

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
12-CVD-642

FILED
2019 MAY 14 PM 3:51
IREDELL CO. N.C. S.C.

PORTFOLIO RECOVERY)
ASSOCIATES, LLC,)

Plaintiff,)

v.)

CAROLINE L. HOUSTON,)

Defendant;)

CAROLINE L. HOUSTON,)

on behalf of herself)
and all others similarly situated,)

Counterclaimant,)

v.)

PORTFOLIO RECOVERY)
ASSOCIATES, LLC,)

Defendant to Counterclaim.)

ANSWER AND
CLASS COUNTERCLAIM OF
CAROLINE L. HOUSTON
(Jury Trial Demanded)

Caroline L. Houston (hereinafter "Houston") answers the Complaint filed in this action and asserts a class counterclaim on behalf of herself and all North Carolina victims of the use by debt buyer and collection agency Portfolio Recovery Associates, LLC ("PRA") of lawsuits filed in violation of North Carolina's Prohibited Practices by Collection Agencies Act (PPCA) at N.C. Gen. Stat. §58-70-90 *et seq.*

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW the Defendant Caroline L. Houston by and through counsel, and Answers the Complaint of the Plaintiff, Portfolio Recovery Associates, LLC and avers:

1. The allegations of paragraph 1 are admitted upon information and belief.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. That the allegations contained in Paragraph numbered 4 of the Plaintiff's

Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters alleged.

5. The allegations of Paragraph 5 are denied as there is no entity named merely "HSBC" and there is no account agreement attached to the Complaint which Defendant could use to verify the allegations of Plaintiff.

6. The allegations of Paragraph 6 are denied as there was not and is not an entity named merely "HSBC" to have extended credit to her.

7. Denied.

8. Defendant admits that the Complaint includes an attached "Exhibit A" and that her name and address appear on several sheets of "Exhibit A." Except as specifically admitted, the remaining allegations of Paragraph 8 of Plaintiff's Complaint are Denied.

9. Defendant denies the allegations of Paragraph 9 of Plaintiff's Complaint and specifically denies that the sheets attached to the Complaint as "Exhibit A" contain any itemization of charges.

10. Denied.

11. That the allegations contained in Paragraph numbered 11 of the Plaintiff's

Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters alleged.

12. That the allegations contained in Paragraph numbered 12 of the Plaintiff's Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters alleged.

13. It is admitted that Plaintiff's Complaint includes an "Exhibit B" but it is specifically denied that "Exhibit B" constitutes a "chain of ownership of the defendant's account." Except as specifically admitted, the remaining allegations of Paragraph 8 of Plaintiff's Complaint are Denied.

14. Denied.

FURTHER ANSWERING THE COMPLAINT OF THE PLAINTIFF AND AS A FIRST FURTHER DEFENSE THERETO, THE DEFENDANT AVERS:

The Plaintiff has failed to state a claim upon which relief can be granted and the Defendant moves, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 58-70-150 that said action against her be dismissed with prejudice.

CLASS COUNTERCLAIM

Summary of Class Counterclaim

1. By her class counterclaim, Ms. Houston seeks a judgment vacating judgments entered in favor of PRA and against North Carolina residents based upon pleadings in clear violation of North Carolina's Prohibited Practices by Collection Agencies Engaged in the Collection of Debts from Consumers, N.C. Gen Stat. 58-70-90 *et seq.* ("PPCA"); declaring that PRA's pleadings filed in clear violation of the PPCA and pursuit of judgments based thereon to be unfair practices in violation of North Carolina law; and awarding civil penalties and actual

damages to all class members pursuant to N. C. Gen. Stat. § 58-70-130 and other North Carolina law.

2. As grounds for her class counterclaim, Ms. Houston alleges, among other things, that PRA is a “collection agency” as defined by North Carolina’s PPCA at N.C. Gen. Stat. §§ 58-70-15 and 58-70-90 and is a “debt buyer” as defined in N.C. Gen. Stat. § 58-70-15(b)(4) as “a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt.”

3. As a debt buyer, PRA filed this Complaint and failed to attach a copy of a contract evidencing the alleged debt signed by Houston, did not allege that no signed contract ever existed and did not attach copies of documents generated when the credit card was actually used in violation of N.C. Gen. Stat. § 58-70-150 (1) and N.C. Gen. Stat. § 58-70-115 (5).

4. Additionally, PRA filed this Complaint without valid documentation that it is the owner of the specific account at issue and did not attach an assignment or other writing evidencing transfer of ownership that contains the original account number of the debt purchased and that shows the debtor’s name associated with that account number in violation of N.C. Gen. Stat. § 58-70-150 (2) and N.C. Gen. Stat. § 58-70-115 (5).

