

United States District Court for  
the Eastern District of Pennsylvania

Robert Wilkinson : Civil Action No. 04 cv 3797

v. :

PA R&D Enterprise, Inc. and :  
Judgment Busters, Inc., :  
Dwayne Gida, :  
and Rose Williams :

**Complaint**

**Jurisdiction**

1. This is an action under the Fair Debt Collection Practices Act, hereinafter “FDCPA,” 15 U.S.C. §1692a, et seq., as well as under the Pennsylvania **Fair Credit Extension Uniformity Act** 73 P.S. § 2270, 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.

**Parties**

3. The plaintiff is Robert Wilkinson.

4. Defendant, PA R&D Enterprise, Inc. (R&D) is a Pennsylvania business corporation, whose primary business is debt collection from consumers. Defendant corporation charter was filed August 27, 2001 and has a principal place of business at 996 Suscon Road, Pittston, PA 18460.

5. Defendant, Judgment Busters, Inc. (JB) is a Pennsylvania business corporation, whose primary business is debt collection from consumers. Defendant corporation charter was filed August 27, 2001 and has a principal place of business at 996 Suscon Road, Pittston, PA 18460.

6. Defendant, JB, is a debt collector as defined by the FCEUA 73 Pa.C.S §2270.1 et seq. as well as under the FDCPA, 15 U.S.C. §1692a(6).

7. Defendant, Dwayne Gida, is an individual residing at an unknown location and an officer or employee of JB and R&D.

8. Defendant Rose Williams is the president of JB and R&D.

9. All defendants herein are all debt collectors as defined by the FDCPA, 15 U.S.C. §1692a(6).

10. Defendant, R&D, is a creditor as defined by the Pennsylvania Fair Credit Extension Uniformity Act 73 Pa.C.S §2270.1 et seq.

Cause of Action

Facts Common to All Counts

11. On June 11, 2003, Jason Diluzio, received a judgment against the debtor in District Court 32-1-32, Springfield, PA venue, in the amount of \$1,266.50.

12. The cause of action for the above judgment arose out of transactions that took place in the County of Delaware.

13. The plaintiff is a resident of Delaware County.

14. On information and belief, at some time shortly thereafter, defendant assigned all his rights to the judgment to PA R&D Enterprise, Inc.

15. Defendant R&D thereafter docketed the judgment in Luzerne County, a Pennsylvania county 120 miles and more than three hours driving distance from the venue and place of original judgment.

16. Defendant R&D routinely used JB as the investigative, enforcement and collection arm of R&D. As such, JB is a debt collector under the FDCPA and the FCEUA.

17. Defendant Gida is an employee of JB and R&D.

18. Gida is not an attorney at law in this or any state.

19. All of Gida's actions, as hereinafter averred herein, were in furtherance of the pecuniary interests, and as agent for R&D, Rose Williams and JB.

20. Gida's job is to locate, telephone, intimidate, and harass judgment debtors' into paying judgments that R&D purchases. As such, Gida is a person routinely and substantially engaged debt collection, which debt collection activities make up a substantial portion of his income.

21. Gida's function is also that of R&D's and JB's "attorney."

22. Although Gida does not hold a license to practice law, Gida appeared in this case and indeed routinely appears in many or all of R&D's cases before the Court of Common Pleas of Luzerne County, and possibly before other state courts and moves them for wage orders.

23. At all times relevant hereto, no defendant herein named was represented by any attorney at law licensed in any jurisdiction.

24. Gida's actions constituted the illegal practice of law without a license in that he represented at least one and possibly two separate legal entities, R&D and JB before the Common Pleas Court of Luzerne County.

25. Gida's actions further constituted the illegal practice of law by threatening legal action that he, Gida, would bring against plaintiff's employer for not quickly complying with a wage order he obtained in the Luzerne County Common Pleas Court.

26. Gida's actions further constituted the illegal practice of law by threatening to subpoena plaintiff's counsel before the Common Pleas Court to punish him for not recommending compliance by plaintiff's employer.

27. The defendant, at all times relevant to this cause of action resided and still resides in Delaware County.

28. The defendant, R&D, with Gida acting as its "attorney" appeared before the Honorable Thomas F. Burke, Jr. a judge of the Court of Common Pleas of Luzerne County and move the court in writing for a wage order against plaintiff's employer in Delaware County.

29. No motion for wage order was ever served upon the plaintiff, even though Gida swore under oath that the same was served.

30. Court rules or local practice requirements in Luzerne County require the filing of the motion and signed order with the Prothonotary after its entry by the court.

31. Consequently, subsequent to the entry of the order for wage attachment, Gida,

who appeared before the court, was obligated by law to take the motion and the order and file the same with the Prothonotary of Luzerne County.

32. Gida, in an effort to obstruct and suppress detection of the facts plead in his motion for wage order, removed the motion from the court and retained it, so that there was no official record of what had happened in the case.

33. The Court of Common Pleas of Luzerne County presently has no written record of the motion drafted by Gida.

34. In actuality, the motion, whose allegations were suppressed by Gida's and actions added some \$1,212.00 in bogus additional costs effectively doubling it.

35. The additional costs consisted in the following:

- i. \$12 in interest for one month (1% a month);
- ii. \$1,000.00 in "counsel fees"
- iii. \$25 for certified mail
- iv. \$125 in "defendant locating fees."

36. Mr. Gida added the above "counsel fees" notwithstanding that he is not an attorney, nor did any defendant herein ever hire one.

37. Defendants Gida, R&D, JB and Rose Williams conspired and carried through with a fraudulent scheme to defraud the plaintiff out of \$1,212.00 by adding the above bogus charges to a Delaware County District Justice judgment originally in the amount of \$1266.50.

