[Cite as *Asset Acceptance L.L.C. v. Caszatt,* 2010-Ohio-1449.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

ASSET ACCEPTANCE LLC,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-L-090**
- vs -	:	
SEAN C. CASZATT,	:	
Defendant-Appellant,	:	
ASSET ACCEPTANCE CAPITAL CORP., et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 08 CV 002587.

Judgment: Reversed and remanded.

Jeffrey C. Turner and *Boyd W. Gentry* and *John P. Langenderfer*, Surdyk, Dowd & Turner Co., L.P.A., One Prestige Place, #700, Miamisburg, OH 45342 (For Plaintiff-Appellee and Defendants-Appellees).

Anand N. Misra, The Misra Law Firm, L.L.C., 3659 Green Road, #100, Beachwood, OH 44122 and *Robert S. Belovich*, 5638 Ridge Road, Parma, OH 44129 (For Defendant-Appellant).

MARY JANE TRAPP, P.J.

{¶1} Sean C. Caszatt appeals from a judgment of the Lake County Court of Common Pleas which denied his motion for class certification relating to his claim that Asset Acceptance, LLC violated the Fair Debt Collection Practices Act ("FDCPA") and Ohio's Consumer Sales Practices Act ("CSPA") by filing time-barred lawsuits to collect

credit card debts. He sought to certify a class of consumers who were sued by Asset after the alleged expiration of the statute of limitations imposed by the state identified in the choice-of-law provision in the credit card's terms and conditions.

{¶2} The main issue presented in this appeal is whether the trial court abused its discretion in denying class certification under Civ.R. 23(B)(3) on the grounds that the predominance and superiority requirements were not met. For the following reasons, we conclude the trial court should have granted certification.

{¶3} **Substantive Facts and Procedural History**

{¶4} Asset is engaged in the business of purchasing charged-off consumer debts and enforcing the debts in courts in various states. On June 6, 2008, it filed a lawsuit[1] against Mr. Caszatt to collect a credit card debt in the amount of $5,820.75 relating to a credit card account he had with Providian National Bank.[2] The date of delinquency for Mr. Caszatt's account was October 17, 2001.

{¶5} Paragraph 16 of "Visa Classic Providian National Bank Account Agreement," which governed Mr. Caszatt's credit card account, states: "No matter where you live, this Agreement and your Credit Card Account are governed by federal law and by New Hampshire law." New Hampshire has a three-year statute of limitations for collections of credit card debts.[3]

1. Asset filed the collection action in the Painesville Municipal Court. Because Mr. Caszatt subsequently sought to certify a class in his counterclaim, the case was transferred to the Lake County Court of Common Pleas.
2. The credit card debt owed by Mr. Caszatt was a part of a debt portfolio sold by Providian National Bank to Palisades Collection LLC, which in turn sold the portfolio to Great Seneca Financial Corporation, which subsequently sold it to Asset.
3. Section 508.4 of the New Hampshire Revised Statutes prescribes a three-year statute of limitations for collection of a credit card debt, running from the date of delinquency.

{¶6} Mr. Caszatt filed an answer and a counterclaim.[4] In his counterclaim, he alleged Asset's internal guidelines applied Ohio's 15-year statute of limitations for written contracts, even for accounts with a choice-of-law provision where the choice-of-law state law imposes a much shorter statute of limitations for collections of credit card debts. Mr. Caszatt alleged this standard practice by Asset violated R.C. 2305.03(B), which provides that a shorter period of limitations from a foreign state is enforceable in cases filed in Ohio.[5] He claimed Asset's practice of filing time-barred lawsuits against consumers is unfair, unconscionable, and a misrepresentation in violation of consumer protection statutes.

{¶7} Mr. Caszatt sought class certification for his claim. The proposed class consists of consumers against whom Asset filed a lawsuit in Ohio after June 6, 2006, to collect a credit card debt beyond the statute of limitations under Ohio law or law of the choice-of-law state specified in the credit card's terms and conditions.[6]

{¶8} Mr. Caszatt maintained the class members can be ascertained from Asset's computerized account records. Asset, however, refused to produce the documents other than documents relating to Mr. Caszatt, claiming that running a data query to derive the records sought by Mr. Caszatt would shut its computer system down for two days. Mr. Caszatt filed a motion to compel discovery. His own research of the

4. The counterclaim joined Asset Acceptance Capital Corp., Asset Acceptance Corp., Asset Acceptance Holdings, LLC, RBR Holding Corp., AAC Investors, Inc, as defendants. We refer to these various Asset entities collectively as Asset.

