UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DARYL J. BARKLEY,

Plaintiff,

v. Case No. 6:20-cv-964-Orl-37GJK

HOLIDAY INN CLUB VACATIONS INCORPORATED; and EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendants.

ORDER

Defendant Holiday Inn Club Vacations Incorporated ("**HICV**") moves to dismiss Plaintiff's complaint.[1] (Doc. 25 ("**Motion**").) Plaintiff opposes. (Doc. 39.) On review, the Motion is denied.

I. BACKGROUND[2]

Plaintiff's claims stem from an October 2015 agreement between Plaintiff and HICV to purchase a timeshare membership in HICV's Las Vegas Desert Club. (*See* Doc. 1, ¶ 37; Doc. 1-1 ("**Agreement**").) Under the Agreement, after Plaintiff makes the first three

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[1] The Motion contains a request to transfer the case here from the Tampa Division, which was granted. (*See* Doc. 25, pp. 1–12; Doc. 26 ("**Transfer Order**").) The Transfer Order didn't address the arguments for dismissal. (*See* Doc. 26.)

[2] The Court takes the facts in the complaint (Doc. 1) as true and construes them in the light most favorable to Plaintiff. *See Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). The Court also considers the exhibits attached to the complaint (*see* Docs. 1-1–1-13). *See Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997).

timely payments, the deed of trust and deed will be recorded and the closing completed. (Doc. 1, ¶¶ 38–39; Doc. 1-1, p. 5, ¶ 7(b).) The Agreement states time is of the essence unless otherwise stated and provides (1) upon HICV's default, Plaintiff may elect to rescind and terminate the Agreement; and (2) upon Plaintiff's default, HICV retains all money paid by Plaintiff as liquidated damages and the parties are relieved of all further obligation under the Agreement. (Doc. 1, ¶¶ 41–42; Doc. 1-1, p. 6, ¶¶ 13, 15.)

Plaintiff paid HICV thirteen times between December 2015 and January 2017, but HICV still hadn't recorded the deed, so the transaction wasn't closed. (Doc. 1, ¶¶ 44–45, 47–49.) On February 9, 2017, Plaintiff's lawyer notified HICV in writing Plaintiff disputed the transaction, considered the Agreement void, and would make no more payments. (*Id.* ¶¶ 50–54; Doc. 1-2 ("**February 2017 Letter**").) Plaintiff's lawyer supplemented the February 2017 Letter a month later, stating HICV breached the Agreement by failing to record the deed and Plaintiff elects to rescind and terminate the Agreement. (Doc. 1, ¶ 55; Doc. 1-3 ("**March 2017 Letter**").) The March 2017 Letter also demanded a full trade line deletion if HICV reported the account to the credit bureaus. (Doc. 1, ¶ 56; Doc. 1-3, p. 3.) Despite these letters, on August 25, 2017, HICV recorded the deed in Plaintiff's name. (Doc. 1, ¶ 58; Doc. 1-4.)

HICV also reported to Defendant Experian Information Solutions, Inc. ("**Experian**") that Plaintiff owed a balance on the debt, and the debt appeared on Plaintiff's consumer disclosure report from Experian. (Doc. 1, ¶¶ 57, 59–60.) Plaintiff's lawyer then sent a letter to HICV and Experian disputing their credit reporting of the debt because Plaintiff stopped making payments (and advised HICV of the same) before

HICV recorded the deed and closed the transaction, which terminated all obligations under the Agreement. (Doc. 1, ¶ 61; Doc. 1-5 ("**June 2018 Letter**").) The June 2018 Letter warned that continued debt collection efforts and credit reporting violate the FCCPA and FCRA. (Doc. 1-5, p. 3.) Yet HICV and Experian continued to report the debt, and Experian advised Plaintiff it would not change the report because HICV certified the information was accurate. (Doc. 1, ¶¶ 66–69; Docs. 1-6–1-7.) Plaintiff's lawyer sent additional similar letters to Experian requesting the change in Plaintiff's credit report, all to no avail. (Doc. 1, ¶ 70–83; Docs. 1-8–1-11.) Plaintiff's lawyer sent a final letter to HICV on April 12, 2019, stating HICV improperly recorded the deed after the March 2017 Letter and again demanding trade line deletion from the credit reports. (Doc. 1, ¶ 84; Doc. 1-12.) Throughout these disputes, HICV sent Plaintiff over fifty billing statements or collection letters demanding payment on the debt. (Doc. 1, ¶¶ 88–89; *see also* Doc. 1-13.)

