

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

|                           |                   |
|---------------------------|-------------------|
| GILBERT J. GERVAIS,       | :                 |
| Plaintiff,                | :                 |
|                           | :                 |
| v.                        | : 3:03cv2102(PCD) |
|                           | :                 |
| RIDDLE & ASSOCIATES, P.C. | :                 |
| Defendant.                | :                 |

**RULING ON PLAINTIFF’S MOTION TO STRIKE COUNTERCLAIMS**

Plaintiff moves to strike Defendant’s counterclaims. For the reasons stated herein, Plaintiff’s motion is **denied**.

**I. Background**

Plaintiff’s complaint alleges that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”) (Count One) and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq. (“CUTPA”) (Count Two). He alleges that Defendant, a law firm and debt collector, sought to collect a debt from Plaintiff after the applicable statute of limitations had passed and when the debt could not be legally enforced. Defendant filed an answer, affirmative defenses, and counterclaims for declaratory judgment. Plaintiff moves to strike Defendant’s counterclaims.

**II. Discussion**

Plaintiff moves to strike the counterclaims because they (1) are “properly asserted . . . (if at all)” via summary judgment; (2) “needlessly complicate the judicial task;” (3) exceed the scope of the controversy; and (4) “attempt to circumvent clearly established FDCPA fee-shifting restrictions.” Pl. Mem. at 1.

As a preliminary matter, the parties dispute the legal standard. Defendant argues that Plaintiff’s motion to strike not only fails to reference FED. R. CIV. P. 12(f), which

governs motions to strike, but also fails to cite any rule or legal authority permitting striking of an entire counterclaim. Def. Opp. at 1. Plaintiff responds that the motion to strike “depends not upon the narrow confines of [Rule 12] (as the [D]efendant might *prefer*) . . . but upon 28 U.S.C. § 2201.” Pl. Reply at 1 (emphasis and ellipses in original).

Assuming *arguendo* that Plaintiff’s motion was brought pursuant to Rule 12(f),<sup>1</sup> it fails. Rule 12 provides that “the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” FED. R. CIV. P. 12(f). First, as Defendant notes, its counterclaim is not a defense. Second, Plaintiff does not identify any portion of the counterclaim as being “redundant, immaterial, impertinent, or scandalous,” and instead seeks to strike the entire counterclaim. Accordingly, Plaintiff does not meet the standard of Rule 12.

The Declaratory Judgment Act, 28 U.S.C. § 2201 (“DJA”), provides that in “a case of actual controversy within its jurisdiction . . . upon the filing of an appropriate pleading, [a court] may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). Plaintiff argues that the DJA confers broad discretion on the federal courts, and that “[c]onsiderations of judicial economy, equity and subject matter jurisdiction recommend dismissal.” Pl. Mem. at 1-2. In its counterclaim, Defendant notes that “pursuant to FED. R. CIV. P. 13(a) [its] claim for declaratory judgment is a compulsory

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<sup>1</sup> See *Smith v. Cont’l Cmty. Bank & Trust Co.*, No. 01 C 8263, 2002 U.S. Dist. LEXIS 11193, at \*6 (N.D. Ill. June 21, 2002) (suggesting that Rule 12(f) motion to strike is proper procedural vehicle to seek striking of a request for declaratory judgment in FDCPA claim).

counterclaim.” Def. Countercl. ¶ 3. Defendant “seeks . . . a judicial declaration that its collection actions with respect to [Plaintiff] were at all times in compliance with the FDCPA and/or CUTPA.” *Id.* at ¶ 9.<sup>2</sup>

While Plaintiff cites cases noting that courts have broad discretion in fashioning declaratory relief, he points to no legal authority for his seeking to strike Defendant’s counterclaims seeking declaratory judgment. For example, Plaintiff argues that *Wilton v. Seven Falls Co.*, 515 U.S. 277, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995), supports his claim. *Wilton* clearly states that federal courts have “unique and substantial discretion in deciding whether to declare the rights of litigants.” *Id.* at 286. However, *Wilton* clearly instructs that its holding is narrow:

We do not attempt at this time to delineate the outer boundaries of that discretion in other cases, for example, cases raising issues of federal law or cases in which there are no parallel state proceedings. Like the Court of Appeals, we conclude only that the District Court acted within its bounds in staying this action for declaratory relief where parallel proceedings, presenting opportunity for ventilation of the same state law issues, were underway in state court.

*Id.* at 290. Plaintiff’s conclusory parenthetical assertion that pointing out his failure to cite appropriate legal authority is “the black-letter rally of conventionalist theory,” Pl. Reply at 1, is unconvincing.

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<sup>2</sup> More specifically, Defendant seeks a declaratory judgment that (1) seeking voluntary payment on a time-barred debt does not violate the FDCPA; (2) nothing in its letter to or telephone conversations with Plaintiff contained a threat of litigation, was a false, misleading, or deceptive statement, or was an unfair means of attempting to collect a debt under 15 U.S.C. § 1692(e) and (f); (3) it did not violate 15 U.S.C. § 1692 (g), (e), or (f) by pursuing collection efforts during the 30-day dispute period absent receipt of a written dispute from Plaintiff; and (4) its collection efforts did not violate CUTPA. Def. Counterclaims Counts 1-4. In each of its counterclaims, Defendant requests costs and fees. *Id.*

There is no motion for declaratory judgment before the Court, and the Court declines Plaintiff's invitation to speculate on the ultimate merits of Defendant's counterclaims. At this early stage of the case, it would be premature to strike the counterclaims seeking declaratory judgment. *See Leach v. Ross Heater & Mfg. Co.*, 104 F.2d 88, 91-92 (2d Cir. 1939) (finding "it was error to strike out [a] counterclaim [seeking a declaratory judgment] at so early a stage" in litigation).

**III. Conclusion**

For the reasons stated above, Plaintiff's motion to strike [Doc. No. 6] is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, March \_\_, 2004.

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Peter C. Dorsey  
United States District Judge