I don't want to
16 quash it and I don't know what the next statute of
17 limitations are and --

18 THE COURT: Well, really right -- really right
19 now I just want you -- I just want to give you the ability
20 to give me your thoughts on whether these are mooted or
21 not and then I'm going to decide.

22 MS. HAMMETT: Oh, okay. Then I'll let you do
23 that research because I don't know the answer to that, but
24 that -- I would hate to --

25 THE COURT: I understand you don't -- I got it.

1 You don't want to concede that they're mooted. That's
2 fine. I under -- I understand that. I -- I believe they
3 are both mooted in this situation so I am going to moot
4 both of -- both of those motions.

5 Mr. Komis in, from your side, anything else?

6 MR. KOMISIN: No, Your Honor.

7 THE COURT: Okay. Ms. Hammett, anything else in
8 terms of something you think I haven't decided or
9 anything?

10 MS. HAMMETT: No, Your Honor.

11 THE COURT: Okay. We are -- we are adjourned.

12 (Proceedings adjourned at 1:34 p.m.)

13 * * * * *

14 REPORTER'S CERTIFICATE

15 I, Valarie D. Flora, FCRR, RPR, certify that the
16 foregoing is a correct transcript of proceedings in the
17 above-entitled matter.

18 Dated this the 14th day of June, 2023.

19 /s/ Valarie D. Flora, FCRR

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21 United States Court Reporter

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23

24

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