5. R.C. 2305.03 states: "(B) No civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitations that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitations that applies to that action under the laws of this state has expired."

6. In his motion for class certification, Mr. Caszatt described the class as: "all persons against whom plaintiff Asset Acceptance LLC has filed a lawsuit in Ohio, to collect a credit card debt, where the credit card agreement contained a choice of law provision, applying the law of a state other than Ohio, the

records from three local municipal courts (Garfield Heights, Elyria, and Parma) showed that Asset filed 33 cases based on Providian credit card accounts since June 6, 2006, of which he claimed 28 were time-barred.

{¶9} Mr. Caszatt sought class certification under all three grounds provided in Civ.R. 23(B)(3), asserting that Asset would be subject to incompatible standards of conduct absent class certification; that declaratory and injunctive relief requiring Asset to refrain from ignoring the choice of law provision is proper; and that common questions of law or fact predominate over individual questions and class action is a superior method of adjudication of the instant matter.

{¶10} In opposing the class certification, Asset pointed out that a paragraph of the terms and conditions of Mr. Caszatt's Providian Bank credit card contract contained a waiver provision. Our review of the terms and conditions shows that immediately before the choice of law provision is a paragraph headed: "Waiver of Certain Rights." It states the following:

{¶11} "Waiver of Certain Rights. We may delay or waive enforcement of any provision of this Agreement without losing our right to enforce it or any other provision later. You waive the right to presentment, demand, protest, or notice of dishonor; any applicable statute of limitations; and any right you may have to require us to proceed against anyone before we sue you."

{¶12} **The Trial Court's Denial of Class Certification**

{¶13} The trial court denied certification, as well as Mr. Caszatt's motion to compel discovery, except discovery relating to Mr. Caszatt's account and his claims

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lawsuit was filed on or after June 6th, 2006, and the lawsuit was filed after the statute of limitations had expired under the law of Ohio or under the law of the choice-of-law state."

against Asset. The court found the class to be identifiable, and also found the prerequisites of Civ.R. 23(A) -- impracticality/numerosity, commonality, typicality, and adequate representation -- are met in this case. However, it found that a class action cannot be maintained because none of the Civ.R. 23(B) requirements are satisfied.

{¶14} Regarding Civ.R. 23(B)(1), the court stated that "the potential class members are ones who have already had an allegedly time-barred lawsuit commenced against them. Consequently, the conduct at issue has already occurred and there is no continuing conduct. As such, the class cannot be certified under this section."

{¶15} Regarding Civ.R. 23(B)(2), the court determined it was inapplicable because it found the primary relief requested by Mr. Caszatt to be damages and the injunctive and declaratory relief to be merely incidental to the monetary damages.

{¶16} Regarding Civ.R. 23(B)(3), the court found the predominance requirement is not met because individual questions affecting individual class members predominated over common questions. The court reasoned that Asset's defense relied on the waiver provision in the terms and conditions in Caszatt's credit card account contract and therefore "the Court would still be required to analyze the choice of law provision in each of the class member's credit card agreements and determine if there is a waiver provision and whether it applies." The court stated "[b]ecause of the potential factual variations, the Court would essentially have to conduct mini-trials and examine each credit card agreement and the debtor's actual payment history to determine whether any particular suit was filed beyond the statute of limitations. As such, the Court finds that questions affecting individual class members predominate over common issues."

{¶17} The trial court also found the superiority requirement under Civ.R. 23(B)(3) is not met. It determined Mr. Caszatt could not show a class action is a superior mechanism for adjudicating this instant dispute. It reasoned that class actions are typically suitable for cases where the "small recoveries" do not provide the incentive for an individual to bring a solo action prosecuting his own right. The court noted that, in the instant case, however, the compensatory and punitive damages sought exceed $25,000. The court also determined class action is not a superior method of adjudication because the potential recovery would vary widely among the class members.

{¶18} Mr. Caszatt now appeals. He does not challenge the court's denial of certification under Civ.R. 23(B)(1) but assigns the following errors regarding its denial of certification under Civ.R. 23(B)(2) and (3).

