

United States Bankruptcy Court for  
the Eastern District of Pennsylvania

In re: Richard & Diane Sacks : Chapter 7

Debtor : Bky. No. 04-14525-DWS

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Richard & Diane Sacks : Adv. 04-

v. :

Bronson & Migliaccio, LLP :

Complaint

1. This is an action under the Fair Debt Collection Practices Act, hereinafter "FDCPA," 15 U.S.C. §1692a, et seq., the FCEUA, 73 Pa.C.S. §2270.1 et seq., "FCEUA" and for common law fraud.

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

3. This Court has jurisdiction over case as an adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334 and 11 U.S.C. §523. This is a core proceeding under 28 U.S.C. § 157(b)(2)(O).

Parties

4. Plaintiffs are Richard Sacks and Diane Sacks, husband and wife and debtors in the above chapter 7 case.

5. Defendant is Bronson & Migliaccio, LLP, a professional or corporation carrying on substantial business activities in Pennsylvania as a consumer debt collection law firm.

6. Defendant is therefore a debt collector as defined by the FDCPA, 15 U.S.C. §1692a(6).

7. Plaintiffs are a "consumers" as defined 15 U.S.C. §1692a(3).

Factual Allegations

8. Diane Sacks owed an obligation to MBNA America Bank, NA as a result of credit card usage in the disputed amount of \$20,083.

9. MBNA at some point had factored the debt to CACV of Colorado, LLC.

10. Defendant, a law firm which practices primarily in the debt collection field, was retained by CACV to collect the above sum from plaintiff, Diane Sacks.

11. Defendant first contacted plaintiff by telephone on or about March 12, 2004.

12. Defendant demanded a \$10,000 immediately. When plaintiff stated she did not have that kind of money "lying around" defendant demanded that plaintiff borrow the money from a family member.

13. Defendant never stated that the call was being recorded, nor asked for permission to record the same. No warning beep were played indicating a telephonic recorded.

14. Defendant demanded "arrangements" for payment at that time. Plaintiff advised defendant that she had had arrangements with the original creditor, MBNA.

15. Defendant advised plaintiff that those arraignments were now null and void and that plaintiff would need to pay at least \$1,000 initially "to keep it out of the courts."

16. Defendant is a New York law firm and does not bring suits in Pennsylvania, where both plaintiffs reside.

17. Defendant continued to threaten court action repeatedly using intimidating language, such as, they would "be checking" her "bank account for money."

18. Defendant's use of the aforesaid language was intended to intimidate and terrorize plaintiff and was patently false and misleading. Plaintiff justifiably feared that if she did not pay defendant her money would never be safe from invasion by defendant.

19. In order to protect her funds, plaintiff agreed to give defendant a "check by phone" by giving defendant the plaintiff's joint funds account and routing numbers. A "payment" of \$1,000 was made, but was eventually stopped.

20. Defendant placed four subsequent calls to plaintiffs remind them to have the funds ready and available. At no subsequent time did defendant warn plaintiffs that the calls from debt collectors attempting to collect a debt and that information obtained would

be used for debt collection purposes.

21. On March 19, 2004 plaintiff received the letter attached hereto as Exhibit "A."

22. Plaintiffs were confused about the validations provisions of the letter because, while on the one hand the letter seemed to give them rights, but on the other, the phone calls from defendant demanded immediate and unconditional action. As a consequence, and out of defendant's induced confusion, plaintiffs failed to exercise their rights where they most definitely, would have otherwise done so.

23. On March 24, 2004 plaintiffs contacted the undersigned counsel. Upon advice of counsel, plaintiffs took steps to protect their assets and asked the bank to freeze all activity on the account.

