

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Linda A. Clarke : Civil Action No. 00-2651

v. :

Collection Specialists, Inc. :
George Pena a/k/a Jack Storm and :
Exton Dental Health Group :

Amended Complaint

Jurisdiction

1. This is an action under the Fair Debt Collection Practices Act, hereinafter "FDCPA," 15 U.S.C. §1692a, et seq.

2. Jurisdiction in this case is founded upon 15 U.S.C. 1692k which grants the court jurisdiction to hear this action without regard to the amount in controversy.

Parties

3. The plaintiff is Linda A. Clarke, a sui juris adult residing at xxxxxxxxxxxx, Pennsylvania.

4. Defendant Collection Specialists, Inc., ("CSI") is a Pennsylvania business corporation, whose primary business is debt collection from consumers.

5. Defendant Jack Storm ("Storm"), is an employee of CSI, and has an employee of CSI at all times relevant hereto acting within the scope of his employment. Storm is a fictitious name used by George Pena when he engages in debt collection activity.

6. Defendant Exton Dental Health Group ("Exton") is a professional corporation

7. CSI is vicariously liable for the actions of Jack Storm pursuant to the doctrine of respondeat superior.

8. At some point recently prior to the actions complained of hereinafter, Exton retained the services of CSI and actively directed CSI's actions respecting debt collection.

Count I - Plaintiff v. CSI and Storm
FDCPA

9. Defendants Storm and CSI are debt collectors as defined by the FDCPA, 15 U.S.C. §1692a(6).

10. Although the plaintiff may not be liable to defendants, the plaintiff is a "consumer" as defined 15 U.S.C. §1692a(3).

11. In or around December 1998, the plaintiff's husband, Clifford Clarke (hereinafter referred to as "husband"), and his two children visited Exton for the purpose of obtaining dental services.

12. Husband's children, stated above, are not plaintiff's children

13. Subsequently, husband disputed certain charges claimed by Exton and consequently refused payment of the disputed portion of the balance to Exton.

14. At no time did plaintiff agree to assume husband's obligations, nor were any contracts or other agreements for same signed by plaintiff obligated herself on any debt to Exton, CSI or Jack Storm.

15. At no time did plaintiff request husband to act on her behalf with respect to Exton.

16. On or about February 15, 2000, Storm contacted plaintiff directly by telephone and stated that he was a "lawyer representing [Exton]."

17. In the same conversation Storm told plaintiff that his "law firm was going to file suit" if plaintiff did not pay \$2,147.33 by February 25, 2000

18. Storm is not an attorney licensed in any state or federal court. It is believed, in fact, that Storm has never been to law school and impersonated an attorney to assist in the commission of consumer fraud.

19. Storm's representation that he was an attorney violated 15 U.S.C. §1692e(3).

20. In demanding the sum of \$2147.33, Storm unlawfully added in excess of \$1000 extra to the true amount owed to Exton by husband.

21. Storm and CSI's demand for payment in excess of \$1000 more than the amount actually owed by husband violated 15 U.S.C. §1692e(2) in that it falsely represented the character and amount of the debt.

22. Storm's actions in inflating the amount of the debt further violated 15 U.S.C. §1692f(1) in that it was an attempt to collect a sum, including any interest, fee, charge

or expense incidental to the principal obligation, that was not authorized by the express agreement of plaintiff or husband and Exton.

23. If plaintiff was liable to Exton, she was liable in an amount far less than the amount demanded of her and not at all with respect to the debt owed by her husband.

24. In contacting plaintiff for payment for allegedly owed Exton, Storm and CSI violated 15 U.S.C.§1692e(2) and §1692f(1)

25. Storm and CSI actions violated of 15 U.S.C.§1692g in that the defendants failed to provide plaintiff with the information and rights required therein with 5 days of the initial communication.

26. At some time subsequent to the initial contact, plaintiff or her husband notified CSI or Exton of their dispute in writing.

27. Storm was advised in his February 15, 2000 telephone call to plaintiff that plaintiff and her husband disputed the amount due.

28. Plaintiff further requested verification of the debt, to which Storm replied “you don’t need anything, “and “you are not going to get anything.”

29. Storm’s actions in refusing to verify the obligation alleged violated 15 U.S.C.§1692g(a) in that neither plaintiff nor her husband received a notice containing the items required by this section.

30. At no time during the course of any telephone call referenced in this Complaint between CSI or its employees, agents, servants or workmen, was plaintiff notified of her rights pursuant to 15 U.S.C.§1692e(11).