{¶19} "[1.] The trial court erred to the prejudice of defendant-appellant in finding that the predominance requirement of Ohio Civil Rule 23(B)(3) was not met despite undisputed evidence proving on a simultaneous, class-wide basis, that plaintiff-appellee intentionally disregards the mandate of ORC 2305.03(B) before filing time-barred suits against all potential class members.

{¶20} "[2.] The trial court erred to the prejudice of defendant-appellant in finding that the predominance requirement of Ohio Civil Rule 23(B)(3) was not met because the court would "be required to analyze the choice of law provision in each of the class member's credit card agreements."

{¶21} "[3.] The trial court erred to the prejudice of defendant-appellant in finding that the predominance requirement of Ohio Civil Rule 23(B)(3) was not met because the

court would "be required to … determine if there is a waiver provision and whether it applies."

{¶22} "[4.] The trial court abused its discretion in overruling defendant-appellant's motion to compel discovery of information relevant to the court's inquire of defendant-appellant's motion to certify.

{¶23} "[5.] The trial court erred to the prejudice of defendant-appellant in finding that the superiority requirement of Ohio Civil Rule 23(B)(3) was not met because "potential recovery for an action brought individually could be large."

{¶24} "[6.] The trial court erred to the prejudice of defendant-appellant in finding that certification was improper under Civil Rule 23(B)(2) because the claim for injunctive relief was merely incidental to a claim for damages."

{¶25} **Standard of Review**

{¶26} "A trial judge has broad discretion in determining whether a class action may be maintained and that determination will not be disturbed absent a showing of an abuse of discretion." *Hamilton v. Ohio Sav. Bank* (1998), 82 Ohio St.3d 67, 70. However, "the trial court's discretion in deciding whether to certify a class action is not unlimited, and indeed is bounded by and must be exercised within the framework of Civ.R. 23. The trial court is required to carefully apply the class action requirements and conduct a rigorous analysis into whether the prerequisites of Civ.R. 23 have been satisfied." Id.

{¶27} **Class Action Certification**

{¶28} As a threshold matter, a class must be identifiable. "The requirement that there be a class will not be deemed satisfied unless the description of it is sufficiently

definite so that it is administratively feasible for the court to determine whether a particular individual is a member. Thus, the class definition must be precise enough 'to permit identification within a reasonable effort.'" Id. at 71-72 (citations omitted).

{¶29} Furthermore, for a class to be certified, various requirements under Civ.R. 23 must be met. Civ.R.23(A) sets forth the prerequisites to a class action. It states that "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class."

{¶30} After a proposed class satisfies the prerequisites of Civ.R. 23(A), one of the three Civ.R. 23(B) requirements must also be met in order for a class action to be certified. Civ.R. 23(B) permits a class action to be brought if: "(1) a series of separate actions would create a risk of inconsistent adjudications or incompatible standard of conduct for the party opposing the class action; (2) injunctive relief would be an appropriate remedy for the entire class; or (3) common questions of law or fact predominate over questions involving only individual members of the class and class treatment is the superior method of resolving the controversy." *Toy v. Mazza*, 11th Dist. No. 2007-T-0028, 2007-Ohio-6406, ¶16; Civ.R. 23(B).

{¶31} "Class action certification does not go to the merits of the action." *Ojalvo v. Board of Trustees* (1984), 12 Ohio St.3d 230, 233. "[A]ny doubts about adequate representation, potential conflicts, or class affiliation should be resolved in favor of

upholding the class, subject to the trial court's authority to amend or adjust its certification order as developing circumstances demand, including the augmentation or substitution of representative parties." *Baughman v. State Farm Mut. Auto. Ins. Co*. (2000), 88 Ohio St.3d 480, 487.

{¶32} Here, the trial court concluded the class proposed by Mr. Caszatt is identifiable and also meets the requirements of numerosity, commonality, typicality, and adequate representation set forth in Civ.R. 23(A). However, the court concluded the class cannot be certified under any of the three grounds of Civ.R. 23(B).

{¶33} Asset does not cross appeal the court's determination that the putative class is identifiable and also meets the Civ.R. 23(A) requirements. Thus, the only issue on appeal is whether the class can be certified under Civ.R. 23(B). As the main issue in this case is whether the proposed class action meets the requirement of Civ.R. 23(B)(3), we address it first.