5. Prior to filing suit, PRA was required as a debt buyer to mail Houston a “Notice of Intent to File Legal Action” that included a copy of the contract evidencing the alleged debt and an itemized accounting of all amounts claimed to be owed including all fees and charges. PRA failed to mail Houston a notice that complied with N.C. Gen. Stat. § 58-70-115(6).

PARTIES

6. PRA is a limited liability company organized under the laws of Delaware with its principal place of business in Norfolk, Virginia. PRA is, and at all relevant times has been, a “collection agency” within the meaning of that term as used in N.C. Gen. Stat. § 58-70-15 and § 58-70-90, and has at all relevant times been licensed by as a collection agency by the North Carolina Department of Insurance.

7. Caroline L. Houston is, and at all relevant times has been, a citizen and resident of Iredell County, North Carolina.

8. The class of persons on behalf of whom Houston seeks to assert the following class counterclaims consists of all individuals against whom PRA filed a complaint seeking collection of a debt in the North Carolina courts on or after October 1, 2009 and all people to whom PRA sent a “Notice of Intent to File Legal Action” on or after October 1, 2009.

FACTUAL ALLEGATIONS

9. PRA is the wholly owned operating subsidiary of Portfolio Recovery Associates, Inc. (“PRA, Inc.”). PRA, Inc. is a publicly traded company trading on the NASDAQ Global Stock Market under the symbol “PRAA.” Information concerning PRA and its parent company is therefore available through PRA, Inc.’s public filings with the Securities and Exchange Commission (“SEC”).

10. PRA is a “debt buyer.” PRA is engaged in the business of purchasing indebtedness allegedly owed to credit card issuers and other creditors, and pursuing collection of such purchased indebtedness. According to the PRA, Inc. Form 10-K filed with the SEC on February 28, 2012:

Our primary business is the purchase, collection and management of portfolios of defaulted consumer receivables. These are the unpaid obligations of individuals to credit originators, which include banks, credit unions, consumer and auto finance companies and retail merchants.

PRA, Inc. 10-K, p. 4.

11. PRA purchases enormous volumes of consumer debt for an average price of approximately three cents per dollar. According to the PRA, Inc. form 10-K, p. 4: "From our 1996 inception through December 31, 2011, we acquired 2,335 portfolios, representing more than 28 million customer accounts and aggregated into 132 pools for accounting purposes, with a face value of \$64.6 billion for a total purchase price of \$2.1 billion." As of December 31, 2011, PRA had acquired, or had purported to acquire, indebtedness allegedly owed by over one hundred thousand North Carolina residents.

12. PRA makes extensive filings in court to collect indebtedness it has acquired.

According to the PRA, Inc. 10-K, p. 12:

An important component of our collections effort involves our legal recovery department and the judicial collection of accounts of customers who we believe have the ability, but not the willingness, to resolve their obligations. . . .

We use a combination of internal staff (attorney and support), as well as external attorneys, to pursue legal collections under certain circumstances. . . .

13. PRA seeks to collect receivables in the most efficient and cost-effective way possible. According to the PRA, Inc. 10-K, p. 6: "The success of our business depends on our ability to purchase portfolios of defaulted consumer receivables at appropriate valuations and to collect on those receivables effectively and efficiently.

14. In its effort to collect on consumer receivables "effectively and efficiently," PRA has sought to collect, and has collected, alleged indebtedness purportedly owed by North Carolina residents by filing lawsuits in clear violation of North Carolina's PPCA.

15. The PPCA at N.C.G.S. § 58-70-150 provides the following with respect to complaints filed by debt buyers to collection debts from consumers:

§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials.

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint or claim:

(1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.

(2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number. (2009-573, s. 8.)

16. Additionally, the PPCA at N.C.G.S. § 58-70-115 provides the following with respect to complaints filed by debt buyers to collection debts from consumers:

§ 58-70-115. Unfair practices.

No collection agency shall collect or attempt to collect any debt by use of any unfair practices. Such practices include, but are not limited to, the following:

[...]

(5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect

on the debt without (i) valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges.

(6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.

17. PRA filed the instant Complaint against Houston on March 14, 2012, seeking to collect an alleged debt in the amount of \$1,261.75.

18. The Complaint does not include as an attachment any contract or other writing evidencing the original debt that contains a signature of Caroline L. Houston.

19. The Complaint does not allege that no contract signed by Caroline L. Houston ever existed nor does it include as an attachment copies of any documents generated when the credit card was actually used.

20. The documents attached to the Complaint as "Exhibit A" do not reflect an itemization of any charges whatsoever or even that charges were made on the card.

21. The Complaint does not include as an attachment an assignment or other writing evidencing transfer of ownership that contains the original account number of the debt purchased and that shows Houston's name associated with that account number.

22. These violations of the North Carolina PPCA constitute unfair or deceptive acts or practices proscribed by the Act and by N.C. Gen. Stat. § 75-1.1 in the area of commerce regulated by these provisions, namely debt collection and collection agencies.