Plaintiff sued Defendants for violations of the Florida Consumer Collection Practices Act ("**FCCPA**") and the Fair Credit Reporting Act ("**FCRA**"). (Doc. 1, ¶¶ 96–152.) HICV moves to dismiss the complaint for failure to state a claim. (Doc. 25.) With Plaintiff's response (Doc. 39), the matter is ripe.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." A complaint "that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint does not need detailed factual allegations, but "a plaintiff's obligation to provide the grounds of his entitlement to relief requires

more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks and citation omitted). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

III. ANALYSIS

At issue is the sufficiency of the FCCPA and FCRA claims against HICV. (*See* Doc. 25, pp. 13–19.) Let's examine each.

A. Count I: FCCPA

First is Plaintiff's FCCPA claim against HICV under Florida Statute § 559.72(9). (*See* Doc. 1, ¶¶ 96–106.) The FCCPA provides, "[i]n collecting consumer debts, no person shall . . . [c]laim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9). Section 559.72(9) "requires by its terms *actual* knowledge." *Bacelli v. MFP, Inc.*, 729 F. Supp. 2d 1328, 1337 (M.D. Fla. 2010) (citations omitted). This means a plaintiff must allege facts from which the Court can reasonably infer the defendant "either (1) had actual knowledge that the debt was not legitimate or (2) asserted a legal right that did not exist and had actual knowledge such right did not exist." *Meyer v. Fay Servicing, LLC*, 385 F. Supp. 3d 1235, 1243 (M.D. Fla. 2019). Simply pleading the defendant had knowledge isn't enough—the plaintiff must plead factual allegations showing how the defendant had that knowledge. *See Reese v. JPMorgan Chase & Co.*, 686 F. Supp. 2d 1291, 1312 (S.D. Fla. 2009).

HICV contends Plaintiff's FCCPA claim fails because she cannot show HICV knew the debt was illegitimate or that it asserted a legal right it knew didn't exist—at most Plaintiff stated an intent to rescind the Agreement, and her allegations contradict the Agreement's terms. (*See* Doc. 25, pp. 14–18.) Not so. Plaintiff alleges two bases for why the debt was illegitimate or HICV's asserted right didn't exist: First, HICV breached the Agreement by failing to timely record the deed, so Plaintiff properly rescinded the Agreement via the March 2017 Letter and thus owed no further payments. (*See* Doc. 1, ¶¶ 41, 47–52, 55–58, 97–98, 100–102; Doc. 1-1, p. 6, ¶ 15.) Second, Plaintiff defaulted by stopping payments before the deed was recorded, so the obligations under the Agreement ended and HICV's remedy was limited to liquidated damages of the monies already paid by Plaintiff. (*See* Doc. 1, ¶¶ 42, 47–54, 57–58, 99, 101–03; Doc. 1-1, p. 6, ¶ 13.) Plaintiff alleges HICV knew the debt was illegitimate or it didn't have the asserted legal right from the February 2017 and March 2017 Letters sent to HICV outlining the relevant Agreement provisions and stating Plaintiff disputed the transaction, considered the Agreement void based on HICV's failure to timely record to the deed, and would no longer pay HICV. (*See* Doc. 1, ¶¶ 50–54, 57–58, 101–03; Doc. 1-2; Doc. 1-3.) Undeterred, HICV sent over fifty written communications to Plaintiff's counsel demanding payment on the debt. (*See* Doc. 1, ¶¶ 88–89, 103–05.)

