

STATE OF NORTH CAROLINA
ANY COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
06 CVD 1234

NCO PORTFOLIO MANAGEMENT, INC.,)
Plaintiff)
v.)
MRS. M.,)
Defendant)

ANSWER AND COUNTERCLAIMS

Now comes the Defendant who answers as follows:

1. Defendant admits the allegations of Paragraph 1.
2. Defendant admits the allegations of Paragraph 2.
3. Defendant admits the allegations contained in the first sentence of Paragraph 3. Lacking sufficient information, the remaining allegations of that paragraph are denied.
4. Defendant admits the allegations of Paragraph 4.

**AFFIRMATIVE DEFENSE:
STATUTE OF LIMITATIONS**

5. Defendant realleges all paragraphs of her Answer.
6. Defendant has not incurred credit upon the account that is subject to this action within the three years preceding the filing of the action.
7. Defendant has not paid on the account that is the subject of this action within the three years preceding the filing of this action.

**FIRST COUNTERCLAIM:
Violation of Fair Debt Collection Practices Act, 15 U.S.C. §1692, et. seq.**

8. Defendant realleges all paragraphs of her Answer.

9. Plaintiff is a foreign corporation in the business of collecting debts in North Carolina. The principal purpose of Plaintiff's business is the collection of debts and Plaintiff regularly collects the debts alleged to be due to another.
10. Plaintiff is a "debt collector" as defined by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(6).
11. Defendant is a natural person, residing in Mecklenburg County, North Carolina, and a consumer as defined by the Fair Debt Collection Practices Act.
12. Defendant entered into a revolving credit transaction with Citibank in or about 1991.
13. On information and belief, Defendant last incurred credit on this account in 1995.
14. On information and belief, Defendant last paid on the account in 2001, or early in 2002.
15. Plaintiff has violated the Fair Debt Collection Practices Act as follows: The filing of a time-barred action is deceptive, unfair and unconscionable and violates 15 U.S.C. 1692f,
16. As a result of the foregoing violations, Plaintiff is liable to Defendant for declaratory judgment, the Plaintiff's conduct violated the FDCPA, actual damages, statutory damages, and attorneys' fees.

SECOND COUNTERCLAIM
Violation of the North Carolina Fair Debt Collection Act

17. Defendant realleges all paragraphs of her Answer.
18. The Defendant is a "consumer" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.
19. The Defendant's relationship with the Plaintiff arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.
20. The Plaintiff was and is a "debt collector" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.
21. Under the provision of Section 75-52 of the North Carolina General Statutes the Plaintiffs were and are prohibited from engaging in any conduct the natural consequences of which is to oppress, harass or abuse any person. All of the FDCPA violations are realleged and incorporated herein by this reference and taken together constitute the conduct prohibited by this section.

22. The Plaintiff violated 75-55(1) by collecting or attempting to collect a debt by use of unconscionable means.
23. Plaintiff's violations of the NCUDAP statute are an essential part of their debt collection practice and result in a higher rate of collection return. Therefore, Plaintiff's numerous violations are willful and are done with malice.
24. Defendant has suffered actual damages.
25. As a result the Plaintiff is liable for statutory damages in the sum of no less than \$2,000.00 for violation of N.C.G.S. Section 75-50, et seq. and the payment of legal fees and expenses.

WHEREFORE, Defendant prays that the Court:

1. Deny the claims of Plaintiff against Defendant as time-barred;
2. Grant Defendant a Declaratory Judgment that Plaintiff's filing of a time-barred action violated the Fair Debt Collection Practices Act.
3. Award Defendant actual damages.
4. Award Defendant statutory damages pursuant to 15 U.S.C. §1692k and N.C. Gen. Stat. §55-56..
5. Grant Defendant costs, expenses and reasonable attorneys' fees pursuant to 15 U.S.C. §1692k and N.C. Gen. Stat. §75-16.1.

This the 18th day of July, 2006.

(Defendant's Name)

(Defendant's Address)

CERTIFICATE OF SERVICE

I, _____, do hereby certify that a copy of the foregoing Answer and Counterclaim was served upon _____ by depositing a copy of it into a U.S. Mail depository, first-class postage prepaid, properly addressed as follows:

(Plaintiff's Name and Address or
Name and Address of Plaintiff's
Attorney)

This the ____ day of _____, 20__.

By: _____
Defendant's Signature

Defendant's Address

