

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/14/08

DEPT. CCW322

HONORABLE PETER D. LICHTMAN

JUDGE A. LIM

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. MASSAROTTI, C.A.

Deputy Sheriff

NONE

Reporter

9:30 am

LC075416

Plaintiff
Counsel

GREAT SENECA FINANCIAL
VS
KENNETH K. HOLTZCLAW, ET AL

NO APPEARANCES

Defendant
Counsel

DEEMED COMPLEX (11-09-06)

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

On October 8, 2008, this Court heard the arguments of counsel regarding cross motions for summary adjudication. On July 25, 2008 cross defendant, Great Seneca Financial Corp. and the law firm of Wolpoff & Abramson filed its motion for summary adjudication requesting that this Court adjudicate, as a matter of law, issues concerning registration and capacity.

On July 14, 2008, cross complainants, Kenneth Holtzclaw and Shane Satey filed their cross motion for summary adjudication seeking adjudications regarding the propriety of the collection conduct of both Great Seneca and its counsel of record.

Specifically, Great Seneca and Wolpoff & Abramson (hereinafter collectively referred to as "GS") seek an order granting summary adjudication in their favor and against Cross Complainants as to the Fifth Cause of Action for Violation of Business & Professions Code Section 17200 ("UCL"), Sixth Cause of Action for Violation of Federal Fair Debt Collection Practices Act (the "FFDCPA") and Seventh Cause of Action for Violation of California Fair Debt Collection Practices Act ("CFDCPA").

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Kenneth Holtzclaw and Shane Satey (hereinafter collectively referred to as "Holtzclaw") seek summary adjudication on the issue of whether GS violated the federal Fair Debt Collection Practices Act, the California Rosenthal Fair Debt Collection Practices Act, and B&P Code 17200 by filing debt collection lawsuits against consumers without having been registered to do business in the state. Holtzclaw moves for summary adjudication on its third and fourth causes of action for Violation of the FFDCPA and the CFDCPA as well as the cross complaint's class causes of action: Fifth for Violation of Business and Professions Code Section 17200; Sixth Cause of action for Violation of the FFDCPA; and Seventh for Violation of the CFDCPA.

During various case management status conferences, the parties agreed to put before this Court certain threshold issues as to whether GS's conduct of filing debt collection lawsuits without being registered with the California Secretary of State pursuant to Corporations Code Sections 2105(a) and 2203(c) violates the FFDCPA, the CFDCPA and the UCL.

This Court first examines whether GS was required to register with the Secretary of State in order to file debt collection lawsuits. Corporations Code Section 2105(a) requires foreign companies transacting intrastate business in California to obtain a

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certificate of qualification. Section 2203 (c) prohibits a foreign corporation not in compliance with section 2105(a) from maintaining any action in the state. Corporations Code Section 191 defines the term "transact intrastate business." Subdivision c of that statute states: "Without excluding other activities that may not constitute transacting intrastate business, a foreign corporation shall not be considered to be transacting intrastate business within the meaning of subdivision (a) solely by reason of carrying on in this state any one or more of the following activities: (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes."

Accordingly, the Corporations Code expressly excludes filing lawsuits as intrastate business and as such GS was not required to register with the State of California.

In an effort to support its interpretation of the Corporations Code provisions referenced above, GS sought judicial notice of a memorandum judgment from the Appellate Division of Los Angeles Superior Court, identified as CACV of Colorado, LLC v. Camacho, LASC No. BV026178 (August 30, 2006). While this Court recognizes that the opinion issued by the Appellate Division cannot serve as precedent, its' analysis of

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this issue is instructive and is the same as this Court.

In the Appellate Division case, as here, the Plaintiff (a collection company) was in the business of acquiring and collecting debts owed by California residents. However, the company had not registered with the California Secretary of State. The trial court dismissed the case holding that the plaintiff could not file an unlimited number of dunning letters to California residents and file an unlimited number of collection actions in California state courts without first registering with the Secretary of State and designating an agent for service of process.

