

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

VERA H. FITZPATRICK,

DEBTOR.

CASE NO.: 03-43069

VERA H. FITZPATRICK,

PLAINTIFF,

ADV. NO.: 08-03017

versus

COUNTRYWIDE HOME LOANS SERVICING LP; AND
BUTLER & HOSCH, P.A.

DEFENDANTS.

**ORDER DENYING MOTION OF PLAINTIFF FOR RECONSIDERATION
TO ALTER, AMEND, VACATE ORDER DENYING MOTION TO DISMISS COUNTS I
CONDITIONALLY GRANTING MOTION TO DISMISS COUNT VII, AND
GRANTING MOTION TO DISMISS COUNTS II, III, IV, V, AND VI**

Martin S. Lewis, attorney for the Debtor Plaintiff
Edmund S. Whitson, III, attorney for the Defendant Countrywide
Margaret A. Krasicki, attorney for Butler & Hosch, P.A.

This adversary case is before the Court on the motion of Vera H. Fitzpatrick for reconsideration of the Court's order of November 3, 2008 denying dismissal of some counts of her complaint, dismissing other counts and conditionally dismissing one count. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below and in the order of

November 3, 2008, the Court is denying the motion.

The plaintiff seeks reconsideration of the Court's dismissal of the counts of her complaint that allege violations of the Fair Debt Collection Practices Act and its Florida counterpart. The plaintiff asserts that the Court should follow the reasoning of several Northern District of Illinois cases that hold that the Bankruptcy Code does not preempt actions under the FDCPA and the Florida FDCPA. *Peeples v. Blatt*, 2001 WL 921731 (N.D. Ill. 2001); *Wagner v. Ocwen Fed. Bank, FSB*, 2001 WL 1382222 (N.D. Ill. 2000). However, this is the minority view on this issue. The majority of the cases, including other cases from the Northern District of Illinois, have ruled that a FDCPA claim based upon collection of a debt discharged in a bankruptcy case is preempted by the Bankruptcy Code. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2001); *Necci v. Universal Fidelity Corp.*, 297 B.R. 376 (Bankr. E.D.N.Y. 2003); *Randolph v. IMBS, Inc.*, 288 B.R. 524 (N.D. Ill. 2003); *Wehrheim v. Secrest*, 2002 WL 31242783 (S.D. Ind. 2002); *Degrosiellier v. Solomon & Solomon, P.C.*, 2001 WL 1217181 (N.D.N.Y. 2001); *Gray-Mapp v. Sherman*, 100 F.Supp.2d 810 (N.D. Ill. 1999); *Baldwin v. McCalla, Raymer, Padrick, Cobb, Nichols & Clark, L.L.C.*, 1999 WL 284788 (N.D. Ill. 1999).

Therefore, for the reasons stated in the order of November 3, 2008 and for the reasons indicated in the majority view cases listed above, the Court concludes that the plaintiff's motion to reconsider should be denied.

Therefore, it is ordered that the motion of the plaintiff for reconsideration to alter, amend, vacate order denying motion to dismiss Count I, conditionally granting motion to dismiss Counts VII, and Granting motion to dismiss Counts II, III, IV, V and VI is DENIED.

