UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MIRABAHN CAIROBE, Plaintiff, v. ZWICKER & ASSOCIATES, P.C., Defendant.	CIVIL ACTION NO. 1:23-CV-0486-CAP

ORDER

This matter is before the court on the magistrate judge's report and recommendation ("R&R") [Doc. No. 46], which recommends that the defendant's motion for summary judgment be granted [Doc. No. 25], the plaintiff's motion to dismiss [Doc. No. 35] be denied as moot; the defendant's motion for sanctions [Doc. No. 29] be granted, and the plaintiff's motion for sanctions [Doc. No. 35] be denied. The plaintiff has filed objections to the R&R as to the recommendations related to the motion for summary judgment and the award of sanctions against her [Doc. No. 49]. The matter is now ripe for consideration.

I. Background

There is no objection to the factual and procedural background set out by the magistrate judge on pages 2 through 6 of the R&R. Therefore, the court adopts that portion of the R&R and includes it below.

On February 2, 2023, the plaintiff filed the present action against the defendant [Doc. No. 1], alleging that it violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the "FDCPA") in connection with its efforts in December 2021 and on occasions throughout 2022 to collect a roughly $15,000 debt incurred on an American Express business credit account issued to Cairobe Holdings and Mirabahn Cairobe, which the plaintiff alleged in her complaint and amended complaint that "she did not open." *See id.; see also* [Doc. No. 6] (Am. Compl.) ¶¶ 8-9, 13. The plaintiff asserted FDCPA claims based upon the defendant purportedly contacting the plaintiff directly when she was represented by an attorney, failing to validate the alleged debt, and attempting to collect on the debt at all, since she purportedly had not incurred the charges. *See* [Doc. No. 6] at ¶¶ 25-31.

On June 5, 2023, and before discovery had expired, the defendant filed its motion for summary judgment as to all of the plaintiff's claims, arguing (1) that the debt was accrued in connection with a business account and therefore outside of the scope of the FDCPA, (2) that the defendant in fact sent the plaintiff a written debt validation, and (3) that when the defendant contacted the plaintiff's attorney—specifically, her present counsel, Attorney Gary Hansz—he stated that his firm did not represent her in connection with the debt [Doc. No. 25.]

The plaintiff initially opposed summary judgment, submitting sworn statements asserting that she never applied for the account, that she never authorized nor made any of the charges or payments on the account, and that she was the victim of identity theft. *See* [Doc. No. 30] at 1-5; *see also* [Doc. 30-2] (Cairobe Decl.).[1] Mr. Hansz also submitted a sworn statement affirming that when the defendant contacted his firm—Credit Repair Lawyers of America ("CRLA")—in October 2022, he stated that CRLA represented the plaintiff only in connection with her federal claims under the "FCRA" (presumably, the Fair Credit Reporting Act) but not in relation to the underlying debt or in relation to a state court action against her seeking to collect the debt. *See* [Doc. No. 30] at 5-7; [Doc. No. 30-4] (Decl. of Gary Hansz).] Notably, Mr. Hansz did not mention the FDCPA, did not otherwise suggest that he represented the plaintiff in relation to the debt underlying this action, and did not state or suggest that it would be inappropriate for the defendant to contact the plaintiff directly about the debt. *See id.; see also* [Doc. No. 25-8] (transcript of Oct. 22, 2022 call). Additionally—and oddly—the state court action in which American Express sought to recover on the debt, which Mr. Hansz referenced and disclaimed representing the plaintiff in relation to, was neither filed nor served

[1] On September 28, 2023, the plaintiff filed a "notice of withdrawal" of her declaration [Doc. No. 45].

on the plaintiff until months after this call.[2] *See American Express Nat'l Bank v. Cairobe*, No. 2022CV02789 JP (Super. Ct. Clayton Cnty.) (filed Dec. 19, 2022, and served on the plaintiff Feb. 13, 2023).

A few weeks before summary judgment briefing concluded, the defendant obtained and provided to the plaintiff's counsel two recordings of telephone calls between the plaintiff and American Express representatives, in which the plaintiff admitted that the account at issue in this case was indeed her own. *See* [Doc. No. 36-14] (Decl. of Sam McDermott); [Doc. No. 35-2] (Decl. of Joon Jeong); [Doc. No. 35-5] (email between counsel).] According to her counsel, "Plaintiff [only then] remembered after hearing the recordings that the subject account belonged to her." [Doc. No. 35-1 at 4-5.] It remains entirely unexplained how the plaintiff forgot that she opened the account; why she never remembered she was responsible for the account during the pendency of this action or the state action seeking to recover on the debt, or when she filed reports—in February, March, and April of 2022—with the Federal Trade

[2] At the hearing on the pending motions, Mr. Hansz stated that, at the time of the call, he had been told by "local counsel," that there was a pending state action; Mr. Hansz specifically mentioned Mr. Lawrence Silverman, the plaintiff's initial CRLA counsel in this action, implying that Mr. Silverman notified him of a state court action against the plaintiff. However, that could not have happened, as Mr. Silverman did not join CRLA until February 28, 2023. See [Doc. No. 36-15] (Decl. of Lawrence Silverman). And, of course, there could not have been any "local counsel" reporting to Mr. Hansz because neither this case nor any collection action was pending at the time.