{¶34} **Civ.R. 23(B)(3): Predominance and Superiority**

{¶35} A class action may be maintained under Civ.R. 23(B)(3), if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation

of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action." Civ.R. 23(B)(3).

{¶36} "There are two main prongs to a Civ.R. 23(B)(3) analysis. The first is that common questions of fact and law predominate over individualized ones, and the second is that class certification is the superior method to fairly and efficiently adjudicate the matter." *Phillips v. Andy Buick, Inc.*, 11th Dist. No. 2004-L-093, 2006-Ohio-5832, ¶36.

{¶37} The underlying issue in this case is whether Asset's practice of applying Ohio's statute of limitations despite the choice of law provision in the credit card's terms and conditions violated R.C. 2305.03(B) and, therefore, the FDCPA and Ohio's CSPA. Mr. Caszatt sought to certify a class of credit card debtors sued in Ohio by Asset whose credit card terms and conditions contained the choice of law provision mandating the application of the law of another state with a shorter period of limitations for credit card collections. We consider first whether the predominance requirement under Civ.R. 23(B)(3) is satisfied.

{¶38} **Predominance**

{¶39} To establish predominance for purposes of Civ.R. 23(B)(3), "it is not sufficient that common questions merely exist; rather, the common questions must represent a significant aspect of the case and they must be able to be resolved for all members of the class in a single adjudication." *Schmidt v. Avco Corp.* (1984), 15 Ohio St.3d 310, 313.

{¶40} As the Supreme Court of Ohio stated in *Cope v. Metro. Life Ins. Co.* (1998), 82 Ohio St.3d 426, "[i]t is now well established that 'a claim will meet the

predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position.'" Id. at 429-430, quoting *Lockwood Motors, Inc. v. Gen. Motors Corp.* (D.Minn.1995), 162 F.R.D. 569, 580.

{¶41} "Courts also generally find that a wide variety of claims may be established by common proof in cases involving similar form documents or the use of standardized procedures and practices." *Cope* at 430. "[C]lass action treatment is appropriate where the claims arise from standardized forms or routinized procedures." *Hamilton* at 84. In *Hamilton*, the court determined class classification for a mortgage interest calculation dispute was proper, because "the questions of law and fact which have already been shown to be common to each respective subclass arise from identical or similar form contracts. The gravamen of every complaint within each subclass is the same and relates to the use of standardized procedures and practices." Id. at 80.

{¶42} Finally, we note that the Supreme Court of Ohio emphasized that "predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Cope* at 429, citing *Amchem Prods., Inc. v. Windsor* (1997), 521 U.S. 591.

{¶43} In this case, the common overarching issue is whether Asset's purported standardized practice of employing Ohio's 15-year statute of limitations violated the FDCPA and Ohio's CPSA by filing suits barred by the time period imposed by the state identified in the choice of law provision in the credit card's terms and conditions.

{¶44} The record in this case contains Asset's internal guidelines, which determines the time period for collection actions in Ohio by applying Ohio's statute of limitations of 15 years regardless of the choice of law provisions in the terms and conditions governing the debtor's credit card. Michael Beach, Asset's Vice President and Litigation Manager, testified that the credit card accounts purchased by Asset generally have standard terms and conditions with similar choice of law provisions. He testified in his deposition as follows:

{¶45} "Q. So in determining the choice-of-law provision, I believe you said: 'We look at the terms and conditions,' is that right?

{¶46} "A. The terms and conditions which control the contractual relationship between the lender and the borrower.

{¶47} "Q. And is that done for every account?

{¶48} "A. We are provided a terms and conditions on a purchase basis. We will be provided the terms and conditions that apply to the debts that were purchased. Then we'll review those terms and conditions and make that determination.

{¶49} "Q. *** [T]his determination is made for every account, is that correct?

{¶50} "A. Yes.

{¶51} " ***.

{¶52} "A. *** [T]here exists a terms and conditions that apply to every account. *I don't necessarily know if you have to look at it on every single account because the terms and conditions will apply across a large band of accounts, generally.*

{¶53} "There are certain instances where there are multiple terms and conditions that may be in play, but as a general rule, we buy accounts in batches that are like

similar, like [sic] characters, and generally they will have maybe one or two terms and conditions that will apply.

