

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA,
RICHMOND DIVISION

2008 MAR -6 A 11: 24

CLERK US DISTRICT COURT
RICHMOND, VIRGINIA

CAPITAL ONE BANK (USA) N.A., CAPITAL)
ONE, N.A., CAPITAL ONE AUTO FINANCE,)
INC.,)

Plaintiffs,

vs.

HESS KENNEDY CHARTERED, LLC,)
HESS KENNEDY HOLDINGS, LTD.,)
CONSUMER CREDIT COUNSELING)
OF AMERICA, INC., THE CAMPOS)
CHARTERED LAW FIRM, THE)
CONSUMER LAW CENTER, LLC,)

Defendants .

CIVIL ACTION NO.

3:08cv147
(HEH)

COMPLAINT

COME NOW Plaintiffs CAPITAL ONE BANK (USA) N.A., CAPITAL ONE, N.A., and CAPITAL ONE AUTO FINANCE, INC., and file this complaint against Defendants Hess Kennedy Chartered, LLC, Hess Kennedy Holdings, Ltd. (collectively referred to as "Hess Kennedy"), Consumer Credit Counseling of America, Inc. ("CCCA"), The Campos Chartered Law Firm ("Campos"), and The Consumer Law Center, LLC ("Consumer Law Center") (collectively referred to as "Defendants"), and state as follows:

I. INTRODUCTION

1. The Defendants are engaged in a fraudulent conspiracy to interfere with and disrupt the business of Plaintiffs, defraud consumers, and misappropriate the resources of federal and state judiciaries.

2. Plaintiffs are in the business of extending credit to consumers in Virginia and other states through credit card accounts. Each account is issued pursuant to and governed by a Customer Agreement between a consumer and one of the Plaintiffs. The Customer Agreement requires the consumer to pay Plaintiff the amounts of any charges to the credit card account, as well as other fees, charges and interest accruing to the account.

3. Through Defendants' fraudulent conspiracy, as of the filing of this action, consumers have "disputed" and/or refused or failed to pay legitimate amounts owing to Plaintiffs on more than seven thousand three hundred (7,300) accounts with Plaintiffs, in violation of the applicable Customer Agreement. In an intentional, illegal effort to disrupt Plaintiffs' businesses and to interfere with Plaintiffs' contractual relations with Plaintiffs' consumers, Defendants have literally sent thousands of letters to Plaintiffs fraudulently disputing valid debts with the intent of forcing Plaintiffs to forego lawful attempts to collect account balances and forcing Plaintiffs to agree to waive valid account balances.

4. This fraudulent scheme is initiated by Defendant CCCA who solicits consumers through web sites and other advertising to sign up for "debt reduction services." Once a consumer signs up with CCCA, Defendant Hess Kennedy and or Campos agrees to "represent" the consumer and sends letters on behalf of the consumers to Plaintiffs and other creditors fraudulently disputing valid, legitimate account balances.

5. In this action, Plaintiffs seek, among other things, to enjoin Defendants from soliciting Plaintiffs' consumers, representing Plaintiffs' consumers, attempting to disrupt Plaintiffs' businesses with fraudulent correspondence, and interfering with Plaintiffs' contractual

relations with its consumers. Plaintiffs also seek an award of damages based on Defendants' intentional and unlawful conduct.

II. JURISDICTION AND VENUE

6. This court has jurisdiction pursuant to 28 U.S.C. § 1331, in that, this controversy involves an action under the Credit Repair Organization Act, 15 U.S.C. § 1679. This Court also has jurisdiction of this matter pursuant to 28 U.S.C. § 1332, in that, this is a controversy between citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(c), because, among other things, the actions complained of occurred in Richmond, Virginia, and the Defendants contacts with this forum are substantial.

8. Defendants have conspired to enter into contracts with, represent, and send letters on behalf of consumers who reside within the Eastern District of Virginia. Further, Defendants have conspired to send thousands of letters on behalf of Plaintiffs' consumers to Plaintiffs in this District.

III. PARTIES

9. Plaintiff Capital One Bank (USA), N.A. is a national banking association organized under federal law, with its principal place of business in Virginia.

10. Plaintiff Capital One, N.A. is a federal savings bank with its principal place of business in Virginia.

11. Plaintiff Capital One Auto Finance, Inc. is a wholly owned subsidiary of Capital One, N.A. with its principal place of business in Virginia.

12. Defendant Hess Kennedy Chartered, LLC is a limited liability company organized under the laws of Florida, with its principal place of business in Florida.

13. Defendant Hess Kennedy Holdings, Ltd. is a limited liability company organized under the laws of Florida, with its principal place of business in Florida.

14. Defendant Consumer Credit Counseling of America, Inc. is a corporation organized under the laws of Massachusetts, with its principal place of business in Massachusetts.

15. Defendant The Campos Chartered Law firm is a corporation organized under the laws of Florida, with its principal place of business in Florida.

16. Defendant The Consumer Law Center, LLC is a limited liability company organized under the laws of Florida, with its principal place of business in Florida.

