

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CYNTHIA M. KUETER, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil 98-CV-234-B  
 )  
 CHRYSLER FINANCIAL )  
 CORPORATION., et al., )  
 )  
 Defendants )

**ORDER AND MEMORANDUM<sup>1</sup>**

Plaintiff, Cynthia Kueter ("Kueter"), originally filed this lawsuit against Defendant, Chrysler Financial Corporation ("Chrysler"), in state court. Chrysler, citing the diversity of parties, removed the case to this Court. See 28 U.S.C. § 1332. Once in federal court, Kueter amended her complaint and named American Auto Transport and Recovery ("AATR") as an additional Defendant. Although the addition of AATR, which is located here in Maine, defeated diversity jurisdiction, the Court still has subject-matter jurisdiction over the case because it involves a federal question. See 28 U.S.C. § 1331.

Kueter claims that both Defendants, in attempts to repossess her vehicle and/or collect overdue payments for that vehicle, violated the Federal Fair Debt Collection Practices Act ("FFDCPA"), 15 U.S.C. §1692, the Maine Fair Debt Collection Practices Act ("MFDCPA"), 32 M.R.S.A. § 11001 et seq., the Maine Consumer Credit Code ("MCCC"), 9-A M.R.S.A. §5-101 et seq., and the common law. Before the Court is AATR's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), as well as both Defendants' Motions for Summary Judgment

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<sup>1</sup> Pursuant to the Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

pursuant to Fed. R. Civ. P. 56. Since the Court concludes that Kueter's federal claim is barred by the statute of limitations, thus removing this Court's subject-matter jurisdiction,<sup>2</sup> the Court GRANTS Defendants' Motions IN PART and REMANDS the remaining claims back to state court.

### STANDARD OF REVIEW

Because the Court has considered the Statement of Material Facts filed by each party, the Court treats Defendants' Motions as ones for summary judgment. See Fed. R. Civ. P. 12(b) ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.")

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under the applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." Fed. R. Civ. P. 56(c). "Fed. R. Civ. P. 56 does not ask which party's evidence is more plentiful, or better credentialled, or stronger." Greenburg v. Puerto Rico

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<sup>2</sup> Although Plaintiff's Amended Complaint asserted that this Court's jurisdiction was based on the diversity of the parties despite the addition of AATR as a defendant, AATR was correct to point out that this Court no longer had diversity jurisdiction upon the addition of it as a party. The existence of the FFDCPA claim, a federal question, is the only reason the case remained in this Court.

Maritime Shipping Auth., 835 F.2d 932, 936 (1st Cir. 1987). Rather, for the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

### STATEMENT OF FACTS

On December 12, 1996, Kueter obtained a 1995 pickup truck from, and secured financing for it through, Morong Brunswick ("Brunswick"). Brunswick then assigned the loan to Chrysler. When Kueter stopped making her payments for the truck, AATR, on behalf of and along with Chrysler, undertook efforts to force Kueter to either hand over her vehicle for repossession or resume making payments. It is Defendants' allegedly heavy-handed efforts in this regard that led Kueter to file this lawsuit.

Kueter attempted to file a complaint in Kennebec County Superior Court on June 19, 1998. At that time, she filed application for waiver of the filing fee. The docket sheet, CV98-175, does not reflect that the complaint was ever filed, but the complaint itself was date stamped on June 19, 1998, as "Rec'd & Filed." Justice Alexander denied her application for a waiver of her filing fee on June 22, 1998, and ordered that "if she fails to pay the filing fee within 7 days of this Order, the action shall be dismissed without prejudice." The docket sheet does not reflect that she failed to tender this fee, but, in fact, Kueter admits that she did not pay the filing fee. When, in July of 1998, Chrysler filed a motion to dismiss the June 19 complaint, Kueter responded by arguing that "the action has never been docketed," and that since she had failed to pay the filing fee, "any request for dismissal with prejudice should be moot." (Pl.'s Opp'n to Def.'s Mot. for More Def. Statement & Mot. to Dismiss at 2.) She also stated that since she failed to pay the filing fee, "the action presumably has been so dismissed without prejudice, or, in

the alternative, the nature of the 6/22/98 Order inherently constitutes such dismissal." *Id.* Her current attorney agrees, stating that this complaint was "apparently dismissed because of plaintiff's failure to pay the filing fee." (Objection to Def.'s AATR's Mot. to Dismiss at 3.) Kueter later filed a second complaint, with the requisite filing fee, on August 5, 1998. The Kennebec County Superior Court gave this complaint the new docket number CV98-202.

## **DISCUSSION**

### A. Statute of Limitations and the FFDCPA and the MFDCPA<sup>3</sup>

The Federal Fair Debt Collection Practices Act provides that "[a]n action to enforce any liability created by this subchapter may be brought . . . within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). The Maine Fair Debt Collection Practices Act provides the same limitations period. *See* 32 M.R.S.A. § 11054(4). The parties do not dispute that the last date on which Kueter could file a complaint under the FFDCPA and the MFDCPA was June 30, 1998, one year after Defendants repossessed Kueter's vehicle.