Commission and law enforcement claiming fraud and identity theft [Doc. No. 6 ¶¶ 10, 12, 16]; and what exactly she remembered about the account and debt when presented with an audio recording of herself. While it is clear that the plaintiff and/or her counsel misrepresented the facts of this case, it is unclear why those misrepresentations were made and whether those misrepresentations were fully deliberate.

The defendant thereafter asked that the plaintiff withdraw what it believed was a summary judgment response incorporating demonstrably false sworn testimony or otherwise stipulate to summary judgment; and on July 21, 2023, it sent the plaintiff a safe harbor warning letter under Federal Rule of Civil Procedure 11. [Doc. No. 35-2] at 5; [Doc. No. 35-7.] But rather than withdraw its response or consent to summary judgment against her, the plaintiff filed a motion to dismiss her claims, asking that each party bear its own costs and fees, but also asking for sanctions against the defendant and its counsel for engaging in "unreasonable and vexatious conduct" under 28 U.S.C. § 1927. [Doc. No. 35-1 at 7-11.]

II. Standard of Review

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the Magistrate Judge's R&R. 28 U.S.C. § 636(b)(1); *United States v. Powell*, 628 F.3d 1254,

1256 (11th Cir. 2010). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(2) (requiring the objecting party's objections to be "specific"). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." *Jeffrey S. v. State Bd. of Educ. of Ga.*, 896 F.2d 507, 512 (11th Cir. 1990). The district judge reviews legal conclusions de novo, even in the absence of an objection. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994). "[T]he district court will review those portions of the R & R that are not objected [to] under a clearly erroneous standard." *Liberty Am. Ins. Group, Inc. v. WestPoint Underwriters, L.L.C.*, 199 F.Supp.2d 1271, 1276 (M.D. Fla. 2001).

III. Analysis

The plaintiff filed objections to the portions of the R&R regarding the motion for summary judgment and the defendant's motion for sanctions [Doc. No. 49]. The plaintiff did not object to the recommendations pertaining to her motion to dismiss or her motion for sanctions. This court has reviewed for clear error those portions of the R&R addressing the plaintiff's motions to dismiss and for sanctions, and finding none, hereby adopts those portions as the order and opinion of this court.

A. Motion for Summary Judgment

The magistrate judge conducted oral argument on the pending motions on September 25, 2023 during which counsel for the plaintiff, Gary Hansz, acknowledged that the plaintiff's declaration filed in opposition to the motion for summary judgment is false. Tr. at 6-7 [Doc. No. 50]. Yet no effort was made to withdraw the false declaration from the record until after oral argument. [Doc. No. 45]. Moreover, counsel for the plaintiff expressly conceded at the hearing that there is no triable issue of fact remaining in the case that would preclude summary judgement. *Id.* at 17-18. Based on these concessions, the magistrate judge recommended that the defendant's motion for summary judgment be granted. R&R at 46.

In the objections, the plaintiff (still represented by Mr. Hansz) sets forth a summary of the factual and procedural background and requests that the court not adopt the R&R. The plaintiff fails to offer any basis for her objection that the motion for summary judgment be granted.

"[A] party that wishes to preserve its objection must clearly advise the district court and pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009) "Frivolous, conclusive, or general objections need not be considered by the district court." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988). Here, the plaintiff

offers no grounds for denial of the defendant's motion for summary judgment—and in fact conceded on the record that there is no factual issue that would preclude summary judgment in favor of the defendant. Thus, this court finds that the magistrate judge is correct in concluding that the motion for summary judgment is due to be granted.

B. Motions for Sanctions

The magistrate judge granted the defendant sanctions pursuant to Federal Rule of civil Procedure 37(d)(1)(A) because the plaintiff failed to appear for her properly noticed deposition. Specifically, the magistrate judge concluded that the plaintiff's deposition was properly notice, that her failure to appear was not substantially justified and there are no circumstances making it unjust to impose sanctions on the plaintiff due to her failure to appear for her deposition. R&R at 25.

In the objections, the plaintiff does not explain how the magistrate judge erred in awarding sanctions under Rule 37. Instead, the plaintiff reiterates the arguments that the magistrate judge rejected. Having reviewed those arguments, the entire docket, and the transcript of the September 25, 2023 oral argument, the court finds that the magistrate judge's evaluation of the excuses offered by the plaintiff for failure to appear at the properly noticed

deposition was correct. Accordingly, sanctions pursuant to Rule 37(d)(1)(A) are proper.

IV. Conclusion

For the reasons stated above, the court OVERRULES the plaintiff's objections and ADOPTS the magistrate judge's R&R [Doc. No. 46]. The defendant's motion for summary judgment is GRANTED [Doc. No. 25]; the plaintiff's motion to dismiss [Doc. No. 35] is DENIED; the plaintiff's motion for sanctions [Doc. No. 35] is DENIED; and the defendant's motion for sanctions [Doc. No. 29] is GRANTED.

The clerk is DIRECTED to enter judgment in favor of the defendant and against the plaintiff. The clerk is further DIRECTED to resubmit this matter to the magistrate judge for additional proceedings on the amount of sanctions to be imposed on the plaintiff and her counsel as well as for consideration of the newly filed motions for sanctions and attorney fees [Doc. Nos. 52, 53].

SO ORDERED this 16th day of November, 2023.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge