

where a debtor complained he had been sued twice on the same debt; Dornhecker v. Ameritech Corp., 99 F. Supp. 2d 918, 923 (N.D.Ill. 2000), where the debtor claimed he settled with one agency and was then dunned by a second for the same debt, and Northwest Diversified, Inc. v. Desai, 353 Ill.App.3d 378, 818 N.E.2d 753 (1st Dist. 2004), where a commercial debtor paid the creditor only to be subjected to a levy by a purported debt buyer.

4. In Wood v. M&J Recovery LLC, CV 05-5564, 2007 U.S. Dist. LEXIS 24157 (E.D.N.Y., April 2, 2007), a debtor complained of multiple collection efforts by various debt buyers and collectors on the same debt, and the defendants asserted claims against one another disputing the ownership of the portfolio involved. Shekinah alleged that it sold a portfolio to NLRS, that NLRS was unable to pay, that the sale agreement was modified so that NLRS would only obtain 1/5 of the portfolio, and that the 1/5 did not include the plaintiff's debt. Portfolio claimed that it and not Shekinah is the rightful owner of the portfolio.

5. In Associates Financial Services Co. v. Bowman, Heintz, Boscia & Vician, P.C., IP 99-1725-C-M/S, 2001 U.S. Dist. LEXIS 7874, *9-12 (S.D.Ind., April 25, 2001), later opinion, 2004 U.S. Dist. LEXIS 6520 (S.D. Ind., Mar. 31, 2004), allegations were made that a creditor had continued to collect accounts allegedly sold to a debt buyer.

6. An article that appeared in the trade press shortly before the extension of the Illinois Collection Agency Act to debt buyers stated:

More collection agencies are turning to the debt resale market as a place to pick up accounts to collect on. Too small to buy portfolios directly from major credit issuers, they look to the secondary market where portfolios are resold in smaller chunks that they can handle.

But what they sometimes find in the secondary market are horror stories: The same portfolio is sold to multiple buyers; the seller doesn't actually own the portfolio put up for sale; half the accounts are out of statute; accounts are rife with erroneous information; access to documentation is limited or nonexistent. . . .

Corinna C. Petry, Do Your Homework; Dangers often lay hidden in secondary market debt portfolio offerings. Here are lessons from the market pros that novices can use to avoid nasty surprises, Collections & Credit Risk, March 2007, pg. 24, Vol. 12, No. 3. The article quoted an

officer of an Illinois debt buyer who had purchased, or ostensibly purchased, bad paper.

7. Courts have also dismissed numerous collection and foreclosure lawsuits filed in the names of entities that did not own the purported debts. In re Foreclosure Cases, 1:07CV2282 and 14 others, 2007 U.S. Dist. LEXIS 84011, 2007 WL 3232430 (N.D. Ohio Oct. 31, 2007); In re Foreclosure Cases, 07-cv-166 and 18 others, 2007 U.S. Dist. LEXIS 90812 (S.D. Ohio Nov. 27, 2007); In re Foreclosure Cases, 521 F. Supp. 2d 650 (S.D. Ohio, 2007); In re Foreclosure Cases, 07-cv-166 and 14 others, 2007 U.S. Dist. LEXIS 95673 (S.D. Ohio, Dec. 27, 2007); NovaStar Mortgage, Inc. v. Riley, 3:07-CV-397, 2007 U.S. Dist. LEXIS 86216 (S.D. Ohio, Nov. 21, 2007); NovaStar Mortgage, Inc. v. Grooms, 3:07-CV-395, 2007 U.S. Dist. LEXIS 86214 (S.D. Ohio, Nov. 21, 2007); HSBC Bank USA v. Rayford, 3:07-CV-428, 2007 U.S. Dist. LEXIS 86215 (S.D. Ohio, Nov. 21, 2007); Everhome Mtge. Co. v. Rowland, 2008 Ohio 1282; 2008 Ohio App. LEXIS 1103 (Ohio App. March 20, 2008) (judgment for plaintiff reversed because it failed to introduce assignment or establish that it was the holder of the note and mortgage); Deutsche Bank National Trust Co. v. Castellanos, 277/07, 2008 NY Slip Op 50033U; 18 Misc. 3d 1115A; 2008 N.Y. Misc. LEXIS 44; 239 N.Y.L.J. 16 (Kings Co., N.Y., Sup. Ct., Jan. 14, 2008); HSBC Bank USA, N.A. v. Valentin, 15968/07, 2008 NY Slip Op 50164U; 14 Misc. 3d 1123A; 2008 N.Y. Misc. LEXIS 229 (Kings Co., N.Y., Sup. Ct., January 30, 2008); HSBC Bank USA, N.A., v. Cherry, 21335/07, 2007 NY Slip Op 52378U; 18 Misc. 3d 1102A; 2007 N.Y. Misc. LEXIS 8279; 239 N.Y.L.J. 2 (Kings Co., N.Y. Sup. Ct., Dec. 17, 2007); Deutsche Bank National Trust Co. v. Castellanos, 15 Misc. 3d 1134A; 841 N.Y.S.2d 819 (Kings Co., N.Y. Sup. Ct. 2007).

8. Debt buyer American Acceptance filed a lawsuit alleging that a broker of charged-off debts sold it debts to which it did not have title. American Acceptance Co. v. Goldberg, 2:08cv9 (N.D. Ind.). Another debt buyer, Hudson & Keyse, filed suit alleging that the same debt broker obtained information about consumer debts owned by Hudson & Keyse and used the information to try to collect the debts for its own account, even though it didn't own

them. Hudson & Keyse, LLC v. Goldberg & Associates, LLC, 07-81047-civ (S.D.Fla., filed Nov. 5, 2007). A similar suit, alleging that the broker resold accounts it did not own, was filed by Old National Bank, Old National Bank v. Goldberg & Associates, 9:08-cv-80078-DMM (S.D.Fla., Jan. 24, 2008).

9. The same debt broker is accused in another complaint of selling 6,521 accounts totaling about \$40 million face value which it did not own. RMB Holdings, LLC v. Goldberg & Associates, LLC, 3:07-cv-00406 (E.D.Tenn., filed Oct. 29, 2007). On May 29, 2008, a decision was issued in favor of the plaintiff in that case. RMB Holdings, LLC v. Goldberg & Associates, LLC, 3:07-cv-00406 (E.D.Tenn.), Dkt. # 24. The decision finds (p. 2) that “RMB began making attempts to collect the accounts it purchased from Goldberg,” even though “Goldberg never delivered title or ownership of the accounts to RMB.”

10. Other debt buyers have voiced similar complaints about defective title to debts. “Florida Broker Faces Multiple Lawsuits,” *Collections & Credit Risk*, April 2008, p. 8.

11. In order to protect Illinois residents against these and other abuses, the Illinois Collection Agency Act (“ICAA”) was amended effective January 1, 2008 to define debt buyers as “collection agencies”.

12. Section 425/3(d), as amended effective Jan. 1, 2008, brings debt buyers within its purview by providing that “A person, association, partnership, corporation, or other legal entity acts as a collection agency when he or it . . . Buys accounts, bills or other indebtedness and engages in collecting the same.”

13. Previously coverage was limited to a person who “Buys accounts, bills or other indebtedness with recourse and engages in collecting the same”.

14. By deleting “with recourse,” the legislature intended to classify as a “collection agency” persons such as the defendant who buy charged-off debts for their own account.

15. The ICAA creates a licensing regime. Section 4 of the ICAA, 225 ILCS

425/4, provides:

Sec. 4. No collection agency shall operate in this State, directly or indirectly engage in the business of collecting, solicit claims for others, have a sales office, a client, or solicit a client in this State, exercise the right to collect, or receive payment for another of any account, bill or other indebtedness, without registering under this Act except that no collection agency shall be required to be licensed or maintain an established business address in this State if the agency's activities in this State are limited to collecting debts from debtors located in this State by means of interstate communication, including telephone, mail, or facsimile transmission from the agency's location in another state provided they are licensed in that state and these same privileges are permitted in that licensed state to agencies licensed in Illinois.

16. The licensing requirements of the ICAA were imposed to protect the public. The public policy represented by the ICAA is stated in §1a, 225 ILCS 425/1a:

Declaration of public policy

Sec. 1a. The practice as a collection agency by any entity in the State of Illinois is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the collection agency profession merit and receive the confidence of the public and that only qualified entities be permitted to practice as a collection agency in the State of Illinois. This Act shall be liberally construed to carry out these objects and purposes.

It is further declared to be the public policy of this State to protect consumers against debt collection abuse.

17. Sections 14 and 14b of the ICAA, 225 ILCS 425/14 and 14b, make it a crime to engage in the business of a collection agency without a license.

18. Section 14a, 225 ILCS 425/14a, provides:

Sec. 14a. The practice as a collection agency by any entity not holding a valid and current license under this Act is declared to be inimical to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The Director, the Attorney General, the State's Attorney of any county in the State, or any person may maintain an action in the name of the People of the State of Illinois, and may apply for injunctive relief in any circuit court to enjoin such entity from engaging in such practice. Upon the filing of a verified petition in such court, the court, if satisfied by affidavit or otherwise that such entity has been engaged in such practice without a valid and current license, may enter a temporary restraining order without notice or bond, enjoining the defendant from such further practice. Only the showing of nonlicensure, by affidavit or otherwise, is necessary in order for a temporary injunction to issue. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in

other civil cases except as modified by this Section. If it is established that the defendant has been or is engaged in such unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further practice. In all proceedings hereunder, the court, in its discretion, may apportion the costs among the parties interested in the action, including cost of filing the complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorneys' fees. In case of violation of any injunctive order entered under the provisions of this Section, the court may summarily try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this Act.

19. The amendment also makes applicable the special assignment requirements in ICAA §8b, 225 ILCS 425/8b. Illinois courts had held prior to the amendment that a party that was required to but did not have such an assignment does not have a valid claim and that the defendant in such a case is entitled to judgment. Business Service Bureau, Inc. v. Webster, 298 Ill. App. 3d 257; 698 N.E.2d 702 (4th Dist. 1998).

20. Section 8b of the ICAA provides:

Sec. 8b. An account may be assigned to a collection agency for collection with title passing to the collection agency to enable collection of the account in the agency's name as assignee for the creditor provided:

(a) The assignment is manifested by a written agreement, separate from and in addition to any document intended for the purpose of listing a debt with a collection agency. The document manifesting the assignment shall specifically state and include:

(i) the effective date of the assignment; and

(ii) the consideration for the assignment.

(b) The consideration for the assignment may be paid or given either before or after the effective date of the assignment. The consideration may be contingent upon the settlement or outcome of litigation and if the claim being assigned has been listed with the collection agency as an account for collection, the consideration for assignment may be the same as the fee for collection.

(c) All assignments shall be voluntary and properly executed and acknowledged by the corporate authority or individual transferring title to the collection agency before any action can be taken in the name of the collection agency.

(d) No assignment shall be required by any agreement to list a debt with a collection agency as an account for collection.

(e) No litigation shall commence in the name of the licensee as plaintiff unless: (i) there is an assignment of the account that satisfies the requirements of this Section and (ii) the licensee is represented by a licensed attorney at law. . . .

21. Furthermore, the assignment must be attached to the complaint. Candice Co. v. Ricketts, 281 Ill.App.3d 359, 362, 666 N.E.2d 722 (1st Dist. 1996).

22. Finally, the assignee is required “in his or her pleading on oath allege that he or she is the actual bona fide owner thereof, and set forth how and when he or she acquired title. . . .” 735 ILCS 5/2-403(a).

23. Defendant CACH, LLC, a debt buyer regulated by the ICAA since January 1, 2008, is required to be licensed under the ICAA because it collects from Illinois residents, through filing lawsuits in the Illinois courts. The activities of CACH, LLC in Illinois are not limited to collecting debts from debtors located in Illinois by means of interstate communication, including telephone, mail, or facsimile transmission from a location in another state.

24. The ICAA expressly regulates litigation by “collection agencies,” ICAA . §§8a-1, 225 ILCS 425/8a-1; and 8b, 225 ILCS 425/8b, making it clear that the filing of collection lawsuits is part of debt collection.

25. Defendant CACH, LLC systematically files collection lawsuits without a license, without compliance with ICAA §8b and, therefore, without valid claims. Furthermore, it misrepresents that it is authorized to sue when this is not true.

26. In this action, plaintiff complains that such practices violate the Fair Debt Collection Practices Act, 15 U.S.C. §§1692e and 1692f, the ICAA, and the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”).

VENUE AND JURISDICTION

27. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331, 28 U.S.C. §1337, and 28 U.S.C. §1367.

