NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

February 2, 2017

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LETTER OPINION FILED WITH THE CLERK OF THE COURT

Re: Cadillo v. Stoneleigh Recovery Associates, LLC
Civil Action No. 17-7472 (SDW) (SCM)

Counsel:

Before this Court is Defendant Stoneleigh Recovery Associates, LLC's ("Defendant") Motion to Certify Order Denying Motion to Dismiss for Immediate Appeal under 28 U.S.C. § 1292(b). This Court having considered the submissions and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, **DENIES** the motion.

DISCUSSION

A. Standard of Review

Interlocutory appeals are generally disfavored because "[p]ermitting piecemeal, prejudgment appeals . . . undermines 'efficient judicial administration' and encroaches upon the prerogatives of district court judges, who play a 'special role' in managing ongoing litigation."

Mohawk Indus. v. Carpenter, 558 U.S. 100, 106 (1978) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)). However, 28 U.S.C. § 1292(b) provides an avenue for interlocutory relief if the court's order "(1) involve[s] a controlling question of law, (2) offer[s] substantial ground for difference of opinion as to its correctness, and (3) if appealed immediately materially advance[s] the ultimate termination of the litigation." *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 754 (3d Cir. 1974) (internal quotations omitted). Nevertheless, certification is "wholly within the discretion of the courts, even if the criteria are present." *Bachowski v. Usery*, 545 F.2d 363, 368 (3d Cir. 1976). Accordingly, certification for interlocutory review is to be granted sparingly because only "exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978).

B. Defendant Has Failed to Show Grounds for Interlocutory Appeal of This Court's December 21, 2017 Order

On December 21, 2017, this Court issued an Opinion and Order (the "Order") denying Defendant's motion to dismiss Plaintiff's Class Action Complaint for failure to state a claim upon which relief could be granted. (Dkt. No. 15.) In so doing, this Court found that Plaintiff had sufficiently pled that Defendant's attempt to collect a debt Plaintiff owed to a third-party violated the Fair Debt Collection Practices Act ("FDCPA") because Defendant's collection letter failed to adequately inform Plaintiff that any dispute regarding the debt must be in writing. (*Id.* at 4-5.) The Court held that "the least sophisticated consumer may not understand that she is required to respond in writing, and could be misled by Defendant's collection notice." (*Id.* 4-6.)

This Court's Order does present a controlling question of law that, "if erroneous, would be reversible error on final appeal," *Katz*, 496 F.2d at 755; *see also Kassin v. AR Resources, Inc.*, Civ. No. 16-4171 (FLW), 2017 WL 4316391, at *2 n.3 (D.N.J. Sept. 28, 2017) (finding that a determination as to whether the least sophisticated consumer would be misled by the language of a debt collection letter is a controlling question of law). In addition, an appeal at this time would eliminate the need for trial, and indeed any further litigation. *See Kassin*, 2017 WL 4316391 at *2.

However, Defendant has failed to show substantial ground for difference of opinion as to the Order's correctness. To pass muster, a substantial ground for a difference of opinion must arise "out of genuine doubt as to the legal standard." *Kapossy v. McGraw-Hill, Inc.*, 942 F. Supp. 996, 1001 (D.N.J. 1996). "Such doubt can stem from conflicting precedent, the absence of controlling law on a particular issue, or novel and complex issues of statutory interpretation." *Bais Yaakov of Spring Valley v. Peterson's Nelnet, LLC*, Civ. No. 11-11, 2013 WL 663301, at *4 (D.N.J. Feb. 21, 2013) (internal citation omitted). Here, there is no doubt that the "least sophisticated consumer" standard is "the applicable standard when assessing whether a debt collection letter is misleading or employed untoward collection tactics." *Kassin*, 2017 WL 4316391 at *3; *see also Wilson v. Quadramed Corp.*, 225 F.3d 350 (3d Cir. 2000). That is the standard this Court applied. "[M]ere disagreement with the district court's ruling does not constitute 'a substantial ground for difference of opinion' within the meaning of'" Section 1292(b). *Cardona v. General Motors Corp.*, 939 F. Supp. 351, 353 (D.N.J. 1996).

Accordingly, Defendant's Motion to Certify Order Denying Motion to Dismiss for Immediate Appeal will be **DENIED**.

CONCLUSION

For the reasons set forth above, Defendant's Motion for Certification of this Court's December 21, 2017 Order for Immediate Appeal is **DENIED**. An appropriate order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Parties
Steven C. Mannion, U.S.M.J.