24. On or about March 29<sup>th</sup> or 30<sup>th</sup>, 2004, plaintiff received a voice mail. The transcribed text of the message is as follows:

*This is Mr. Griffin with the Law offices of Bronson & Migliaccio. Ma'am we're in a bit of a situation here, in reference of a thousand dollar payment that was supposed to be coming out of your account today, per the recording we had you on stating the account number. And we contacted the bank; that account number does not exist with them 'k (sic) you gave false information to an attorney's office on a recorded line; you're recorded doing this. If this matter is not going to be resolved voluntarily ma'am, this matter is going to be collected as evidence, and forwarded to your county or the judge to review, that we did try to work with you diligently to get this matter taken care of but it's not going to help your case giving false information to an attorney's office, Ma'am I'm trying to work with you the best as I can to get this matter resolved you owe about over Twenty thousand dollars Ma'am don't think that this matter is not going to be pursued. We're an attorney's office; we're a litigating law firm. We will pursue this matter we will stick you with our attorney's fees on this, with which you will be court mandated to pay back. I want you to contact this office back today before six pm explain your situation get the money out of your account Western Union it, whatever this money has to be in our office today not a day later. The number is 1-888-900-9749 extension 254. Again, I will be in this office until 6 p.m. contact this firm back up immediately to give us an explanation in reference to this check. Thank you.*

25. On March 31, 2004, Mr. Griffin again called and left another voice mail for plaintiff. Griffin stated, "...the attorney's are under the impression that you are giving out false information to avoid prosecution on this case."

26. After hearing the March 31, 2004 call, plaintiffs believed that they would be criminally prosecuted.

27. Defendant's repeated and intimidating calls terrorized the plaintiffs. Plaintiff wife was unable to sleep properly. Defendant wife estimates that she lost several full nights of sleep and was unable to sleep soundly for weeks thereafter.

28. As a result of her emotional and physical debilitation, as well as the lack of normal sleep, the parties normal marital relations suffered, as well as their abilities to perform the basic functions of their daily lives, such as driving to go shopping, transporting their child by automobile and other normal activities.

29. Plaintiff wife had experienced the type of feelings she felt after the phone calls, only once before in her life; when her first husband died.

30. Defendant knew their calls were having a debilitating effect on plaintiff wife, because during several of the calls she openly sobbed.

31. As a further result, plaintiff wife became irritable more difficult to tolerate by plaintiff husband.

32. The said periods, as stated above, continued for several weeks, disrupting the normally quiet household and marital harmony.

#### First Claim for Relief

33. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

34. By stating to plaintiff, "*We will pursue this matter we will stick you with our attorney's fees on this, with which you will be court mandated to pay back*" the defendant violated 15 U.S.C. §§ 1692e(2)(A) and 1692f(1).

35. By stating to plaintiff, "If this matter is not going to be resolved voluntarily ma'am, this matter is going to be collected as evidence, and forwarded to your county or the judge to review" and also "I want you to contact this office back today before six p.m., explain your situation get the money out of your account Western Union it, whatever this money has to be in our office today not a day later," the Defendant violated 15 U.S.C. § 1692g by making a threat of suit or other legal retaliation during the debt validation request

period in a manner that overshadowed the notice of validation rights and would create confusion for a least sophisticated consumer about his rights.

36. By stating the fact of the frozen account would be “forwarded to your county or the judge to review, that we did try to work with you diligently to get this matter taken care of,” was in and of itself violative of 15 U.S.C. §1692e(5) in that evidence that the one of the parties tried to “work it out” is inadmissible settlement negotiations and is not probative of the debt, nor relevant in any legal proceeding to enforce a debt. The sole purpose of the phrase was to intimidate and terrorize the plaintiffs.

37. The Defendant violated 15 U.S.C. §1692e(11) in that in no telephone contact did they advise plaintiff that they were attempting to collect a debt and information would be used for that purpose.

38. The Defendant violated 15 U.S.C. §1692e(3) in the statement, “you gave false information to an attorney’s office” when, in fact the caller was not an attorney and no attorney took any information from her. In fact the statement would indicate to the least sophisticated consumer that “lying to an attorney’s office” is the equivalent to making a statement to an attorney, when, in fact, no attorney was involved and the calculated use of the statement “attorney’s office” was meant to imply that the caller had an enhanced legal status, such as that of a licensed attorney. Plaintiff was intimidated, misled and confused in violation of the applicable provisions of the FDCPA.

39. The defendant violated 15 U.S.C. §1692e(5) in its statement, “this matter is going to be collected as evidence, and forwarded to your county or the judge to review,” in that evidence of an attempted settlement would not be admissible in a civil trial; that such conduct cannot be “forwarded to a judge for review” since to do same would violate the rules of judicial conduct which bars ex parte communications; that the least sophisticated consumer would believe that an ex parte communication was about to occur; and that the county does not review individual transactions between debt collectors and the persons from whom they are attempting to collect.

