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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re)
)
Jose Loreto Echeagaray Rivera,)
)
Debtor.)

Case No. 12-38328-elp7
Adv. Proc. No.

**COMPLAINT FOR VIOLATION OF
THE AUTOMATIC STAY AND
UNLAWFUL DEBT COLLECTION**

JOSE LORETO ECHEAGARAY RIVERA,)
)
Plaintiff,)

JURY TRIAL DEMANDED

v.)

11 U.S.C. § 362(k)
11 U.S.C. § 1692 et seq.
ORS 646.639 et seq.

AMERICAN EXPRESS COMPANY, a New)
York business corporation, and **GC SERVICES**)
LIMITED PARTNERSHIP, a Delaware)
limited partnership.)

Defendants.)
_____)

1.

Jose Loreto Echeagaray Rivera (“plaintiff”), by and through his trial attorney, Michael

Fuller, alleges:

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2.

JURISDICTION AND THE PARTIES

This is an adversary proceeding brought under 11 U.S.C. § 362(k), the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Oregon Unlawful Debt Collection Practices Act (“OUDCPA”), ORS 646.639 *et seq.*

3.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1334, 157, and 1367 because the Bankruptcy Code and FDCPA are federal law, diversity of parties exists and the amount in controversy is satisfied, and because plaintiff’s state law claims are so related to the automatic stay and FDCPA claims that they form part of the same case or controversy.

4.

This adversary proceeding is one arising in and related to the above-captioned bankruptcy case, filed under Chapter 7 of Title 11 now open in this Court, case number 12-38328-elp7. The action for violating the automatic stay is a core proceeding under 28 U.S.C. § 157. Plaintiff consents a jury trial on his FDCPA and OUDCPA claims in bankruptcy court. Plaintiff consents to final adjudication of his entire case in bankruptcy court.

5.

This is an action for declaratory relief, actual damages, statutory damages, punitive damages, and attorneys fees and costs brought by plaintiff against American Express Company (“creditor”) and its debt collector GC Services Limited Partnership (“debt collector”) resulting from willful violation of the automatic stay and strict liability laws governing debt collection.

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6.

Plaintiff resides in Portland, Oregon and is a “consumer” as defined by the FDCPA at 15 U.S.C. § 1692a(3).

7.

Plaintiff is also a “person” and a “consumer” as defined by the OUDCPA at ORS 646.639(1)(h) and (a).

8.

Creditor regularly engages in consumer credit transactions with Oregonians.

9.

Creditor is a foreign entity and a “person” as defined by the OUDCPA at ORS 646.639(1)(h).

10.

Creditor enforces its consumer transactions with Oregonians and is a “commercial creditor” as defined by the OUDCPA at ORS 646.639(1)(c).

11.

Creditor directly, and indirectly through its debt collector, attempts to enforce consumer loan obligations against Oregonians and is a “debt collector” as defined by the OUDCPA at ORS 646.639(1)(g).

12.

Debt collector operates its debt collection business in Oregon and regularly collects creditor’s consumer loan obligations against Oregonians.

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13.

Debt collector is a foreign entity and a “person” as defined by the OUDCPA at ORS 646.639(1)(h).

14.

Debt collector regularly collects creditor’s consumer loan debts and is a “debt collector” as defined by the OUDCPA at ORS 646.639(1)(g) and the FDCPA at 15 U.S.C. § 1692a(6).

15.

Debt collector attempts to collect plaintiff’s alleged obligation to creditor constituting a “debt” as defined by the OUDCPA at ORS 646.639(1)(e).

16.

FACTUAL ALLEGATIONS

Prior to filing for Chapter 7 bankruptcy protection, plaintiff owed a debt to creditor.

17.

Plaintiff filed for Chapter 7 bankruptcy protection in this Honorable Court on November 2, 2012.

18.

Plaintiff listed creditor on his schedule of unsecured creditors.

19.

Creditor received actual notice of the automatic stay in plaintiff’s bankruptcy case, including a court-generated notice from the bankruptcy court.

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20.

The court-generated notice warned creditor that attempting to collect debt from plaintiff in violation of the automatic stay may result in penalties.

21.

The court-generated notice informed creditor that plaintiff was represented by an attorney and provided contact information for plaintiff's attorney.

22.

The court-generated notice advised creditor to consult its lawyer to determine its rights in plaintiff's bankruptcy case.

23.

Creditor did not motion this Bankruptcy Court for relief from the automatic stay.

24.

After receiving actual written notice of plaintiff's bankruptcy case and the automatic stay, creditor, through its agent and debt collector, willfully harassed plaintiff in an attempt to collect on a claim arising before the commencement of his bankruptcy case.

25.

Creditor's failure to take affirmative steps to ensure compliance with the automatic stay resulted in a willful act to collect.

26.

Creditor knew and should have known further collections were illegal because notice of plaintiff's bankruptcy case was mailed to it November 7, 2012.

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31.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(WILLFUL VIOLATION OF THE AUTOMATIC STAY)

(11 U.S.C. § 362(k))

Plaintiff incorporates the above by reference.

32.

Creditor failed to take affirmative steps to stop collections from plaintiff despite receiving actual notice of the automatic stay, constituting a willful violation of 11 U.S.C. § 362.

33.

Creditor has not remedied or acknowledged its contempt, constituting a willful ongoing violation of 11 U.S.C. § 362.

34.

Plaintiff is entitled to and so seeks punitive damages against creditor under 11 U.S.C. § 362(k) so it may become profitable for it to implement procedures to avoid this type of violation in the future.

35.

Plaintiff is injured as a result of creditor’s willful violations, and so is entitled to actual damages and punitive damages pursuant to 11 U.S.C. § 362(k).

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36.

SECOND CLAIM FOR RELIEF

(OUDCPA)

(ORS 646.641)

Plaintiff incorporates the above by reference.

37.

(COUNT ONE)

Based on a determination that the automatic stay prohibited collection of creditor’s claim from plaintiff, creditor and debt collector violated the OUDCPA, specifically ORS 646.639(2)(k).

38.

(COUNT TWO)

Regardless of whether the automatic stay prohibited collection of creditor’s claim from plaintiff, creditor and debt collector violated the OUDCPA, specifically ORS 646.639(2)(e) and (k).

39.

As a result of creditor and debt collector’s willful unlawful collection practices, plaintiff is entitled to the greater of actual damages or \$200, punitive damages, reasonable attorneys fees and costs, and declaratory relief pursuant to ORS 646.641.

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WHEREFORE, plaintiff request judgment against creditor and debt collector as follows:

- A. Declaratory judgment holding creditor and debt collector in violation of laws governing debt collection;
- B. An award of actual damages, statutory damages, punitive damages, and reasonable attorneys fees and costs;
- C. For such other and further relief as this Court may deem just and proper.

Dated: January 27, 2013

/s/ Michael Fuller
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