

Commonwealth of Kentucky
Madison District Court
No. 12-C-1295
Div. 3

Portfolio Recovery Associates, LLC

PLAINTIFF

v.

ANSWER and COUNTERCLAIM

Donna J. Guenther

DEFENDANT

and

Donna J. Guenther

COUNTERCLAIMANT

v.

Portfolio Recovery Associates, LLC

COUNTER DEFENDANT

*** **

For her answer to the Complaint against her, Defendant, Donna J. Guenther, by counsel, states as follows:

1-3. Defendant is without knowledge as to the truth of these allegations and, therefore, denies ¶¶1-3 on this ground.

4. Deny.

Affirmative Defenses

5. Plaintiff's claim is a stale claim that is barred by the applicable statute of limitations.

6. Defendant lacks standing to bring suit

7. The Complaint fails to state a claim upon which relief may be granted

8. Defendant provisionally pleads as to affirmative defenses, those affirmative defenses stated in CR 8 and CR 12 as if fully restated herein and all other

affirmative defenses available to him under the laws of the Commonwealth of Kentucky, the applicability, if any, of said defenses to be determined during the discovery of this action with amendment to pleadings accordingly.

COUNTERCLAIM

I. INTRODUCTION

9. This is an action for damages brought by an individual consumer for Portfolio Recovery Associates, LLC's ("PRA") violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

II. PARTIES

10. Counterclaimant, Donna J. Guenther, is a natural person residing in Madison County, Kentucky and is a "consumer" within the meaning of FDCPA. 15 U.S.C. § 1692a(3).

11. Counter-Defendant, Portfolio Recovery Associated, LLC, is a foreign limited liability company engaged in the business of purchasing debt from creditors and collecting these debts in this state, with its principal place of business located in Norfolk, VA. The principal purpose of Defendant is the collection of debts using the mails, telephone, and the other.

12. Portfolio Recovery Associated, LLC ("PRA") is a "debt collector" as defined by the FDCPA. 15 U.S.C. § 1692a(6).

III. FACTUAL ALLEGATIONS

13. PRA's lawsuit is an attempt to collect a debt from Ms. Guenther that she

allegedly owed on a Citibank credit card.

14. Ms. Guenther recalls applying for and using a Citibank credit card but has no records or recollection as to whether the credit card corresponds to the Citibank credit card debt referenced in the Complaint.

15. Ms. Guenther used her Citibank credit card for personal and household purposes, making PRA's lawsuit an action an attempt to collect a "debt" within the meaning of 15 U.S.C. § 1692a(5).

16. PRA's Complaint demands prejudgment interest of 8% from October 31, 2011.

17. The Complaint includes a Citi credit card statement for an account ending in 1006.

18. The Citi account statement is dated November 6, 2011.

19. The Citi account statement has balance due of \$4,072.63, which is the same principal amount demanded in the Complaint.

20. Upon information and belief, the Bill of Sale from Citibank to PRA or to one of PRA's assignors does not include the transfer of any contract rights.

21. Upon information and belief, Citibank waived the right to charge interest on the Citibank credit card account between the time of charge off and the time Citibank sold the credit card debt to PRA or one of its assignors.

IV. CLAIMS FOR RELIEF: VIOLATION OF THE FDCA

22. Ms. Guenther repeats and re-alleges and incorporates by reference

paragraphs one through twenty-one above.

23. PRA violated the FDCPA. PRA's violations include, but are not limited to, the following:

(a) Violation of 15 U.S.C. § 1692f(1): PRA attempted to collect a debt that is not permitted by contract or law by, including but not limited to, demanding recovery of interest that Citibank affirmatively or implicitly waived *before* Citibank sold the debt to PRA or one of its assignors;

(b) Violation of 15 U.S.C. § 1692e(2)(A): PRA falsely representing the character, amount, and/or legal status of the debt upon which PRA brought suit against Ms. Guenther by, including but not limited to demanding recovery of interest that Citibank affirmatively or implicitly waived *before* Citibank sold the debt to PRA or one of its assignors; and

(c) Violation of 15 U.S.C. § 1692e(5): PRA threatened to take [an] action that cannot legally be taken" in violation of the FDCPA by, including but not limited to demanding recovery of interest that Citibank affirmatively or implicitly waived *before* Citibank sold the debt to PRA or one of its assignors.

WHEREFORE, Counterclaimant, Donna Guenther, respectfully prays that judgment be entered against the Counter Defendant, Portfolio Recovery Associates, LLC, for the following:

- A. Actual damages, including attorney's fees.
- B. Statutory damages pursuant to 15 U.S.C. § 1692k.
- C. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k.
- D. For such other and further relief as may be just and proper.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on the following via U.S. Mail, postage prepaid, on this 30th day of November, 2012 to:

Molly Rose
Morgan & Pottinger, P.S.C.
204 E. Market Street
Louisville, KY 40202
Counsel for Plaintiff



Counsel for Defendant