40. As a result of the above statements, plaintiff or the least sophisticated consumer would believe that he or she would be punished by the county government or the court system unless he or she satisfied the defendant.

41. The defendant violated 15 U.S.C. §1692e(4) by implying that lying to attorney's office would cause criminal punishment by use of the phrase "you gave false information to an attorney's office on a recorded line," and that this would be "forwarded to a judge for review" in that the least sophisticated consumer would believe that to give such false information would be criminally prosecuted.

42. The defendant further violated §1692e(4) by stating "the attorney's are under the impression that you are giving out false information to *avoid prosecution* on this case," which strongly suggested to plaintiff that she would be criminally prosecuted.

43. The use of the word "prosecuted" as opposed to "sued" was calculated to strike terror into the heart of plaintiff, which it was successful in doing.

44. The defendant violated 15 U.S.C. §1692f in that used unconscionable means to collect a debt by wiretapping and recording plaintiff's telephone conversations with defendant, without plaintiff's prior knowledge or permission in violation of 18 Pa. C.S. §5703, a felony of the third degree in the Commonwealth of Pennsylvania.

45. The defendant generally violated 15 U.S.C. §1692f in that their actions were otherwise unfair and/or unconscionable for the reasons set forth in the paragraphs immediately preceding.

46. The Defendant violated 15 U.S.C. §1692e(10) by stating "you owe about over twenty thousand dollars ma'am don't think that this matter is not going to be pursued," when in fact, no lawsuit could be brought because defendant is not licensed in Pennsylvania, nor did it have any intention of bring such a lawsuit from its offices in Williamsville, New York.

47. The Defendant violated 15 U.S.C. §1692e(10) by stating "We're an attorney's office; we're a litigating law firm," while the person making the statement, was not an attorney, made no policy for the firm, could not direct the litigation and, in fact, the

defendant's litigation proclivity would be irrelevant, misleading and deceptive out of its home jurisdiction, which is where plaintiff's resided.

48. The Defendant violated 15 U.S.C. §1692e generally by having a non-attorney imply that he controlled the timing or scope of litigation allegedly to be filed against plaintiffs.

49. The Defendant violated 15 U.S.C. §1692e by making statements to plaintiff indicating that unliquidated, improperly calculated or undetermined fees and costs would be collected, implying that plaintiffs had no chance to defend, that defendant, or its clients would without question prevail; which statements were untrue, false, deceptive and/or misleading and would be deceptive or misleading to the least sophisticated consumer.

50. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiff for declaratory judgment that defendant's conduct violated the FDCPA, and Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

51. Plaintiffs have agreed to hire the services of their attorney at the rate of \$250 an hour, which, based upon counsel's 27 years of experience in the field of consumer and bankruptcy law, is reasonable.

52. Plaintiffs request that attorney's fees at this rate be awarded in addition to statutory, special, compensatory and punitive damages.

53. Defendant's actions were oppressive, outrageous and intentional, and well beyond the pale of normal debt collection activity.

#### Second Claim for Relief

54. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

55. Defendant violated the Pennsylvania **Fair Credit Extension Uniformity Act** 73 P.S. § 2270 et seq (the "FCEUA"). Defendant' violations of the FCEUA include, but are not limited to, the following:

i. The Defendant violated 73 P.S. §§ 2270.4(a) by violating the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et Seq.)

ii. Defendant' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt

56. As a result of the above violations of the FCUEUA, the Defendant is liable to the Plaintiffs for injunctive and declaratory relief and for actual damages, statutory damages, and attorney's fees and costs.

WHEREFORE, Plaintiffs respectfully prays that judgment in a sum less than \$150,000 be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant' conduct violated the FDCPA, and declaratory and injunctive relief for the Defendant' violations of the state Act;
- B. Actual damages;
- C. Statutory damages pursuant to 15 U.S.C. § 1692k.
- D. Statutory damages pursuant to 73 P.S. § 2270.5.
- E. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k and 73 P.S. § 2270.5.
- F. Punitive damages;
- G. For such other and further relief as may be just and proper.

**s/Lawrence S. Rubin, Esquire**

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