

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 10, 2015

ELYSE J. REID v. ROOMS TO GO, A TENNESSEE CORPORATION

**Appeal from the Circuit Court for Davidson County
No. 14C845 Joseph P. Binkley, Jr., Judge**

No. M2015-00269-COA-R3-CV – Filed May 10, 2016

Plaintiff who brought action under the Fair Credit Reporting Act appeals the dismissal of the case on statute of limitations grounds. Discerning no error, we affirm the judgment dismissing the case.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Elyse J. Reid, Brentwood, Tennessee, appellee, Pro Se.

Douglas Ray Pierce, Nashville, Tennessee, for the appellee, Rooms to Go, a Tennessee Corporation.

MEMORANDUM OPINION¹

This appeal has its genesis in the General Sessions Court for Davidson County, where Elyse J. Reid filed an action against Rooms To Go Tennessee Corporation (Rooms To Go) on

¹ Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

January 14, 2014;² for cause of action the warrant stated:

This account has been paid in full. Alias Room to go TN Corp. has charged me 3-times for the same transaction (1) 601919121380 and Portfolio (2) 6019191201380. (3) 0605 has been paid in full / never late. The law states after seven years the account must be deleted. My credit has been damaged I have been turned down for credit. I need this removed from my credit. I have been turned down for credit. I lost \$50,000.00 when I applied for refinancing on my home over the term of the loan under \$25,000.00 Dollars.

Trial was set for February 18, 2014, and the warrant was dismissed on that date; Ms. Reid appealed to Circuit Court.

Following some discovery and discovery-related disputes, the exact nature of which is not apparent from the record, Rooms To Go moved to dismiss the case pursuant to Tenn. R. Civ. P. 12.02(6), asserting that Ms. Reid did not allege that she had submitted her dispute to a consumer reporting agency in accordance with the Fair Credit Reporting Act (“FCRA”) and that her claims were barred by the statute of limitations at 15 U.S.C. § 1681 and Tenn. Code Ann. § 28-3-109(a)(3). In response to the motion, Ms. Reid filed an eleven page handwritten document styled “Plaintiff’s Motion to Stay or Halt Defendant’s Motion to Dismiss.”³

Rooms to Go’s motion was heard on November 21, 2014, and on December 3 the court entered an order holding:

This case came to be heard on November 21, 2014, for consideration of Defendant’s Motion to Dismiss, at which time Plaintiff was placed under oath and testified that she has known since at least July 5, 2010 of the factual basis for her claim under the Fair Credit Reporting Act. Additionally, in her most recent filing with the Court Plaintiff admitted she is complaining about a transaction she claims Defendant placed on her credit report and “after ten years of me trying to get them to remove it, they would not.” (Plaintiff’s Stay or Halt (for the second time) of Defendant’s Motion to Dismiss, p. 3) The record in this case establishes that Plaintiff initiated this lawsuit with a filing in the General Sessions Court of Davidson County on December 6, 2013. Accordingly, the Court finds that Plaintiffs claim is time barred by either the

² The record shows that Ms. Reid initially filed a warrant on December 6, 2013, but that the warrant was not served for a reason not appearing on the face thereof. The warrant filed on January 14, 2014, is the one which came on for hearing on February 18, 2014, and was dismissed, leading to Mr. Reid’s appeal to circuit court.

³ The first 3-1/2 pages of the document contains primarily factual matters and allegations, and the remainder is a Memorandum in support of the motion. Attached as exhibits are various credit reports and medical documents.

two or five year limitation periods contained in 15 U.S.C. § 1681p. The Court further finds that Plaintiff's case is barred by her failure to comply with a condition precedent. The Court further finds that the only claim Plaintiff has asserted is a claim under the Fair Credit Reporting Act.

After the hearing but prior to entry of the order dismissing the case, Ms. Reid filed a document styled "Halt/Stay – The Order," which the court treated as a Motion to Alter or Amend. The court denied the motion, stating:

In the December 3 Order, the Court found that Plaintiff's claim was time barred by either the two or five year limitation periods contained in 15 U.S.C. § 1681p. Plaintiff has now argued that she met the two year limitations period. Even if this were true, however, Plaintiff's claim is still untimely because she failed to meet the five year limitation period, which acts as a statute of repose. Specifically, in her filing signed November 18, 2014, Plaintiff stated "Rooms to Go put an illegal transaction on my credit report and after 10 years of me trying to get them to remove it, they would not." This factual statement constitutes an admission by Plaintiff. Therefore, regardless of when Plaintiff may have learned of the actions of which she now complains, those actions clearly took place more than five years ago.

Ms. Reid appeals stating the following issue:

Rooms to Go Tennessee Corp. placed an illegal false transaction on my credit report. I have two years to take action after I found out about it. It was proven in court under oath that I took formal action fourteen months after I found out about it.

DISCUSSION

In her brief on appeal, Ms. Reid acknowledges that this is a case under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq.*; her allegations with respect to Rooms to Go invoke the provisions of § 1681s-2. The statute of limitations to enforce such an action is contained at 15 U.S.C. § 1681p:

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of--

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

The trial court determined that Ms. Reid had known of the factual basis of her claim since at least July of 2010. “The burden is upon the appellant to show that the evidence preponderates against the judgment of the trial court.” *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992) (citing *Capital City Bank v. Baker*, 442 S.W.2d 259, 266 (1969)). “The burden is likewise on the appellant to provide the court with a transcript of the evidence or a statement of the evidence from which this court can determine if the evidence does preponderate for or against the findings of the trial court.” *Coakley*, 840 S.W.2d at 370. “In the absence of a transcript of the evidence, there is a conclusive presumption that there was sufficient evidence before the trial court to support its judgment, and this Court must therefore affirm the judgment.” *Id.* (citing *McKinney v. Educator and Executive Insurers, Inc.*, 569 S.W.2d 829, 832 (Tenn. Ct. App. 1977)). Inasmuch as the first suit was not initiated until December 2013, the two year statute of limitations at 15 U.S.C. § 1681p barred the action.

In addition, the court correctly held that the statement in her pleading that she “had been trying to get [Rooms to Go] to remove the transaction at issue from her credit report for ten years was an admission that she knew of the action which formed the basis of her complaint.”⁴ This admission invoked the five year statute of repose at 15 U.S.C. § 1681p, likewise barring the action.⁵

For the foregoing reasons, the judgment of the trial court is affirmed.

RICHARD H. DINKINS, JUDGE

⁴ In “Plaintiff’s Motion to Stay or Halt Defendant’s Motion To Dismiss”, Ms. Reid stated: “I purchased an item from Rooms to Go on 1/8/2004. On 1.13.2004 Rooms to Go stole my personal information and used my stolen identity to place another transaction on my credit report, with willful intent and malice (account number 60191921380).”

⁵ A statute of repose “limits potential liability by limiting time during which the cause of action can arise.” Black’s Law Dictionary, (6th ed. 1990).