#### Count I

38. All above paragraphs relevant hereto are incorporated herein by reference.

39. R&D's actions constituted a "legal action" prohibited by 15 USC §1692i.

40. R&D transferred a Delaware County District Justice judgment to Luzerne County for the purpose of making it convenient for R&D and the other defendants and to subvert attempts to open the judgment due to its remoteness from the plaintiff.

41. Luzerne County is approximately 115 miles from plaintiff's residence in Delaware

County.

42. Defendants' actions in removing the judgment to a remote location and petitioning for a wage order there violated §1692i and the FCEUA.

Count II

43. All above paragraphs relevant hereto are incorporated herein by reference.

44. The entry of the judgment and the application for a wage order in Luzerne County Common Pleas Court was accomplished without counsel with the plaintiff, a corporation being represented by a layman.

45. A corporation must be represented by an attorney under Pennsylvania law.

46. Actions taken by a lay person on behalf of a corporate client are a nullity according to Spirit of the Avenger Ministries v. Commonwealth (Commw. Ct. 2001) 767 A.2d 1130, 2001 Pa. Commw. Lexis 33.

47. Since the above actions were a nullity, no valid judgment was secured in Luzerne County and therefore defendants' actions in obtaining a judgment and securing a wage order violated §1692e and 1692f of the FDCPA and the FCEUA.

48. Plaintiff's actions, as stated above, constituted a violation of §1692d since their natural consequences were calculated to harass, oppress or abuse the defendant at his place of employment without authority of law.

Count III

49. All above paragraphs relevant hereto are incorporated herein by reference.

50. Both defendant's Gida and Williams telephoned attorney for plaintiff on September 29, 2003 and insisted that the judgment be paid and that plaintiff's attorney cooperate with a wage order.

51. Williams advised counsel for the plaintiff that Gida was president of JD.

52. Gida was not in fact a corporate officer of JD, and was not even aware that JD was a corporation.

53. In fact Gida, acting as an agent of all other defendants herein, was simply the

boyfriend of Williams who was used as the “enforcer.” Gida’s tactics included profanity, verbal harassment, strong-arm tactics and generally bullying unsophisticated judgment debtors, such as the plaintiff and/or counsel.

54. Gida, when questioned about counsel fees, stated that R&D was represented by a Bernard Kotulak, Esquire, an attorney in Wilkes-Barre, Luzerne County, and that Mr. Kotulak “charged \$1,000 for each” such case.

55. Bernard Kutulak never represented R&D, nor any defendant herein in this or any matter related to collection of judgments.

56. In fact, Gida never even sought advice of counsel and as such, attempted to unlawfully enrich himself and the other defendants through fraud on the plaintiff and upon the court. The said fraud in this case amounted to approximately \$1212.00.

57. Gida, in a conversation with counsel for plaintiff demanded that counsel recommend to plaintiff’s employer to comply with the wage attachment.

58. Gida appeared unconcerned that counsel for plaintiff did not represent plaintiff’s employer and could not recommend legal action to them.

59. Upon questioning of Gida’s authority to increase the judgment, Gida attempted to bully counsel for plaintiff into compliance stating, “I hope you will enjoy your visit to Luzerne County because I will subpoena your ass up here with all your records and files!”

60. Gida continued the attempt at bullying with a stream of obscenities in a last desperate attempt to secure payment of the judgment.

61. Gida and defendants’ actions as stated above violated §§1692d, 1692d and 1692f as well as the FCEUA.

#### Count IV

62. All above paragraphs relevant hereto are incorporated herein by reference.

63. On or about September 24, 2003, or shortly prior to that date, defendants herein communicated with a third party, i.e. Frederick Reigle, who was not a representative of the plaintiff, and disclosed the fact of the judgment, the underlying debt, and the fact that plaintiff

was indebted to the defendant R&D.

64. The purpose of the communication was to effectuate collection of the underlying obligation.

65. Frederick Reigle was not contacted as legal counsel or as proposed legal counsel for any defendant herein.

66. The disclosure of the debt to Frederick Reigle violated FDCPA §1692c(b) and the FCEUA.

#### Count V

67. All above paragraphs relevant hereto are incorporated herein by reference.

68. The above judgment of the Delaware County District Justice was not based upon physical damages arising out of a residential lease.

69. Likewise, the said judgment was not subject to attachment pursuant to 42 Pa.C.S. §8127.

70. In its transcript of judgment, the lower court did not list any sum as a sum that would have been subject to wage attachment.

71. Defendants therefore committed a fraud upon the plaintiff, as well as upon the Court of Common Pleas of Luzerne County, by representing that the same was subject to attachment.

72. Defendants have violated §§1692d, 1692d and 1692f as well as the FCEUA.

73. Defendants actions amount to common law fraud upon the plaintiff.

74. Defendants actions in this case were malicious, fraudulent and outrageous and hence entitle the plaintiff to punitive damages.

75. Defendants actions herein have subjected plaintiff to humiliation and embarrassment, as well as fear and anxiety about the loss of employment as a result.

76. Plaintiff has been required to retain counsel at the rate of \$250 a hour to prosecute this action. Plaintiff estimates that approximately \$10,000 in counsel fees alone

will be required to litigate this matter.

WHEREFORE, plaintiff demands judgment jointly and severally against the defendants herein for:

- a. Actual damages;
- b. Statutory damages
- c. Punitive damages
- d. For costs, interest, attorney's fees;
- e. For three times the actual damages
- f. and such other relief that the court feels is just and proper.

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

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