31. On or about February 17, 2000, husband contacted Exton in an attempt to receive an explanation of the charges.

32. To date, no explanation has been received.

33. On or about February 21, 2000 husband attempted to pay Exton directly and in person.

34. At that time Exton informed husband that the account was in the hands of its debt

collector, defendant CSI and that no payment would be accepted by Exton.

35. On February 28, 2000 Storm, acting as an agent for CSI, wrote plaintiff a letter a copy of which is attached hereto as Exhibit "A."

36. The said correspondence stated that, "In a percentage of cases, litigation is initiated and attachment proceedings effected against real and personal property...to recover the sum of \$2203.68."

37. The said correspondence was false and misleading and in violation of 15 U.S.C. §1692e(4) in that the debt collector had no intention of taking such action.

38. The said correspondence was false and misleading and in violation of 15 U.S.C. §1692e(4) in that the debt collector had no intention of hiring legal counsel in this case.

39. The said correspondence was false and misleading and in violation of 15 U.S.C. §1692e(4) in that the debt collector could not lawfully take such action since plaintiff did not owe \$2203.68 to Exton.

40. The said correspondence was false and misleading and in violation of 15 U.S.C. §1692e(4) in that the debt collector could not legally take such action since the amount owed was approximately \$1000 less than what was claimed, and therefore bringing such a legal action would violate 15 U.S.C. §1692f.

41. The said correspondence was false and misleading and in violation of 15 U.S.C. §1692e(4) in that the debt collector could not lawfully take such action against plaintiff since the said action would have violated 15 U.S.C. §1692f(6) in that the property sought to be attached would have been exempt.

42. The said correspondence violated 15 U.S.C. §1692f as an unfair and/or unconscionable means to collect a debt for the reasons set forth in the paragraphs immediately preceding.

43. The said correspondence violated 11 U.S.C. §1692e in that it was generally false, deceptive and misleading in that the defendants, since CSI and Storm failed to define "percentage of cases," leaving the impression that the percentage is large, when in fact the

percentage could have easily been infinitesimally small, or perhaps even zero percent, since zero is also a “percentage.”

44. The said correspondence violated 11 U.S.C. §1692e in that it was generally false, deceptive and misleading in that the defendants, since CSI and Storm failed to define “percentage of cases,” leaving the impression that the percentage is large, when in fact the percentage could have easily been infinitesimally small, or perhaps even zero percent, since zero is also a “percentage.”

45. In fact, defendants had no idea at all what a “percentage” meant since it was never considered prior to sending the letter.

46. On or about March 10, 2000, plaintiff was contacted by a Rob Parker, and employee of CSI.

47. Parkers attempted to interview plaintiff about the nature and extent of her assets, real and personnel, including place of employment and salary.

48. The purpose of the telephone call was to determine suitable assets of plaintiff for later attachment.

49. At no time did Parker advise plaintiff that he was a debt collector and information obtained would be used for debtor collection purpose as required by 15 U.S.C. §1692e(11).

50. As a result of her failure to cooperate Parker had Storm take the call, who then verbally abused, harassed and intimidated the plaintiff in violation of 15 U.S.C. §1692d. At no time did Storm advise plaintiff of her warnings as required by 15 U.S.C. §1692e(11).

51. When plaintiff protested her treatment by Storm, Storm screamed at plaintiff that he could say “whatever he wanted” and that “there was no law” that prevented him from saying “whatever he wanted” to say.

52. In the same conversation, Storm full demanded payment in one week.

53. Plaintiff received a statement with balances thereafter on March 13, 2000 and a demand for payment.

54. The statement was addressed to plaintiff notwithstanding the fact that plaintiff had

not received any services.

55. The letter March 13, 2000 letter constituted a communication from a debt collector but did not contain the warnings required by §1692e(11). A copy of the letter is attached hereto as Exhibit "B."

56. The letter contained a copy of the Insurance and Financial Responsibility form a copy of which is attached hereto as Exhibit "C." Nowhere on the form was there any indication that plaintiff was liable on the debt to Exton.

57. On or about March 24, 2000 CSI wrote to plaintiff and her husband. A copy of the letter is attached hereto as Exhibit "D." The letter received stated that plaintiff should appear on March 31, 2000 at 2:00 p.m. to explain why legal action should not be commenced against her to recover the sum of \$2229.88 owed to Exton.

58. The aforesaid letter violated §1692e(5) in that at no time did CSI take or intend to take legal action against plaintiff.

59. The aforesaid letter violated §1692e(5) in that CSI could not legally take legal action against plaintiff since plaintiff did not owe Exton any sum.