CLASS ALLEGATIONS

23. Defendant and Counterclaimant Caroline L. Houston is one of numerous North Carolina residents who have been the subject of a PRA lawsuit or lawsuit and judgment based on a Complaint that violates North Carolina law.

24. Ms. Houston seeks to maintain this Answer and Counterclaim as a class answer and a class counterclaim, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, on her behalf and on behalf of all other persons similarly situated.

25. The proposed class definition is as follows:

All individuals against whom PRA filed a complaint seeking collection of a debt in the North Carolina courts on or after October 1, 2009 and all people to whom PRA sent a "Notice of Intent to File Legal Action" on or after October 1, 2009.

26. On information and belief, the class is so numerous, in excess of 1000 persons, that joinder of all members of the class is impractical; there are questions of law and fact common to the class; the claims and defenses of Defendant-Counterclaim Plaintiff Houston are typical of the claims and defenses of the class and Defendant-Counterclaim Plaintiff Houston will adequately represent and protect the interests of the class.

27. PRA is collecting debts from North Carolina consumers and filing lawsuits across the state, using a uniform business practice, without providing requisite proof that the consumer incurred the debt, without requisite proof as to the itemization of what is owed, and without requisite proof that PRA owns the debt.

28. PRA has acted or refused to act and will continue to do so on grounds generally applicable to the class thereby making injunctive or declaratory relief appropriate with respect to the class as a whole. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for PRA.

29. Questions of law and fact common to the members of the class predominate over any question affecting only an individual member or members and a class action is superior to other available methods for the fair and effective adjudication of the controversy.

CLAIMS FOR RELIEF

WHEREFORE, Ms. Houston asserts the following claims and requests for relief on her own behalf and on behalf of the members of the plaintiff class:

FIRST CLAIM FOR RELIEF **Declaratory Judgment**

30. This First Claim for Relief asserts a class counterclaim on behalf of all members of the proposed class. All allegations set out elsewhere in this Answer and Class Counterclaim are incorporated herein by reference.

31. Ms. Houston is entitled to, and requests, a declaration that the following conduct of PRA violates the PPCA at N.C. Gen. Stat. §58-70-115 (5): filing of Complaints without attaching any contract or other writing evidencing the original debt that contains a signature of

the debtor, and, for credit cards for which no written contract ever existed, filing of Complaints without attaching copies of documents generated when the credit card was actually used.

32. Ms. Houston is entitled to, and requests, a declaration that PRA's sending a "Notice of Intent to File Legal Action" and failing to produce a copy of the contract evidencing the alleged debt and an itemized accounting of all amounts claimed to be owed prior to filing suit is an unfair attempt to collect a debt in violation of N.C. Gen. Stat. §58-70-115 (6).

33. Ms. Houston is entitled to, and requests, a declaration that PRA's failure to send a "Notice of Intent to File Legal Action" prior to filing suit is an unfair attempt to collect a debt in violation of N.C. Gen. Stat. §58-70-115 (6).

SECOND CLAIM FOR RELIEF

Violation of North Carolina Prohibited Practices by Collection Agencies Act N.C. Gen. Stat. § 58-70-90 *et seq.*

34. The allegations of the preceding paragraphs are re-alleged and incorporated herein by reference as if set forth fully herein.

35. PRA is a "collection agency" as defined by North Carolina's Prohibited Practices by Collection Agencies (PPCA) statute at N.C. Gen. Stat. §§ 58-70-15 and 58-70-90.

36. PRA is also a "debt buyer" as defined in N.C. Gen. Stat. § 58-70-15(b)(4) as "a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

37. Counterclaimant Houston is a "consumer" as defined by North Carolina's Prohibited Practices by Collection Agencies statute at N.C. Gen. Stat. § 58-70-90(2) as "an

individual, aggregation of individuals, corporation, company, association, or partnership that has incurred a debt or alleged debt.”

38. Venue is proper in this District because the acts and transactions occurred here, Houston resides here, and PRA transacts business here.

39. At all times relevant to the subject matter of this Complaint / Counterclaim, PRA was involved in business activities in this state including collecting or attempting to collect payments and was therefore engaged in commerce in North Carolina.

40. PRA filed this action against Houston, and other similar actions throughout North Carolina, seeking to collect alleged debts.

41. PRA as a debt buyer has attempted to collect a debt by unfair means in violation of N.C. Gen. Stat. §58-70-115(5) by filing Complaints in court without valid documentation it is the owner of the specific account at issue and without reasonable verification of the amount of the debt allegedly owed by the defendant, by failing to produce a copy of the contract evidencing the alleged debt and an itemized accounting of the amount claimed to be owed including all fees and charges.