The Appellate Division reversed the trial court's order of dismissal and found that the company did not need to register with the California Secretary of State prior to maintaining collection actions in California state courts. The judges of the Appellate Division analyzed Corporation Code provisions virtually identical to the ones at issue here except those sections applied to Limited Liability Companies.

Both this Court and the Appellate Division noted that the Corporations Code specifically excludes maintaining or defending any actions, lawsuits, or administrative or arbitration proceedings from the definition of "transact[ing] intrastate business." The

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Appellate Division further noted that the Corporations Code does not limit or otherwise restrict the number of lawsuits or actions that a foreign company may bring in California state courts.

This Court concurs with the analysis provided by the Appellate Division. Moreover, out of state cases when interpreting laws similar to California's Corporation Code provisions have likewise so held. See The Cadle Company, Inc. v. Wallach Concrete, Inc. (N.M. 1993) 855 P2d 130, 132 (holding that the foreign corporation's activities constituted debt collection and was not "transacting business" within the state as to require a certificate of authority); Continental Assurance Co. v. Ihler (Ida. 1933) 26 P2d 792, 793 (a foreign corporation is not barred from maintaining suit because securing of debts is not doing business in a state by a foreign corporation.); Goss v. Bobby D. Assoc. (Tex. App. 2002) 94 S.W. 3d 65, 70 (foreign partnership has standing to bring debt collection actions in state courts without first obtaining a certificate of authority from Secretary of State and was not considered transacting business within the state).

Alternatively, assuming aguendo that GS was required to register, the next step is to determine whether such lack of registration violated state and federal fair credit reporting practices acts and the

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UCL.

In that regard, a corporation that is suspended or has otherwise failed to comply with statutory requirements does not lack standing to sue but rather lacks capacity to sue. Color-Vue, Inc. v. Abrams (1996) (1996) 44 Cal. App. 4th 1599, 1604. See also CLD Construction Inc. v. City of San Ramon (2004) 120 Cal. App. 4th 1141.

Such a defect can be cured and is waived if not asserted as an affirmative defense. Id. GS registered with California's Secretary of State as a foreign corporation on April 10, 2006 and thus, any alleged defect was cured.

Holtzclaw argues that the lack of registration was a deterrent to cross-complaints. However, once GS filed its lawsuit, a counterclaim could be asserted by serving GS's counsel of record by mail. See CCP Section 428.60. Holtzclaw has failed to show that judgment in any case wherein GS lacked the capacity to sue would be unenforceable. California law is to the contrary. See United Medical Management Ltd. v. Gatto (1996) 49 Cal. App. 4th 1732. In this vein, Holtzclaw offers as proof of GS's alleged attempt to evade service of cross-complaints, evidence that its counsel Wolpoff & Abramson provided an incorrect address. A close look at the evidence shows that the

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proper address appeared on the Summons and Complaint
~~Complaint against Mr. Satey.~~

To summarize, Holtzclaw has not demonstrated that failure to register a foreign corporation prior to filling debt collection lawsuits violates state or federal fair credit reporting statutes or the UCL.

In light of the above this court need not reach the issue of the litigation privilege.

The evidentiary objections interposed by both sides have been ruled on and are set forth in separate orders. As for Holtzclaw's objection to GS's request for judicial notice of the Appellate Division case of CACV of Colorado, LLC v. Camacho, this Court overruled that objection on the record at the time of the hearing.

In light of the above, GS's motion for summary adjudication is granted. Conversely, Holtzclaw's cross motion is denied. The prevailing party is to give notice and prepare the appropriate court orders.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the

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above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 10/14/08 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: October 14, 2008

John A. Clarke, Executive Officer/Clerk

By: _____

A. LIM

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 Stephen H. Turner
 221 North Figueroa Street, Suite 1200
 Los Angeles, CA. 90012

BRENNAN, WIENER & ASSOCIATES
 Robert F. Brennan

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