Kueter argues that she satisfied the statute of limitations when she filed an application for waiver of the filing fee and submitted the complaint to the Kennebec County Superior Court on June 19, 1998. Specifically, she claims that 14 M.R.S.A. § 855 applies to her case. It provides that:

When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or the action

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<sup>3</sup> The Court notes AATR's argument that this Court gave leave to Plaintiff on March 2, 1999, to amend her complaint, not to join an additional Defendant. The deadline for joinder of parties and amendment to the pleadings was on February 17, 1999. Therefore, AATR contends that they should not be a defendant in this suit. The Court declines to dismiss AATR on this basis, but does not thereby suggest that the March 2, 1999, Order authorized the joinder of additional parties. Counsel are on notice that when joinder is contemplated, it should be addressed in accordance with the scheduling order's provisions.

is otherwise defeated for any matter of form, or by the death of either party the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months.

Id. She contends that the state court's dismissal of her complaint for failing to pay the filing fee "is clearly a matter of form," and therefore this Court should grant the extension provided by the statute. (P.'s Obj. to Def. AATR's Mot. to Dismiss at 4.)

Although the statute does not define "any matter of form," the Maine Supreme Court has interpreted this provision once, in a 1912 case titled Densmore v. Hall, 109 Me. 438 (Me. 1912). In that case, the Law Court declined to apply the statute when a writ was made returnable after the term in which it should have been made returnable had passed. See id. at 984. The Law Court stated that "defects in form are amendable, but clearly this writ was not amendable at the time it was dismissed" because the proper term had passed. Id. The Law Court, therefore, concluded that the writ was perhaps "unlawful", "rather than one defective for informalities." Id. Discussing the purpose of the statute, the Law Court concluded that:

The proviso was to protect a diligent creditor from losing his cause of action on account of the abatement of his timely and appropriate action because of some matter not affecting its merits, but not to afford the means for a designing creditor to use to extend his cause of action in violation of the statutory limitation.

If a creditor can carelessly bring an action returnable after one intervening term, and be permitted under this proviso to bring another within six months after the first is abated, it is difficult to understand why he may not purposely make the first action returnable after any number of intervening terms, and thereby extend his cause of action at his option. It would therefore seem reasonable that the statute was not intended to apply to a case like the one at bar.

Id.

Given Densmore's warning that plaintiffs should not receive the benefit of the statute where they "purposely" seek to extend the time in which to bring a cause of action, the Court

concludes that Kueter should not receive the statute's protection. This case does not involve a situation where Kueter chose to correct a mere mistake regarding the form of her complaint or summons upon learning of that mistake. Instead, after the state court judge put her on notice that he would dismiss her case unless she paid the filing fee, she chose dismissal rather than comply with the judge's order. Like the Densmore Court, the Court points out that granting Kueter the benefit of her decision to ignore the judge's order would allow plaintiffs to file an application for waiver of the filing fee within the limitations period in order to guarantee a six-month tolling of the statute of limitations. It is Kueter's decision that does not permit this Court to extend the statute of limitations beyond the deadline for filing claims under the FFDCPA and the MFDCPA. Therefore, the Court grants summary judgment with regard to Kueter's claims under the FFDCPA and the MFDCPA.

Although Kueter only requests relief under the MFDCPA and the FFDCPA, she has alleged that Defendants violated the Maine Consumer Credit Code and the common law. Based on her Amended Complaint, it is unclear what common law violations, other than trespass, she is asserting. Regardless, the dismissal of the federal claim ends this Court's subject-matter jurisdiction over any other state statutory or common law claims, and the Court declines to exercise supplemental jurisdiction over these claims. See 28 U.S.C. 1367(c); see also Miller v. Kennebec County, 63 F. Supp.2d 75, 85 (D. Me. 1999) ("In light of the fact that the Court has granted summary judgment in favor of Defendants on Plaintiffs' constitutional claims, the Court declines to exercise its supplemental jurisdiction over these remaining state law claims.") (citations omitted). Therefore, the Court GRANTS summary judgment [Docket Nos. 38 & 40] to both Defendants with regard to Kueter's claims under the MFDCPA and the FFDCPA, and

REMANDS the remaining claims to state court. AATR's Motion to Dismiss [Docket No. 33] is moot.

SO ORDERED.

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MARGARET J. KRAVCHUK  
United States Magistrate Judge

Dated this 5th day of April, 2000.

U.S. District Court  
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 98-CV-234

KUETER v. CHRYSLER FINANCIAL, et al Filed: 11/25/98  
Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK ury demand: Plaintiff  
Demand: \$0,000 Nature of Suit: 320  
Lead Docket: None Jurisdiction: Diversity  
Dkt # in KENNEBEC SUPERIOR : is CV-98-202

Cause: 28:1332 Diversity-Notice of Removal

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WILLIAM D. ROBITZEK  
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v.

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