28. Venue and personal jurisdiction in this District are proper because:

- a. Defendant's collection communications and activities impacted plaintiff within this District;
- b. Defendant does or transacts business within this District.

PARTIES

29. Plaintiff is an individual who resides in the Northern District of Illinois.

30. Defendant CACH, LLC is a limited liability company chartered under Colorado law. Its principal place of business is 4340 S. Monaco St., 2nd floor, Denver, CO 80237.

31. Defendant CACH, LLC is engaged in the business of enforcing charged-off consumer debts against the consumers.

32. Defendant CACH, LLC pays an average of less than ten cents on the dollar for the debts it claims to purchase.

33. Defendant CACH, LLC regularly uses the mails and telephones to conduct its business.

34. Defendant CACH, LLC has been the plaintiff in more than 500 Illinois lawsuits filed since January 1, 2008 and seeking to collect consumer debts.

35. Because the purported obligations were originally owed to other entities and were charged off prior to purchase, CACH, LLC is a "debt collector" as defined in the FDCPA.

FACTS

36. On or about January 17, 2008, CACH, LLC filed suit against plaintiff Decena Ola Morales in the Circuit Court of Cook County to collect a purported debt incurred for personal, family or household purposes. CACH, LLC claimed to have purchased the debt.

37. The complaint did not attach any sort of assignment.

38. Defendant CACH, LLC regularly files lawsuits in Illinois on debts it claims to have purchased.

39. None of the complaints filed by CACH, LLC in Illinois had attached to it

an assignment that complies with §8b of the Collection Agency Act.

40. On information and belief, defendant did not have an assignment that complied with §8b of the Collection Agency Act in the case of plaintiff or anyone else it sued in Illinois since January 1, 2008.

41. Attached to the complaint was an affidavit which represented that CACH, LLC is “a duly licensed/ registered limited liability company” with “full power and authority to do and perform all acts necessary for the collection, settlement, adjustment, compromise or satisfaction of the said claim.”

42. These representations were false, in that CACH did not have a collection agency license and was not legally authorized to sue plaintiff or take any other collection action against plaintiff.

43. The affidavit contained the above-quoted representations is a standard form document that on information and belief has been filed in every collection action filed by CACH, LLC in Illinois courts since January 1, 2008.

44. Because defendant was not licensed and did not have a valid assignment, it did not have any sort of valid claim and knew or should have known that it did not have a valid claim.

45. Defendant knows or should know it has no valid claim, but files suit anyway because consumers are unlikely to realize the fact.

46. On information and belief, based on a computer search of court records, defendant has filed over 500 such lawsuits.

CLASS ALLEGATIONS

47. Plaintiff brings this action on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3). The class consists of (a) all individuals (b) against whom defendant CACH, LLC filed a collection lawsuit (c) in Illinois (d) subsequent to January 1, 2008.

48. The class is so numerous that joinder of all members is not practicable.

49. On information and belief, there are at least 40 individuals against whom defendant CACH, LLC filed a collection lawsuit in Illinois subsequent to January 1, 2008.

50. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether defendant engages in a practice of filing lawsuits without attaching to the complaint an assignment that complied with §8b of the ICAA.
- b. Whether defendant is unlicensed.
- c. Whether such lawsuits are therefore subject to a defense of which defendant knows or should know about.
- d. Whether such practice is an unfair or deceptive.
- e. Whether defendant violates the ICAA.
- f. Whether defendant violates the Illinois Consumer Fraud Act.

51. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

52. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

53. A class action is superior for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights;
- c. Congress intended class actions to be the principal enforcement

mechanism under the FDCPA.

COUNT I – FAIR DEBT COLLECTION PRACTICES ACT

54. Plaintiff incorporates paragraphs 1-53.

55. The filing and prosecution of collection lawsuits notwithstanding a known defense, in the hope that the consumer will not raise the defense, is both a deceptive collection practice, in violation of 15 U.S.C. §§1692e, 1692e(2), 1692e(5), and 1692e(10), and an unfair collection practice, in violation of 15 U.S.C. §1692f.

56. Since Kimber v. Federal Financial Corp., 668 F. Supp. 1480, 1488 (M.D.Ala. 1987), “bringing a lawsuit to which there appears to exist a complete defense” in the hope that the consumer will not realize it exists and will default or pay has been a violation of the FDCPA.

