

United States Bankruptcy Court for
the Eastern District of Pennsylvania

In re: Kevin S O'Keefe and Stacy L O'Keefe : Bky No. 08-10001-dws
Debtors

Kevin S O'Keefe and Stacy L O'Keefe : Adv. No. 08-00102 DWS
Debtor/Plaintiff

v. :

Creditor's Interchange :
Defendant :

Adversary 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 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. The plaintiffs are the debtors in this case.
5. The first defendant is Creditor's Interchange, ("CI") a business corporation regularly engaged in the collection of debts of others in the Commonwealth of Pennsylvania having a place of business at 80 Holtz Drive, Buffalo, NY 14225.
6. The defendant is a debt collector as defined by the FDCPA, 15 U.S.C. §1692a(6).
7. The plaintiff is a "consumer" as defined 15 U.S.C. §1692a(3).

Factual Allegations

8. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
9. Defendants were retained to collect a sum of money in the approximate amount of \$10,700 from the plaintiff.
10. Plaintiff denies that she was liable for this sum.
11. On or about December 17, 2007 plaintiff received a call from CI at her home and also at the home of her parents, with whom she had not resided for many years.
12. The message from CI stated "This message is for Kevin or Stacey O'Keefe regarding a litigation matter in regards to a property with Citimortgage. Please contact Mr. Zimmer at 1-800-545-2386 extension 3313 by end of business. Refer to document number (number unknown)."
13. At no time were plaintiffs given their "mini-Miranda" warnings under 15 USC 1692e(11).
14. When plaintiff, Stacey O'Keefe, wife, arrived home, she called Zimmer, who later called back.
15. In the conversation that ensued, Zimmer stated, in an aggressive and rude manner, "We have a problem. You are trying to steal from Chase. You owe \$10,700 and are not willing to pay."
16. Plaintiff wife offered a small amount of money as a start, which Zimmer said was a "slap in the face" and that his company was "in the works of litigation" and that he (meaning CI) would "take 27% of her husband's take-home pay each week."
17. Zimmer then stated he would not work with plaintiffs and was sending them to the litigation department. He further stated he would be calling Citimortgage, their mortgage company, to "put a lien" on their house.

18. Zimmer further stated that “PA is the worst when accounts went to court,” and whether she was aware of the “number of sheriff sales in PA, and by the way, do you know what a sheriff sale is?”
19. Zimmer then said he would “run [their] credit scores.”
20. Later Zimmer claimed to have done so and described a score to wife that she knew to be a fabrication.
21. In the same or later conversation, Zimmer threatened to have the plaintiff husband “arrested on criminal charges” and that he had better “contact a criminal lawyer,” presumably based upon Zimmer’s statement that husband “stole” or was attempting to steal Chase.

First Claim for Relief

22. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
23. The defendants violated 15 USC 1692e(11) by not giving the plaintiffs their rights pursuant to that section.
24. The defendant violated 15 USC 1692e by using false, deceptive, or misleading representations or means in connection with the collection of this debt with respect to the averments in paragraphs 12, 14 through 21, above.
25. The defendant violated 15 USC 1692d by engaging in conduct the natural consequence of was is to harass, oppress, or abuse any plaintiffs in connection with the collection of a debt, more fully described in paragraphs 12, 14 through 21.
26. The defendant’s actions, as stated in the above paragraphs, further violated 15 USC 1692f by using false representations and deceptive means to collect the debt.
27. As a result of the actions of defendants, plaintiffs have been required to hire the undersigned counsel. Counsel has been an attorney in good standing for

30 years and obtained a license to practice law in Pennsylvania on April 17, 1978.

28. As a further result of defendants' conduct and unlawful debt collection practices, plaintiffs suffered severe emotional stress and fear of criminal prosecution.
29. Counsel claims fees in accordance with the Laffey Matrix, found at the Department of Justice's website:
www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html. Currently the hourly rate allowable in the DC Metro Region is \$440 an hour. In the event an adjustment is required for the Philadelphia Region, counsel claims fees in accordance with Laffey, as adjusted.
30. As a result of defendants' action, plaintiff lost sleep, suffered emotional trauma, headaches, stress and strain upon their marriage, and the same disrupted her entire household.
31. As a result of the above violations of the FDCPA, the defendant is liable to the plaintiff for actual damages, statutory damages, and costs and attorney's fees.
32. Defendants actions were so offensive and outrageous that plaintiffs are entitled to exemplary damages.

Second Claim for Relief

33. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
34. Defendant violated the Pennsylvania **Fair Credit Extension Uniformity Act** 73 P.S. § 2270 et seq (the "FCEUA"). Defendants' violations of the FCEUA include, but are not limited to, the following:
 - a. 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.)

- b. Defendant' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt
35. As a result of the above violations of the FCEUA, the Defendant is liable to the Plaintiffs for actual damages, statutory damages, and attorney's fees and costs.
36. A violation of the FCEUA is a violation of the Pennsylvania UDAP statute, i.e. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §. 201-1 et seq., entitling plaintiff to treble damages.

WHEREFORE, Plaintiffs respectfully prays that judgment against the Defendant for the following:

- A. Actual damages;
- B. Statutory damages pursuant to 15 U.S.C. § 1692k.
- C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k and 73 P.S. § 2270.5.
- D. Treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §. 201-1 et seq
- E. For such other and further relief as may be just and proper.

s/Lawrence S. Rubin, Esquire

Lawrence S. Rubin, Esquire
Attorney for Debtor/plaintiff
337 West State Street
Media, PA 19063
Phone No: (610) 565-6660
Fax No: (610) 565-1912