{¶54} "And generally, even across different sets of terms and conditions, there is very little change. *Like a choice of law is something that's not the type of thing that may change from one set of terms and conditions to another*. *It's fairly boilerplate* and it's not going to move or be redefined in a later terms and conditions." (Emphasis added.)

{¶55} Thus, the questions of fact and law common to each member in the putative class represent a significant aspect of this controversy. This is because the claim underlying the class action arose from similar credit card agreements and standardized procedures and practices employed by Asset, which utilizes Ohio's 15-year statute of limitations instead of the limitations period imposed by the choice-of-law state. There therefore exists "generalized evidence which proves or disapproves an element on a simultaneous, class-wide basis" in the form of Asset's internal guidelines for filing court actions and the terms and conditions governing the debtors' credit card account, which Asset admitted to be "boilerplate." Accordingly, the predominance test under Civ.R. 23(B)(3) is met.

{¶56} The trial court, however, found individual questions affecting the class members predominate over common questions. It reasoned that Asset's defense relied on the waiver provision in the terms and conditions in Mr. Caszatt's credit card account, therefore, "the Court would still be required to analyze the choice of law provision in each of the class member's credit card agreements and determine if there is a waiver provision and whether it applies." The trial court therefore concluded that it "would essentially have to conduct mini-trials and examine each credit card agreement and the

debtor's actual payment history to determine whether any particular suit was filed beyond the statute of limitations."

{¶57} The trial court apparently confused the issue of identifying class members with the issue of predominance. The putative class members are those sued in Ohio courts whose credit card agreement contained a choice of law provision. The identification of these members can be achieved with minimum efforts since the terms and conditions are boilerplate contract forms. The date of delinquency of each member can presumably be readily ascertained from Asset's records of the credit card accounts. As to the existence of a waiver provision in the putative members' credit card agreement, which Asset relied on as a defense but Mr. Caszatt claimed to be unenforceable, that information would also be easily discernable by a cursory examination of the standard agreements.

{¶58} Therefore, no "mini-trials" would be required to determine the class membership. More importantly, that determination goes to identification of the class membership, not the issue of whether common questions represent a significant aspect of the instant dispute -- whether Asset's standard practice of applying Ohio's statute of limitations for written contracts to file credit card collection suits, instead of applying the statute of limitations pursuant to the choice law provision in the debtors' credit card agreement, violated the FDCPA and CSPA. As in *Hamilton*, where the court granted certification for a dispute regarding a bank's mortgage interest calculation method, the putative class here is "clearly bound together by a mutual interest in resolving common questions to a far greater extent than it may be divided by individual interests. None of the questions affecting only individual members rises to the level necessary to defeat

class certification." *Hamilton* at 86. Thus, we conclude the trial court abused its discretion in holding the class action does not meet the predominance requirement.

{¶59} **Superiority**

{¶60} The second prong of the Civ.R. 23(B)(3) analysis requires the court to determine whether a class action is the superior method to fairly and efficiently adjudicate the matter. "[I]n determining whether a class action is a superior method of adjudication, the court must make a comparative evaluation of the other procedures available to determine whether a class action is sufficiently effective to justify the expenditure of judicial time and energy involved therein." *State ex rel. Davis v. Public Employees Retirement Bd*., 111 Ohio St.3d 118, 2006-Ohio-5339, ¶28.

{¶61} As the Supreme Court of Ohio stated: "[t]he purpose of Civ.R. 23(B)(3) was to bring within the fold of maintainable class actions cases in which the efficiency and economy of common adjudication outweigh the interests of individual autonomy. Thus, 'this portion of the rule also was expected to be particularly helpful in enabling numerous persons who have small claims that might not be worth litigating in individual actions to combine their resources and bring an action to vindicate their collective rights.'" *Hamilton* at 29-30 (internal citations omitted).

{¶62} "'The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.'" Id. at 30, quoting *Amchem Prods., Inc. v. Windsor* (1997), 117 S. Ct. 2231, 2246.

{¶63} Here, the trial court found the superiority requirement is not met because the potential recovery may be large and may vary widely among the class members. We disagree. "[A] trial court should not dispose of a class certification solely on the basis of disparate damages." *Ojalvo* at 232. Although we recognize that "small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her own rights," it does not follow, however, that potentially significant recoveries preclude class certification.