57. Both the absence of a required license and the absence of the required assignment are defenses to defendant’s collection actions.

58. In addition, defendant misrepresents that it was authorized to take collection action against plaintiff when it was not.

59. Defendant thereby violated 15 U.S.C. §§1692e, 1692e(2), and 1692e(10). Seeger v. Aid Associates, Inc., 05-C-944, 2007 U.S. Dist. LEXIS 22824 (E.D.Wisc. March 29, 2007); Radaj v. ARS National Services, Inc. 05-C-0773, 2006 U.S. Dist. LEXIS 68883 (E.D.Wisc. September 12, 2006); Czerwinski v. Risk Management Alternatives International Corp. Canada, 05-C-0945, 2006 U.S. Dist. LEXIS 19113 (E.D.Wisc. April 4, 2006).

60. Section 1692e provides:

§ 1692e. False or misleading representations [Section 807 of P.L.]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

- (2) The false representation of--**
 - (A) the character, amount, or legal status of any debt; . . .**
- (5) The threat to take any action that cannot legally be taken or**

that is not intended to be taken. . . .

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .

61. Section 1692f provides:

§ 1692f. Unfair practices [Section 808 of P.L.]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. . . .

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

- (1) Statutory damages;
- (2) Actual damages;
- (3) Attorney's fees, litigation expenses and costs of suit;
- (4) Such other and further relief as the Court deems proper.

COUNT II – ILLINOIS COLLECTION AGENCY ACT

62. Plaintiff incorporates paragraphs 1-53.

63. Defendant is a "collection agency" as defined in the ICAA.

64. Defendant violated 225 ILCS 425/4 by collecting without a license.

65. Defendant violated 225 ILCS 425/8b by filing suit without an assignment in the form specified therein.

66. Defendant negligently or knowingly violated the following provisions of 225 ILCS 425/9:

. . .(20) Attempting or threatening to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist. . . .

67. 225 ILCS 425/14a provides:

Sec. 14a. The practice as a collection agency by any entity not holding a valid and current license under this Act is declared to be inimical to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The Director, the Attorney General, the State's Attorney of

any county in the State, or any person may maintain an action in the name of the People of the State of Illinois, and may apply for injunctive relief in any circuit court to enjoin such entity from engaging in such practice. Upon the filing of a verified petition in such court, the court, if satisfied by affidavit or otherwise that such entity has been engaged in such practice without a valid and current license, may enter a temporary restraining order without notice or bond, enjoining the defendant from such further practice. Only the showing of nonlicensure, by affidavit or otherwise, is necessary in order for a temporary injunction to issue. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases except as modified by this Section. If it is established that the defendant has been or is engaged in such unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further practice. In all proceedings hereunder, the court, in its discretion, may apportion the costs among the parties interested in the action, including cost of filing the complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorneys' fees. In case of violation of any injunctive order entered under the provisions of this Section, the court may summarily try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this Act.

68. A private right of action exists for violation of the ICAA. Sherman v. Field Clinic, 74 Ill. App. 3d 21, 392 N.E.2d 154 (1st Dist. 1979).

69. Plaintiff and the members of the class were damaged as a result of the violations.

WHEREFORE, plaintiff requests that the Court grant the following relief in favor of plaintiff and the class and against defendant:

- a. Compensatory, punitive and nominal damages, as appropriate;
- b. Costs.
- c. Such other and further relief as is appropriate.

COUNT III – ILLINOIS CONSUMER FRAUD ACT

70. Plaintiff incorporates paragraphs 1-53.

71. Defendant's conduct as set forth above constitutes both unfair and deceptive acts and practices, in violation of §2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2.

72. Defendant engaged in such conduct in the course of trade and commerce.

73. Defendant engaged in such conduct for the purpose of obtaining money from and injuring the credit of plaintiff and others.

74. Plaintiff and the members of the class were damaged as a result.

75. The filing of collection lawsuits is regularly picked up and reported by credit bureaus.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendant for:

- a. Actual damages;
- b. Punitive damages;
- c. An injunction against further violations;
- d. Attorney's fees, litigation expenses and costs of suit;
- e. Such other or further relief as the Court deems proper.

s/Daniel A. Edelman
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JURY DEMAND

Plaintiff demands trial by jury.

s/Daniel A. Edelman
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NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

s/Daniel A. Edelman
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