

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael Fuller, Oregon Bar No. 09357
Trial Attorney for Debtor
OlsenDaines, PC
9415 SE Stark St., Suite 207
Portland, Oregon 97216
Email: mfuller@olsendaines.com
Office: (503) 274-4252
Fax: (503) 362-1375
Cell: (503) 201-4570

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re)
Sergio Martinez and Maria Gonzalez,)
Debtors.)
_____)
SERGIO MARTINEZ,)
Plaintiff,)
v.)
CITIBANK, N.A., a foreign legal entity, and)
SUTTELL & HAMMER PS, a foreign)
corporation.)
Defendants.)
_____)

Case No. 10-36845-rld13
Adv. Pro. No.
**COMPLAINT FOR VIOLATION OF
THE AUTOMATIC STAY,
CONTEMPT, AND UNLAWFUL DEBT
COLLECTION**
JURY TRIAL DEMANDED
11 U.S.C. § 362(k)
15 U.S.C. § 1692 et seq.
ORS 646.639 et seq.

1.

INTRODUCTION

Despite receiving actual notice of the automatic stay and having filed a proof of claim in this case, Defendants garnished Debtor’s bank account in June 2012.

Defendants have not timely responded to email from Debtor’s bankruptcy attorney and now necessitate this action to remedy their contempt and recover fair and just compensation.

1
2 Sergio Martinez (“Debtor”), by and through his trial attorney, Michael Fuller, alleges:

3
4 2.

5 **JURISDICTION AND THE PARTIES**

6 This is an adversary proceeding brought under 11 U.S.C. §§ 105 and 362(k), the Fair
7 Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Oregon Unlawful
8 Debt Collection Practices Act (“OUDCPA”), ORS 646.639 *et seq.*

9
10 3.

11 This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1334, 157, and 1367 because
12 Debtor’s state law claim is so related to the automatic stay claim that they form part of the same
13 case or controversy.

14
15 4.

16 This adversary proceeding is one arising in and related to the above-captioned bankruptcy
17 case, filed under Chapter 13 of Title 11 now open in this Court. The action for violating the
18 automatic stay and for contempt are core proceedings under 28 U.S.C. § 157. Pursuant to §
19 157(e), Debtor consents to a jury trial before the Bankruptcy Court.

20
21 5.

22 This is an action for declaratory relief, actual damages, statutory damages, punitive
23 damages, sanctions, and attorneys fees and costs brought by Debtor against Citibank, N.A.
24 (“Citibank”) and its attorney Suttell & Hammer PS (“Suttell”) resulting from ongoing willful
25 violation of the automatic stay and refusal to timely respond to Debtor’s bankruptcy attorney.

26
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6.

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

7.

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

8.

Citibank operates its banking business through various branches in Oregon.

9.

Citibank is a national banking association and a “person” as defined by the OUDCPA at ORS 646.639(1)(h).

10.

Citibank engages in consumer banking transactions with Oregonians and is a “commercial creditor” as defined by the OUDCPA at ORS 646.639(1)(c).

11.

Citibank directly, and indirectly through its attorney Suttell, 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.

Suttell operates its debt collection business in Oregon and files various collection-related lawsuits in Oregon courts.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13.

Suttell is a Washington corporation and a “person” as defined by the OUDCPA at ORS 646.639(1)(h).

14.

Suttell regularly collects Citibank’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.

Suttell attempts to collect Debtor’s alleged obligation to Citibank constituting a “debt” as defined by the OUDCPA at ORS 646.639(1)(e).

16.

FACTUAL ALLEGATIONS

Prior to filing for Chapter 13 bankruptcy protection, Debtor owed a debt to Citibank.

17.

Debtor filed for Chapter 13 bankruptcy protection in this Honorable Court on July 20, 2010.

18.

Debtor listed Citibank on his schedule of unsecured creditors.

19.

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

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20.

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

21.

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

22.

The court-generated notice advised Citibank to consult a lawyer to determine its rights in Debtor's bankruptcy case.

23.

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

24.

On August 4, 2010 Citibank filed a proof of claim in Debtor's bankruptcy case.