{¶64} Class action is particularly appropriate in a case like this where the unsophisticated consumers-debtors most likely are not aware of a statute of limitations defense. *Ramirez v. Palisades Collection LLC* (N.D. Ill., 2008), 250 F.R.D. 366, 374. These consumers-debtors are unlikely to seek or to be able to afford representation to pursue their individual claim. Thus, the size and disparity in individual recovery in this case does not undermine the superiority of the case proceeding as a class action. The trial court abused its discretion in determining otherwise.

{¶65} Based on the foregoing reasons, the first, second, third, and fifth assignments of error are sustained.

{¶66} **Civ.R. 23(B)(2)**

{¶67} Mr. Caszatt also sought class certification under Civ.R. 23(B)(2). Civ.R. 23(B)(2) provides for class actions where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

{¶68} In addition to seeking money damages, Mr. Caszatt also requested the court to order Asset to refrain from its standard practice of ignoring the choice of law provisions in the credit card accounts and from making incorrect reporting to the credit bureaus.

{¶69} The trial court found Civ.R. 23(B)(2) inapplicable because it found the primary relief sought to be monetary damages and the injective and declaratory relief to be merely incidental to the monetary damages, citing *Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538, 2004-Ohio-5847 ("[c]ertification under Civ.R. 23(B)(2) depends upon what type of relief is primarily sought, so where the injunctive relief is merely incidental to the primary claim for money damages, Civ.R. 23(B)(2) certification is inappropriate").

{¶70} We disagree. Among the putative class members, while there are class members from whom Asset had already collected and thus would be entitled to monetary damages if Mr. Caszatt's claim prevails, there are others against whom Asset may have obtained a judgment but had yet to collect. The latter category of class members would therefore be only entitled to equitable relief but not monetary damages, other than a share of the statutory damages.

{¶71} As the Supreme Court of Ohio stated, "[d]isputes over whether the action is primarily for injunctive or declaratory relief rather than a monetary award neither promote the disposition of the case on the merits nor represent a useful expenditure of energy. Therefore, they should be avoided. If the Rule 23(a) prerequisites have been met and injunctive or declaratory relief has been requested, the action usually should be allowed to proceed under subdivision (b)(2). *** The court has the power under

subdivision (c)(4)(A), which permits an action to be brought under Rule 23 'with respect to particular issues,' to confine the class action aspects of a case to those issues pertaining to the injunction and to allow damage issues to be tried separately." *Hamilton* at 87, quoting Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure (2 Ed.1986) 470, Section 1775. Pursuant to *Hamilton*, therefore, the trial court abused its discretion in not allowing class certification pursuant to Civ.R. 23(B)(2). The sixth assignment of error is sustained.

{¶72} Lastly, Mr. Caszatt's fourth assignment of error relates to the trial court's partial denial of his motion to compel discovery. He sought documents from Asset as well as depositions of its employees relating to its practice of filing lawsuits in Ohio courts over credit card debts allegedly after the expiration of the statute of limitations. The trial court ruled that, because of its denial of the class certification, Asset should only produce information relating solely to Mr. Caszatt's account and his own claims against Asset. As we have concluded certification is proper in this case, we sustain his fifth assignment of error.

{¶73} This case involves Asset's purported practice of filing collection lawsuits that are time-barred under the law of the state identified in the choice of law provisions against consumers likely unaware of the statute of limitation defense. We cannot conceive of a case more suited for class action treatment.[7] This is exactly the type of cases contemplated by Civ.R. 23(B)(3) in which a class action would "achieve economies of time, effort, and expense, and promote uniformity of decision as to

7. We are aware of two federal cases where the court granted class classification for similar collection practice. See *Cotton v. Asset Acceptance, LLC*, (June 26, 2008), N.D. Ill. No. 07 C 5005, 2008 U.S. Dist. LEXIS 49042, and *Ramirez v. Palisades Collection LLC*, supra.

persons similarly situated ***." *Cope* at 430, quoting the 1966 Advisory Committee Notes to Fed.R.Civ.P. 23(b)(3). Therefore, we conclude the trial court abused its discretion in denying class certification.

{¶74} The judgment of the Lake County Court of Common Pleas Court reversed, and this case is remanded for further proceedings consistent with this opinion.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.