

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DAVEY CLAY :
V. : CASE NO. 3:00CV00056(AHN)
EUGENE MELCHIONNE AND :
JOSEPH J. POPOLIZIO :

RULING ON DEFENDANTS' MOTION TO DISMISS

The plaintiff, Davey Clay ("Clay"), brings this action against the defendants, Eugene S. Melchionne ("Melchionne") and Joseph J. Popolizio ("Popolizio"), alleging a violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 et seq., and a violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. 42-110a et seq.

Now pending before the court is Melchionne and Popolizio's motion to dismiss [doc. # 10]. For the reasons set forth below, the motion [doc. # 10] is DENIED.

STANDARD OF REVIEW

In deciding a motion to dismiss under Rule 12(b)(6), the court is required to accept as true all factual allegations in the complaint and must construe any well-pleaded factual allegations in the plaintiff's favor. See Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991). A court may dismiss a complaint only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to

relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Still v. DeBuono, 101 F.3d 888 (2d Cir. 1996). A court must not consider whether the claim will ultimately be successful, but should merely "assess the legal feasibility of the complaint." See Cooper, 140 F.3d at 440 (citation omitted). In deciding such a motion, consideration is limited to the facts stated in the complaint or in documents attached thereto as exhibits or incorporated therein by reference. See Kramer v. Time Warner Inc., 937 F.2d 767, 773 (2d Cir. 1991).

FACTS

Clay is a property owner in Waterbury, Connecticut. (See Compl. ¶ 4.) Melchionne and Popolizio are attorneys licensed in Connecticut with an office in Waterbury, Connecticut. (See id. ¶¶ 5, 6.) On June 29, 1999, Popolizio sent a letter to Clay attempting to collect \$841.72 for unpaid water rents, attorney's fees and accrued interest on account 03313000. (See id. ¶ 8.) On July, 6, 1999, Clay went to Melchionne's law office and complained about their "tactics". (See id. ¶ 9.) In addition, Clay sent a written complaint regarding the water rents to the defendants. On August 13, 1999, the defendants sent a second letter to Clay attempting to collect \$857.63 for unpaid water rents on account number 03318000. (See id. ¶ 11.)

Clay did not pay the requested amount and Melchionne and Popolizio filed suit in Waterbury Superior Court on September 22,

1999. (See id. ¶ 12.) In addition to Clay, Melchionne and Popolizio named as additional defendants the World Savings and Loan Association and Neighborhood Housing Services of Waterbury, Inc., both of whom held mortgages on the property. (See id. ¶ 13.) Thereafter, World Savings and Loan Association paid the debt and the action was withdrawn. (See id. ¶ 14.) Currently, World Savings and Loan Association is seeking reimbursement from Clay in the amount of \$2,062.94. (See id. ¶ 15.)

Clay asserts that Melchionne and Popolizio made misleading statements in their letters of June 29 and August 13 regarding the amount of debt owed, interest and attorney's fees. (See id. ¶¶ 18-20.) In addition, Clay alleges that they failed to disclose the correct amount of the debt and that their suit was for a different amount than the amount requested in their letters in violation of CUTPA. (See id. ¶ 23.) Clay also asserts that he has suffered monetary loss, humiliation, embarrassment, and emotional distress as a result of the defendants' actions and that he has suffered actual damages because he now owes \$2,062.94 to World Savings and Loan, which is greater than the amount he initially owed to the City of Waterbury. (See id. ¶¶ 24, 25.)

DISCUSSION

The dispositive issue in determining whether the complaint states a claim upon which relief can be granted is whether a water usage fee constitutes a "debt" under the FDCPA. See

Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1167 (3d Cir. 1987) ("A threshold requirement for application of the FDCPA is that the prohibited practices are used in an attempt to collect a 'debt'"). The FDCPA defines a debt as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. § 1692a(5).

Melchionne and Popolizio maintain that the water usage fee is not a debt. They rely upon Staub v. Harris, 626 F.2d 275 (3d Cir. 1980)(holding that a municipal per capita tax was not covered by the FDCPA) and Beggs v. Rossi, 145 F. 3d 511 (2d Cir. 1998)(holding that personal property taxes levied upon automobiles do not constitute debts within the meaning of the FDCPA) and argue that the City of Waterbury's statutory control of water distribution establishes a relationship between the city and homeowners that is akin to that of a taxpayer. The court is not persuaded by this analogy.

The money owed to the municipalities in Staub and Beggs was based upon the ownership of property, not on a consumer transaction. Here, the nature of the relationship between the City of Waterbury and its homeowners regarding water use is inherently based upon a consumer transaction. This is so even

though Waterbury has the statutory authority to administer water services. See Pollice v. National Tax Funding, 225 F.3d 379, 400 (3rd Cir. 2000) (holding that overdue water bills initially owed to the Pittsburgh Water and Sewer Authority, a government entity, created a "debt" within the context of the FDCPA).¹

In Pollice, homeowners brought suit alleging that a defendant, National Tax Funding ("NTF"), a company in the business of purchasing delinquent claims from municipalities, had collected unlawfully high interest and penalties on assigned claims from governmental entities in violation of the FDCPA. The NTF argued that water and sewer claims fell outside the scope of the FDCPA. The court disagreed and determined that the requirements of the FDCPA were satisfied because homeowners were consumers of water services and had an obligation to pay money to the government arising out of the requests for water services primarily for personal, family, or household purposes. Id. The court evaluated water, sewer, and tax obligations separately and distinguished water-use bills from tax bills and held that based upon Staub and Beggs, tax obligations, unlike water obligations, were not "debts."²

¹The District of Connecticut also held that an overdue water bill when owed to a private utility constitutes a "debt" within the FDCPA. See Allen v. BRT Utility Corp., 3:95cv00221(WWE), 1996 U.S. Dist. LEXIS 22441 (D. Conn. Oct. 24, 1996).

²Despite the court's ruling, the matter was remanded to the district court for a determination as to which members of the

Here, the overdue water bills are owed to the City of Waterbury because the water system is managed by the Bureau of Water - Public Works Department, a department that was established by the Charter for the City of Waterbury. Thus, based upon the holding in Pollice, this court concludes that a water usage fee owed to a municipality constitutes a "debt" within the FDCPA.

Based on the foregoing analysis, the defendants' motion to dismiss [doc. # 10] is DENIED.

SO ORDERED this _____ day of December, 2000, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge

Pollice class with water and sewer obligations used their property exclusively for business purposes, not "primarily for personal, family, or household purposes" as is required to be considered a "debt" within the FDCPA.