

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI  
HOLDS THAT A STATUTE OF LIMITATIONS DEFENSE IS NOT PROPERLY  
ASSERTED BY WAY OF A MOTION TO DISMISS UNLESS THE COMPLAINT ITSELF  
ESTABLISHES THE DEFENSE

In *Harris v. Barton*.<sup>1</sup>, the United States District Court for the Eastern District of Missouri granted in part and denied in part Defendant Dennis J. Barton's motion to dismiss a complaint against him for failure to state a claim.<sup>2</sup> The court held that a statute of limitations defense is not properly asserted by way of a motion to dismiss, unless, the complaint itself establishes the defense.<sup>3</sup>

This case arose from a complaint filed by Plaintiff Sophornia Harris under the Fair Debt Collection Practices Act (FDCPA)<sup>4</sup>, and under state law for abuse of process.<sup>5</sup> Harris alleged that—in his attempts to collect a debt that Harris owed to St. Anthony's Medical Center ("St. Anthony's")—Barton, an attorney engaged in the practice of collecting debts for collection agencies, made false representations and engaged in unfair practices in violation of the FDCPA.<sup>6</sup> According to the original complaint, sometime prior to October 26, 2012, St. Anthony's assigned Harris's debt to a collection agency, pursuant to Missouri Revised Statute § 425.300 that states in part that "[c]ollection agencies may take assignment of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own and the claimant's names thereon..."<sup>7</sup> Harris claims that Barton attempted to collect the debt with a phone call and letter both indicating that he represented St. Anthony's, and that these attempts came roughly thirty days before St. Anthony's assigned her debt.<sup>8</sup> Barton further alleges that, while the letter she received was on Barton's law firm letterhead, he did not draft or sign the letter and that neither he nor any other attorney made diligent inquiry to determine if the debt was valid.<sup>9</sup>

On October 26, 2012, Barton filed a petition against Harris in state court in an attempt to collect the debt that Harris owed to St. Anthony's.<sup>10</sup> This petition named only St. Anthony's as the plaintiff and did not mention that the debt had been assigned to a collection agency.<sup>11</sup> Harris

---

<sup>1</sup> 4:13CV02516 AGF, 2014 WL 3701037 (E.D. Mo. 2014).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> 15 U.S.C. § 1692(d)-(f).

<sup>5</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

claims that Barton had no communication with St. Anthony's prior to filing the petition and signing it as "Attorney for Plaintiff."<sup>12</sup> Harris further claims that in November 2013, she learned that Barton had never represented St. Anthony's in respect to the debts he had tried to collect.<sup>13</sup>

Harris's original complaint asserted a state abuse of process claim and claims that Barton's collection practices were unfair and involved false representations in violation of the FDCPA.<sup>14</sup> Barton moved to dismiss Harris's claims as time barred under the FDCPA's one year statute of limitations.<sup>15</sup> On April 23, 2014, Harris moved to file an amended—almost identical—complaint adding an allegation that Barton sent at least one additional collection letter after his state court petition was dismissed.<sup>16</sup> The amended complaint contained no indication of when this letter was sent or received, but attached to the amended complaint was a letter from General Counsel for St. Anthony's confirming that Barton was not employed by, and never had a contractual relationship with the hospital.<sup>17</sup> Harris's motion to amend was granted on May 15, 2014.<sup>18</sup>

In response to the amended complaint, Barton asserted that the FDCPA claims for the September 2012 letter and phone call are barred by the one-year statute of limitations period, which he claimed to be jurisdictional and not subject to equitable tolling.<sup>19</sup> He also claimed that Harris should not have been able to continue with an amended claim without proving that the letter affirmatively pleading that the letter was sent after May 14, 2004.<sup>20</sup> In response Harris's state lawsuit, Barton asserts that Harris failed to state a claim for abuse of process because she was never served with the petition, and in the alternative, St. Anthony's assignment of the debt allowed Barton to file the lawsuit with St. Anthony's as the only named plaintiff.<sup>21</sup> Harris counters that even though she was not served with the state petition, Barton violated the FDCPA by making deceptive misrepresentations in the petition.<sup>22</sup> Harris argued that Barton's dismissal of the state lawsuit on January 30, 2014, was in itself deceptive because he did so purporting to be St. Anthony's attorney and this deceptive act was within the statute of limitations.<sup>23</sup> Harris further asserted that the timely claims based on the dismissal and the post-dismissal letter reset

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 1.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

the limitations clock for her earlier claims.<sup>24</sup> Harris argues that there are grounds for tolling the one-year statute of limitations, because Barton's concealment of information regarding his lack of authority to act on behalf of St. Anthony's prevented her from discovering the alleged September 2012 violation of the FDCPA until the limitation period had passed.<sup>25</sup>

In making its ruling, the court reviewed the standard for pleadings and determined that in order to survive Barton's motion to dismiss, Plaintiff Harris's claims must contain sufficient facts to state a claim that is plausible on its face.<sup>26</sup> While the court is required to accept the plaintiff's factual allegations as true and construes those facts in the plaintiff's favor, it is not required to accept any legal conclusions that the plaintiff has made.<sup>27</sup> The court does not consider the plausibility of each separate allegation, but will use its own discretion to consider the plausibility of the plaintiff's entire claim.<sup>28</sup> The court recognized that the FDCPA makes actionable "a false, deceptive, or misleading representation or means in connection with the collection of any debt,"<sup>29</sup> and that typically, a statute of limitations defense is not a ground for dismissal under Rule 12(b)(6) "unless the complaint itself establishes the defense."<sup>30</sup>

While the court concedes that Barton may have engaged in deceptive practices, they acknowledged that the claims related to the September 12 letter were time-barred.<sup>31</sup> The court dismissed the FDCPA claims that took place more than one year prior to December 23, 2013, after examining the readings of several district courts in the Eighth Circuit to determine that the FDCPA's statute of limitations is jurisdictional and cannot be equitably tolled.<sup>32</sup> The court also rejected Harris's claims that the dismissal of the state lawsuit reset the tolling period.<sup>33</sup> The court did, however, recognize that the post-dismissal letter that Harris alleged in her amended complaint has not been proven to be time-barred.<sup>34</sup>

The court held that a statute of limitations defense is not properly asserted by way of a motion to dismiss unless the complaint itself establishes the defense, and because Harris's complaint does not establish the defense, the court must assume that the letter could have been

---

<sup>24</sup> *Id.*

<sup>25</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 2.

<sup>26</sup> *Id.* at 3 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

<sup>27</sup> *Id.* at 3 (quoting *Retro Television Network, Inc. v. Luken Commc'ns, LLC*, 696 F.3d 766, 768–69 (8th Cir.2012)).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3 (quoting 15 U.S.C. § 1692(e)).

<sup>30</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 3 (quoting *Jessie v. Potter*, 516 F.3d 709, 713 n. 2 (8th Cir.2008); *Varner v. Peterson Farms*, 371 F.3d 1011, 1016 (8th Cir.2004)).

<sup>31</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 3.

<sup>32</sup> *Harris*, 4:13CV02516 AGF, 2014 WL 3701037 at 3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

sent within one year of the filing of the motion to amend the complaint.<sup>35</sup> The motion to dismiss was granted for the September 2012 letter and denied for the 2013 letter.<sup>36</sup>

\*Furonda Brasfield

---

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*