The case HICV relies on to challenge the sufficiency of Plaintiff's allegations about HICV's actual knowledge is unavailing. (*See* Doc. 25, pp. 14–15.) In *Sharon v. Royal Caribbean Cruises, Ltd.*, No. 17-22323-Civ-WILLIAMS/TORRES, 2017 WL 11220344 (S.D. Fla. Oct. 6, 2017), the FCCPA claim failed because the plaintiffs "simply allege[d] that

they brought their dispute of the debt to Defendant's attention, and proceed[ed] to recite the elements for a claim under the FCCPA"—their complaint was "devoid of any factual claim or inference that the Defendant had actual knowledge that the debt it was trying to collect from Plaintiffs was illegitimate." *Id.* at *5. But here, Plaintiff doesn't merely allege she informed HICV she disputed the debt; she alleged multiple bases for why the debt was illegitimate and why HICV's asserted right didn't exist based on the Agreement and how HICV knew this from the February 2017 and March 2017 Letters. (*See* Doc. 1, ¶¶ 41–58, 97–106; *see also* Doc. 1-1, p. 6, ¶¶ 13, 15; Docs. 1-2–1-3.) Taking Plaintiff's allegations as true and construing them in the light most favorable to her, as the Court must at this stage, the Court can reasonably infer HICV had actual knowledge the debt was illegitimate or asserted a right it knew didn't exist. *See Meyer*, 385 F. Supp. 3d at 1243; *Reese*, 686 F. Supp. 2d at 1312. Whether Plaintiff can establish the debt was illegitimate or HICV's asserted right didn't exist—and HICV's requisite knowledge—is an issue for another day. (*See* Doc. 25, pp. 14–18.)

B. Count II: FCRA

Next is Plaintiff's FCRA claim against HICV under 15 U.S.C. § 1681s-2(b). (*See* Doc. 1, ¶¶ 107–16.) Section 1681s-2(b) requires furnishers of credit information, upon notice of disputed credit reporting, to investigate the disputed information and to either modify or delete the information or permanently block the reporting of the information if the investigation reveals the disputed information is inaccurate or incomplete. *See* 15 U.S.C. § 1681s-2(b)(1); *see also Pieta v. USAA Grp.*, No. 3:13cv322/MCR/EMT, 2013 WL 3810891, at *4 (N.D. Fla. July 22, 2013). "The FCRA provides a private right of action for

willful and negligent noncompliance with § 1681s-2(b)." *Pieta*, 2013 WL 3810891, at *4.

HICV argues Plaintiff's FCRA claim fails for the same reason as the FCCPA claim—Plaintiff's attorney letters don't "equate to actual knowledge by HICV that the debt is illegitimate or that HICV asserted a legal right that it actually knew did not exist." (Doc. 25, p. 19.) This argument fails for two reasons. First, it doesn't address the requisite elements of an FCRA claim. To the extent HICV contends Plaintiff's FCCPA and FCRA rise and fall together, this wouldn't warrant dismissal as the allegations in Plaintiff's FCCPA claim are enough to survive dismissal. *See supra* Section III.A. Second, taking Plaintiff's allegations as true, she adequately alleged HICV received notice of Plaintiff's disputes from Experian and then willfully or negligently furnished inaccurate information within Plaintiff's credit reports and failed to properly investigate Plaintiff's disputes and correct the reported debt. (Doc. 1, ¶¶ 24, 27–33, 60–84, 107–16.) So Plaintiff's FCRA claim survives dismissal too. *Cf. Pieta*, 2013 WL 3810891, at *4.

IV. CONCLUSION

It is **ORDERED AND ADJUDGED** that Defendant Holiday Inn Club Vacations Incorporated's Motion to Dismiss for Failure to State a Claim (Doc. 25) is **DENIED**.

DONE AND ORDERED in Chambers in Orlando, Florida, on August 4, 2020.

ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record