42. PRA as a debt buyer has attempted to collect a debt by unfair means in violation of N.C. Gen. Stat. §58-70-115(6) by failing to send alleged debtors, including Ms. Houston, a “Notice of Intent to File Legal Action” that included a copy of the contract evidencing the alleged debt and an itemized accounting of all amounts claimed to be owed prior to filing suit.

43. PRA as a debt buyer has attempted to collect a debt by unfair means in violation of N.C. Gen. Stat. §58-70-150(1) and §58-70-115(5) by filing Complaints without including as an attachment any contract or other writing evidencing the original debt that contains a signature of the consumer being sued.

44. PRA as a debt buyer has further attempted to collect a debt by unfair means in violation of N.C. Gen. Stat. §58-70-150(1) and §58-70-115(5) by filing Complaints without alleging that no signed contract ever existed and attaching copies of documents purporting to be generated when the credit card was actually used though they do not reflect any actual charges having been made.

45. PRA as a debt buyer has further attempted to collect a debt by unfair means in violation of N.C. Gen. Stat. §58-70-150(2) and §58-70-115(5) by filing Complaints without attaching a valid assignment or other writing evidencing transfer of ownership that contains the original account number of the debt purchased and shows the debtor's name associated with that account number.

46. As a result of PRA's violations of the North Carolina Prohibited Practices by Collection Agencies Act, Houston and all members of the Class are entitled to actual damages and to statutory damages in an amount not less than \$500.00 but no greater than \$4,000.00 per violation pursuant to N.C. Gen. Stat. §58-70-130; and, reasonable attorney's fees and costs pursuant to N.C. Gen. Stat. §75-16.

47. PRA is liable to Ms. Houston and to all class members for:

- (a) any actual damages, including all amounts paid to PRA on the alleged debt on or after January 1, 2011;
- (b) "civil penalties" under N.G.S. 58-70-130 as prescribed by the Court, "which shall not be less than five hundred dollars (\$500.00) for each violation nor greater than four thousand dollars (\$4,000) for each violation;"
- (c) attorney fees pursuant to G.S. 58-70-130(c) and 75-16.1.

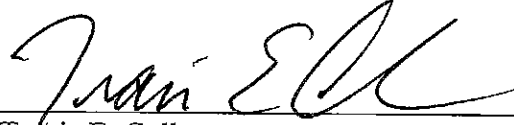
PRAYER FOR RELIEF

WHEREFORE, Defendant and Counterclaim Plaintiff prays that this Court:

1. Enter an Order that Plaintiff have and recover nothing of the Defendant in this action and that this action be dismissed with prejudice.
2. Certify this case as a class action.
3. Enter a declaratory judgment that the following conduct of PRA violates the PPCA at N.C. Gen. Stat. §58-70-115 (5): filing of Complaints without attaching any contract or other writing evidencing the original debt that contains a signature of the debtor, and, for credit cards for which no written contract ever existed, filing of Complaints without attaching copies of documents generated when the credit card was actually used.
4. Enter a declaratory judgment that PRA's failure to send a "Notice of Intent to File Legal Action" with a copy of the contract evidencing the alleged debt and an itemized accounting of all amounts claimed to be owed prior to filing suit is an unfair attempt to collect a debt in violation of N.C. Gen. Stat. §58-70-115 (6).
5. Enter a declaratory judgment that PRA's sending a "Notice of Intent to File Legal Action" and failing to produce a copy of the contract evidencing the alleged debt and an itemized accounting of all amounts claimed to be owed prior to filing suit is an unfair attempt to collect a debt in violation of N.C. Gen. Stat. §58-70-115 (6).
6. Enter a money judgment against PRA and in favor of all class members for an award of actual damages in an amount to be determined at trial and \$4000 to each member of the Class in statutory damages per violation pursuant to the violations of N.C. Gen. Stat. § 58-70-90, *et. seq.* alleged herein.
7. Award attorney fees pursuant to G.S. 58-70-130(c) and 75-16.1.

8. Grant such other relief as the Court may deem appropriate.
9. Tax the costs of this action, to PRA.
10. As to any disputed issues of fact, grant plaintiff TRIAL BY JURY.

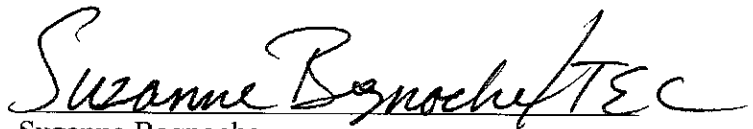
This the 14 day of May, 2012.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing "Answer and Class Counterclaim of Caroline L. Houston" were served upon all parties by U.S. mail, as follows:

Mitchell A. Meyers.
Sessoms & Rogers, P.A.
P.O. Box 52508
Durham, NC 27717

This the 14 day of May, 2012.



Travis E. Collum

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BY 