

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Robert M. Dow, Jr.	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 5338	DATE	5/14/2008
CASE TITLE	Konewko vs. Dickler, Kahn, Sloikowski & Zavell, Ltd.		

DOCKET ENTRY TEXT

The Court grants Plaintiff's motion to strike Defendant's Affirmative Defense [44] without prejudice and allows Defendant until 6/4/08 in which to file a second amended affirmative defense.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

After Plaintiff filed a motion to strike, the Court allowed Defendant leave to file an amended affirmative defense attempting to assert a "bona fide error" defense to Plaintiff's claim under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* The Court now has before it Plaintiff's motion to strike that amended affirmative defense [44], along with Defendant's response [50], and Plaintiff's reply [53].

Notwithstanding the "disfavored" status of motions to strike and the "liberal pleading standard" in Fed. R. Civ. P. 8, the Court concludes that the motion is well taken. Because the defense at issue deals with an alleged "mistake" -- a "bona fide error" in the statutory parlance -- Defendant is obligated to comply with both Fed. R. Civ. P. 8 and 9(b). The standard under Rule 9(b) requires parties to state the circumstances of a mistake with "particularity." As the Seventh Circuit has explained, Rule 9(b) mandates that parties allege at the pleading stage "the who, what, when, where, and how of the mistake." *GE Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1078 (7th Cir. 1997). Defendant correctly points out that Rule 9(b) permits pleaders to allege matters such as intent and knowledge in a more general manner. However, the remaining factual details of an alleged mistake -- for example, who made the mistake and when and how it occurred -- must be set out with "particularity" in the pleading.

Although Defendant has added some detail to its original effort to plead its affirmative defense, there still is work to do before the Court reasonably can conclude that Defendant has complied with its obligation to provide "the first paragraph of any newspaper story" (*GE Capital Corp.*, 128 F.3d at 1078) setting forth with particularity Defendant's version of the circumstances supporting the defense, as Rule 9(b) and the Seventh Circuit case law require. Accordingly, the Court grants Plaintiff's motion [44] without prejudice and allows Defendant until 6/4/08 in which to file a second amended affirmative defense.

Courtroom Deputy
Initials: