

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Marc Sirabella : Civil Action No. 09-cv-2378
:

v.

Gerald E. Moore & Associates PC a/k/a
Gerald E. Moore & Associates Law Offices :

and

Worldwide Asset Purchasing, LLC

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 United States District Courts jurisdiction to hear this action without regard to the amount in controversy.

Parties

3. The plaintiff is Marc Sirabella, residing at 62 Curie Ave, Clifton, NJ 07011.
4. Defendants are Gerald E. Moore & Associates PC a/k/a Gerald E. Moore & Associates Law Offices, a professional corporation doing business at Suite 500, 2253 Northwest Parkway, Marietta, GA 30067 ("hereinafter referred to as "Moore defendants") as primarily a consumer debt collection law firm.
5. The Moore defendants also run a separate collection agency under the same name. The said collection agency uses the name of Gerald E. Moore & Associates Law Offices, but is not, in fact, a law office.
6. Defendant Gerald E Moore is an attorney licensed in the State of Georgia and California only. Moore maintains no license in the Commonwealth of Pennsylvania, Minnesota or New Jersey. Moore holds the sole interest in the professional corporation and collection agency above, and directs and controls

the actions of the said other defendants.

7. Worldwide Asset Purchasing, LLC (“WWA”) is a corporation doing business at 2 Ravina Drive, #1750, Atlanta, Georgia 30308.
8. All defendants hereinabove are debt collectors as defined by the FDCPA, 15 U.S.C. §1692a(6).
9. All above defendants regularly collect debts in the Commonwealth of the Pennsylvania and within the venue of the Eastern District of Pennsylvania.
10. Although the plaintiffs may not liable to defendants or any company or corporation for which defendants collect, the plaintiffs are “consumers” as defined 15 U.S.C. §1692a(3).

Factual Allegations

11. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
12. Gerald E. Moore & Associates Law Offices” was an agent, servant or employee of defendants acting within the scope of his authority.
13. Plaintiff was notified on or about April 3, 2009 by the National Arbitration Forum (“NAF”) and the Moore defendants that an arbitration claim was brought against him with regard to a certain debt that was alleged to be owed by plaintiff to WWA’s assignor, Citibank, with an account number of 4621205049523166. The sum alleged to be owed was approximately \$1723.
14. In fact, plaintiff was never obligated to Citibank regarding account number 4621205049523166.
15. No such debt or account appears on plaintiff’s consumer report, which was received by plaintiff on May 15, 2009.
16. The NAF’s notice of arbitration was in fact the first notice of the alleged obligation received from WWA or the Moore defendants.
17. At no time did plaintiff ever agree to an arbitration provision with the original

creditor, Citibank.

18. The NAF notice of arbitration was issued at the instance and behest of WWA and the Moore defendants.
19. The NAF notice was an initial debt collection communication which contained no notice pursuant to 15 USC §1692g(a)
20. In the said NAF claim WWA and the Moore defendants sued for an amount allegedly due, plus interest at the rate of 31.49% and counsel fees in the amount of \$511.19 pursuant to the alleged contract between Citibank and plaintiff.
21. Defendants, by commencing litigation before the NAF, have commenced litigation in a jurisdiction that is not plaintiff's home jurisdiction, nor in his home state.
22. Although plaintiff never had any such contract with Citibank, even if he did, the said contract would:
 - a. Not permit a debt collection by an arbitration claim under the circumstances present herein since the arbitration clause does not apply to assignees alone;
 - b. Not permit collection of counsel fees by any defendant in this case since Citibank did not refer collection of the account to a lawyer, but instead sold the debt to WWA;.
 - c. Not permit collection of interest at a rate in excess of the usury rates.
23. Notwithstanding the above, plaintiff did not owe WWA's predecessors in interest any sum of money, or alternatively, a sum of money far less than the amount sued for in the arbitration claim.
24. The attorney commencing the arbitration before the NAF was Robert Diana, Esquire. Mr. Diana is not licensed to practice in Minnesota or New Jersey.

First Claim for Relief

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

26. By bringing a legal action to collect an amount in excess of the amount due, defendants violated 15 U.S.C. §1692e(2) by falsely represented the character and amount of the debt.
27. The defendants violated 15 U.S.C. §1692f(1) in attempting to collect a sum not founded upon any lawful instrument of indebtedness and by adding excessive fees similarly unauthorized.
28. Defendants violated 15 U.S.C. §1692f by bringing an arbitration action against plaintiff when plaintiff was not obligated to any defendant.
29. Defendants violated 15 U.S.C. §1692f by bringing an arbitration instead of a civil action when they lacked authority to do so.
30. Defendants violated 15 U.S.C. §1692i by bringing legal action in a remote district, i.e. Minnesota, which is not is jurisdiction where plaintiff signed the contract sued upon; or in which such consumer resided at the commencement of the action.
31. The Moore defendants violated 15 U.S.C. §1692f by bringing legal action by and through an attorney not licensed to practice in the state of the arbitration, nor in plaintiff's home state.
32. The defendants violated 15 U.S.C. §1692g by making a threat of suit 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.
33. The defendants violated 15 U.S.C. §1692g by failing to send the plaintiff a 30-day validation notice within five days of the initial communication .
34. The defendants violated 15 U.S.C. §1692e by failure to disclose in the initial written communication with the plaintiff that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.
35. The defendants violated 15 U.S.C. §1692f by seeking to collect attorney's

- fees, when the said counsel fees were not permissible pursuant to contract.
36. Defendant Worldwide is liable for the actions of the Moore defendants under the doctrine of respondeat superior as well as for their direct control of the Moore defendant.
37. Counsel claims fees in accordance with the Laffey Matrix, found at the Department of Justice's website:
http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html.
Currently the hourly rate allowable in the DC Metro Region is \$465 an hour. In the event an adjustment is required for the Philadelphia Region, counsel claims fees in accordance with Laffey, as adjusted for the Eastern District of Pennsylvania.
38. As a result of defendants' actions, plaintiff lost sleep, suffered emotional trauma, and the same disrupted his entire household.
39. As a result of the above violations of the FDCPA, the defendants are liable to the plaintiff for actual damages, statutory damages, and costs and attorney's fees.

WHEREFORE, Plaintiffs respectfully prays that judgment in a sum less than \$150,000 be entered 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.
- d. For such other and further relief as may be just and proper.

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