60. Approximately two weeks later, Storm phoned again and spoke with plaintiff's sister who was babysitting.

61. In that conversation, Storm demanded the telephone number where plaintiff was currently.

62. Plaintiff's sister told Storm that she did not know the number, to which Storm verbally abused plaintiff's sister, screamed at her various insults concluding with calling her a liar.

63. Storm's actions as stated in the above paragraph violated §1692b in that it was not a valid and lawful attempt to find location information in that Storm knew that plaintiff lived at that location, and in that Storm did not identify himself as required by §1692b(1).

64. Storm's actions as stated above violated §1692d(6) in that Storm placed the phone call without a meaningful disclosure of his identity to plaintiff's sister.

65. On April 19, 2000, CSI sent plaintiff a letter saying that a representative wanted to

visit plaintiff with respect to debt collection. A copy of said letter is attached as Exhibit "E."

66. As a result of the aforesaid letter, plaintiff was placed in fear for her personal safety.

67. No follow-up was made and the letter, therefore, was a further attempt to intimidate plaintiff into paying an obligation that was not hers.

68. The aforesaid letter violated §1692d in that its purpose was primarily to harass, oppress or abuse plaintiff, placing her in legitimate fear of personal visits by defendants or their agents.

69. The conduct of the defendants, CSI and Storm, over the period of time covered by this complaint tended to as a whole, violate §1692d in that it was calculated to oppress, harass and abuse the plaintiff.

70. The defendants, CSI and Storm's, conduct as stated hereinabove, was persistent, frequent, deliberate, oppressive and coldly calculated.

71. The defendants' conduct was not the result of a bona fide error.

72. Defendants CSI and Storm have engaged in similar oppressive conduct in the past and as such, this activity is a part of a pattern of abuse which is ingrained in CSI's business.

73. The plaintiff's have retained counsel to enforce their rights under the FDCPA and in such other manners as provided by law.

74. Plaintiff's normal billing rate is \$175 an hour.

75. Plaintiff estimates billable hours at approximately 20 and as such requests an award of counsel fees in the amount of \$8750 or such reasonable sums as provided by §1692k(a) and permitted by this court.

76. As a result of the willful conduct of the defendants, plaintiff suffered damages including but not limited to humiliation, embarrassment, reasonable fear of personal harm, assault and/or battery.

77. Plaintiff incorporates by reference the prior paragraphs as though set forth at length.

78. Defendants, CSI and Storm's, conduct constituted common law malice under Pennsylvania Commonwealth common law, in that it involved conduct that was outrageous, because of the defendant's evil motive or their reckless indifference to the rights of others, was malicious, wanton, reckless, willful, and oppressive.

79. Plaintiff is entitled to punitive damages under Pennsylvania common law as a result of defendants' oppressive conduct.

Count III - Plaintiff v. CSI and Storm (73 P.S. §2270.1 et seq)

80. Plaintiff incorporates by reference the prior paragraphs as though set forth at length.

81. This action is brought in accordance with 73 P.S. §201-9.2 and 73 P.S. §2270.1 et seq.

82. The actions of defendants as described above are violations of the Unfair Trade Practices and Consumer Protection Law 73 P.S. §201-1 et seq and the Fair Credit Extension Uniformity Act, 73 P.S. §2270.1 et seq since a creditor's violation the Fair Debt Collection Practices Act constitute a violation of 73 P.S. §2270.4(a) and are actionable thereunder.

Count IV - Plaintiff v. Exton

83. Plaintiff incorporates by reference the prior paragraphs as though set forth at length.

84. This action is brought in accordance with 73 P.S. §201-9.2 and 73 P.S. §2270.1 et seq.

85. Plaintiff, at no time, owed defendant Exton Dental Health the sum of money it claimed to be owed.

86. Exton was at all times aware or should have been aware that it was not owed the sum it was attempting to collect.

87. Exton, therefore, made efforts to collect sums not actually due it.

88. Exton's actions would have violated the Fair Debt Collection Practices Act were it a debt collector.

89. The actions of defendant as described above are violations of the Unfair Trade Practices and Consumer Protection Law 73 P.S. §201-1 et seq and the Fair Credit Extension Uniformity Act, 73 P.S. §2270.1 et seq since a creditor's violation the Fair Debt Collection Practices Act constitute a violation of 73 P.S. §2270.4(a) and are actionable thereunder.

WHEREFORE, plaintiff demands judgment jointly and severally against the defendants herein for compensatory and punitive damages, along with court costs, interest, attorney's fees and such other relief that the court feels is just and proper in an unliquidated amount not in excess of \$150,000.

Lawrence S. Rubin, Esquire
Attorney for plaintiff