

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.
★ DEC 01 2003 ★
X

JOSHUA PACTH,

on behalf of himself and all others similarly situated

CV 03 03 6050

BROOKLYN OFFICE

Plaintiff,

-against-

DEARIE, J.

PRESSLER and PRESSLER, P.A.

AZRACK, J.

Defendant.

X

CLASS ACTION COMPLAINT

Plaintiff, Joshua Pacht, by his undersigned attorneys, alleges as follows:

JURISDICTION AND VENUE

1. This is an action under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* to secure permanent injunctive relief and other equitable relief, including rescission, restitution, and disgorgement, against defendant for engaging in unfair or deceptive acts or practices in violation of the FDCPA, 15 U.S.C. § 1692.
2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.

§§ 1331, 1337(a) and 1367.

3. Venue is proper in the United States District Court because all parties may be found here.

DEFINITIONS

4. As used in reference to the FDCPA, the terms "creditor," "debt," and "debt collector" are defined in § 803 of the FDCPA, 15 U.S.C. § 1692a.

THE PARTIES

5. The FDCPA, 15 U.S.C. § 1692 which prohibits certain debt collection practices provides for the initiation of court proceedings to enjoin violations of the FDCPA and to secure such equitable relief as may be appropriate in each case.

6. Defendant Pressler and Prossler, P.A. ("P & P") is an active professional association. Its principal place of business is at 16 Wing Drive, Cedar Knolls, New Jersey. P & P transacts business in this District. It is a debt collector.

7. Plaintiff Joshua Pacht is an individual who resides in Queens County, New York and is a consumer as defined by the FDCPA.

8. Plaintiff is a person who engaged Capital One Bank primarily for personal, family, or household purposes.

STATEMENT OF FACTS

9. On or about April 28, 2003, plaintiff Joshua Pacht received a collection letter from Pressler and Pressler Attorneys at Law. Said letter concerned a Capital One Bank account.

Exhibit A.

10. Upon information and belief, defendant Pressler and Pressler, P.C. has not been retained by Capital One Bank, nor has Capital One Bank engaged these attorneys in any material manner. *Miller v. Wolpoff & Abramson, L.L.P.*, 2003 U.S. App. Lexis 3409 (2nd Cir. 2003); *Clomon v. Jackson*, 998 F.2d 1314 (2d Cir. 1993); *Avila v. Rubin*, 84 F.3d 222 97th Cir. 1996); *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002).

COUNT 1

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

11. Defendant in many instances violated the requirements of the FDCPA, in the following and other respects:

(a) by making false and misleading representations by sending correspondence which falsely represent that a law firm is materially involved in collection;

(b) falsely representing that Pressler and Pressler is a law firm retained by Capital One directly, when in fact it is not;

(c) employing, false and misleading representations in violation of 15 U.S.C. § 1692e;

(d) the use of a caption: CAPITAL ONE BANK VS. JOSHUA PACHT,

DOCKET #

COURT : Special Civil Part

which falsely represents the character and legal status of the debt in violation of 15 U.S.C. § 1692e(2)(A);

(e) the use of false representations and deceptive means to attempt to collect a debt in violation of 15 U.S.C. § 1692e(10);

Class Allegations

12. This action is brought on behalf of a class. The class includes

(i) all consumers;

(ii) who received an attorney letter;

(iii) purporting to come from a third party collection attorney on behalf of Capital One Bank;

(iv) which employs a legal caption when no legal action has been commenced.

13. The class period begins one year prior to the filing of this action.

14. The class is so numerous that joinder of all members is impractical. Upon information and belief, there are at least several hundred class members. Plaintiff is complaining of standard form letters.

15. There are questions of law common to the class, which questions predominate over any questions affecting only individual class members. The principle questions presented are:

a. Whether attorneys sending collection correspondence listing Capital One Bank as creditor are retained by Capital One Bank.

b. Whether defendant Capital One Bank sent collection letters purporting to come from a third party collection attorney.

c. Whether defendant violated 15 U.S.C. §1692e(10) by using deceptive means in attempting to collect a debt.

d. Whether defendant violated 15 U.S.C. §1692e(3) by falsely representing that communications are from an attorney representing Capital One Bank.

e. Whether defendant violated 15 U.S.C. § 1692e(2)(A), by employing a case caption.

16. Plaintiff will fairly and adequately protect the interests of the class. He has retained counsel experienced in handling class claims and claims involving unlawful collection practices. Neither plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this claim.

17. Plaintiff's claims are typical of the class, which all arise from the same operative facts and are based on the same legal theories.

18. A class action is a superior method for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Issue a preliminary and permanent injunction restraining defendant, its employees, agents and successors from, *inter alia*, engaging in conduct and practices that are in violation of the FDCPA;
- c) Issue a declaratory Order requiring defendant to make corrective disclosures;
- d) Awarding plaintiff statutory damages;
- e) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- f) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiffs hereby demand a trial by jury.

Dated: November 25, 2003
Uniondale, New York



Lawrence Katz (L.K-0062)
Katz & Kleinman PLLC
165 EAB Plaza
Uniondale, New York 11556-0165
Telephone (516) 522-2621
Facsimile (516) 522-2890

EXHIBIT A

PRESSLER AND PRESSLER
COUNSELLORS AT LAW
16 WING DR
CEDAR KNOLLS, NJ 07927
973-753-5100 Ext 5290
Fax Number 2-973-753-5353

P&P File#P51593

04/28/03

ADVBAL- P51593

JOSHUA PACTH
13654 71ST RD
FLUSHING, NY 113671943

RE: CAPITAL ONE BANK VS. JOSHUA PACTH
DOCKET #
COURT : Special Civil Part

Dear JOSHUA PACTH

Your balance is 1,301.94 . Contact this office at
973-753-5100 or make check payable to CAPITAL ONE BANK and mail
to:

Pressler & Pressler
16 Wing Drive
Cedar Knolls, NJ 07927

Please include your file # P51593 on the check.

We accept Western Union, please call them at 1-800-325-6000 for nearest
agent and mention code city: PRESSLER, State: NJ). We also accept
Visa/Mastercard, American Express and Discover. If you choose this payment
option return this letter along with:

Name as it appears on Credit Card _____

Expires ____/____ Credit Card # _____

Amount \$ _____ Signature _____

Very Truly Yours,

Pressler & Pressler

P&P FILE # P51593

This communication is from a debt collector.