25.

On July 28, 2011 Citibank filed a transfer of claim notice in Debtor's bankruptcy case.

26.

After receiving actual written notice of Debtor's bankruptcy case and the automatic stay, Citibank willfully harassed Debtor in an attempt to collect on a claim arising before the commencement of his bankruptcy case.

27.

Specifically, Citibank and its attorney Suttell garnished Debtor's bank account on or around June 2012.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

31.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(WILLFUL VIOLATION OF THE AUTOMATIC STAY)

(11 U.S.C. § 362(k))

Debtor incorporates the above by reference.

32.

Citibank and Suttell’s garnishment of Debtor’s bank account despite receiving multiple actual notices of the automatic stay constitute a willful violation of 11 U.S.C. § 362.

33.

Citibank and Suttell’s refusal to take immediate affirmative steps to remedy their contempt constitute a willful ongoing violation of 11 U.S.C. § 362.

34.

Citibank and Suttell’s willful choices violate the automatic stay and provide them an unfair advantage over other creditors that choose to responsibly conduct themselves within the bounds of the automatic stay and order confirming plan.

35.

Debtor is entitled to and so seeks punitive damages against Citibank and Suttell so it may become profitable for them to follow the rules and abide by the Orders of this Court in the future.

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

36.

Debtor is injured as a result of Citibank and Suttell’s willful violations, and so is entitled to actual damages, punitive damages, declaratory relief that Citibank and Suttell violated the automatic stay, and attorneys fees and costs to remedy the contempt pursuant to 11 U.S.C. § 362(k).

37.

SECOND CLAIM FOR RELIEF
(COMPENSATORY CIVIL CONTEMPT)
(11 U.S.C. § 105)

Debtor incorporates the above by reference.

38.

Citibank and Suttell’s choices, taken without first seeking instruction from this Court or the Chapter 13 Trustee, are in direct violation of this Court’s Order and they should be sanctioned and held in contempt pursuant to 11 U.S.C. § 105 and pursuant to this Court’s inherent powers.

39.

THIRD CLAIM FOR RELIEF
(OUDCPA)
(ORS 646.641)

Debtor incorporates the above by reference.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

40.

Citibank and Suttell injured Debtor through their willful unlawful collection practices as detailed above, violating the OUDCPA, specifically ORS 646.639(2)(k).

41.

As a result of Citibank and Suttell's willful unlawful collection practices, Debtor 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.

42.

FOURTH CLAIM FOR RELIEF

(FDCPA)

(15 U.S.C. § 1692k)

Debtor incorporates the above by reference.

43.

Suttell injured Debtor through its willful unlawful collection practices as detailed above, violating the FDCPA, specifically 15 U.S.C. § 1692e and f.

44.

As a result of Suttell's willful unlawful collection practices, Debtor is entitled to the greater of actual damages or \$1,000 and reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k.

45.

Debtor is entitled to and so demands a jury trial on the OUDCPA and FDCPA claims.

///

1
2 **WHEREFORE**, Debtor request judgment against Citibank and Suttell as follows:

- 3
4 A. Declaratory judgment that Citibank and Suttell's choices willfully violated the
5 automatic stay;
- 6 B. An Order holding Citibank and Suttell in contempt;
- 7 C. An award of actual damages against Citibank and Suttell;
- 8 D. An award of statutory damages against Citibank and Suttell;
- 9
10 E. An award of punitive damages against Citibank and Suttell;
- 11 F. An award of sanctions against Citibank and Suttell;
- 12 G. An award of expenses, including reasonable attorneys fees and costs against Citibank
13 and Suttell;
- 14
15 H. For such other and further relief as this Court may deem just and proper.

16
17 Dated: July 4, 2012

18 /s/ Michael Fuller

19 Michael Fuller, Oregon Bar No. 09357
20 Trial Attorney for Debtor
21 OlsenDaines, PC
22 9415 SE Stark St., Suite 207
23 Portland, Oregon 97216
24 Email: mfuller@olsendaines.com
25 Office: (503) 274-4252
26 Fax: (503) 362-1375
27 Cell: (503) 201-4570
28