IV. FACTS

17. Upon information and belief, Defendants, as a part of an ongoing nationwide conspiracy, have created and are engaged in a scheme whereby consumers of the Plaintiffs are led to believe that Defendants will erase their credit card debt through the legal services of Hess Kennedy or its affiliates. Specifically, Hess Kennedy states on its website:

We work with approved debt consolidation organizations that negotiate with over 50,000 creditors and we are confident that we will be able to help you to develop a debt consolidation repayment plan or credit card management plan that will fit your budget and help you to reach your goal of becoming DEBT FREE! Remember THERE IS LIFE AFTER DEBT and we will help you get back on track.

If you carry a balance, a credit card debt can be like a very expensive loan made by banks, gasoline companies or department stores. These credit card debts yield high profits to their issuers for several reasons. The most important is the high rate of interest (as high as 33% each year). Interest from a credit card alone can account for the bulk of the profits earned by the bank that issued you the credit card. Also, many credit card companies charge an annual fee for issuing you the credit card, and most of these companies charge late fees, over-the-limit fees and other miscellaneous charges. Finally, the banks and loan companies profit by charging the merchants and service providers a fee each time a customer uses the loan company's credit card in the merchant's establishment. Our debt consolidation and credit card management program can help you put an end to these high interest credit card debts. A Certified Debt Counselor will contact you within the next 24 hours with your free consultation. Please have your most recent Credit Card Statements available and we will show you how to consolidate them to save you from 20% to as much as 60% in monthly payments!

(Hess Kennedy Chartered Company web site, http://www.hesskennedycompany.com/credit_counseling.html, a copy of which is attached hereto as Exhibit "1".) Hess Kennedy's website also explains: "We will help you make the best choices possible despite difficult financial circumstances. We will help you decide whether there are debts you can ignore and what your options are when you cannot ignore a particular debt." (Hess Kennedy Chartered Company web site, http://www.hesskennedycompany.com/debt_settlement.html, a copy of which is attached hereto as Exhibit "2".) Campos identically states on its website as follows:

We work with approved debt consolidation organizations that negotiate with over 50,000 creditors and we are confident that we will be able to help you to develop a debt consolidation repayment plan or credit card management plan that will fit your budget and help you to reach your goal of becoming DEBT FREE!

(The Campos Chartered Law Firm website, <http://www.camposlegalservices.com/creditcounseling.html>, a copy of which is attached hereto as Exhibit "3".)

18. This scheme is one of countless examples of debt elimination schemes directed at making Defendants easy money by swindling consumers into believing their debts can be eliminated simply by the mailing of a "dispute" letter by one of the Defendants to Plaintiffs.

19. Through a telemarketing and internet ploy, CCCA signs up consumers under the guise that it will hire the consumer a lawyer who will help the consumer eliminate his credit card debt. CCCA collects an over-the-phone payment from the consumer for its initial “services” by directly debiting the consumer’s bank account. Upon information and belief, CCCA takes initial information regarding the consumer, his debts, account numbers, and address. CCCA then sends the consumer’s information to one of the law firm defendants for “validation.”

20. Upon information and belief, Hess Kennedy, Campos and/or the Consumer Law Center, without ever meeting or conferring with their “client,” inserts the consumers’ name and credit card information into a form letter. The letter is sent to Plaintiffs and other credit card companies alleging that the entire balance of the credit card is in “dispute.”

21. A virtually identical letter is sent for every consumer without regard for the age of the consumer’s account, the consumer’s debt load, the type of the account, or any other factor. That letter reads in part as follows:

The undersigned represents the above named consumer. The purpose of this letter is to determine the nature of the relationship between your company and my client, as well as the nature, validity and scope of the alleged debt. This is a request for strict proof of your claim under commercial and general contract law principals. Please be advised than any communications that you make in this matter will become part of an administrative record, and may be used in litigation of claims related to the above listed account.

....

My client is disputing the accuracy and validity of the balance as reflected on your most recent statement, as well as disputing the accuracy and validity of all charges shown on all statements that my client may have ever received, as well as all statements my client may receive until this dispute is resolved. To be clear, at this point in my investigation, and based upon conversations that I have had with legal and accounting advisors, my client is disputing the entire balance and every charge reflected on the disputed account. As such, any claim based upon an account stated is without foundation and is hereby disputed.

....

Unless and until the above listed information is provided, there can be no “default” on this account. Further, this account is not stated, and I hereby specifically rebut any presumption that this account has been stated. Absent your providing the above-listed documentation, validation and verification, the remedy I seek is the complete elimination and / or discharge of the entire balance of the account referenced above, and the complete removal of my client’s name from your records. I also request, a zero balance due statement showing that no further monies are owed and no balance is due.

Your failure to satisfy this dispute and request within the requirements of federal and state commercial and collections law will be construed as your absolute waiver of any and all claims against my client, and your tacit agreement to compensate my client for costs and attorneys’ fees.

(Exemplar Letter from Hess Kennedy Company Chartered to Capital One, Billing Dispute Representative (Mar. 23, 2007) attached as Exhibit “4”.)

22. The letters also claim that any communication with the borrower will constitute a violation of the Fair Credit Billing Act, and communications with the borrower about the debt will be a violation of the Fair Debt Collection Practices Act. (*Id.*) The letters specifically ask for information relating to the validity and legal sufficiency of the claim for the valid debt. (*Id.*)

23. Defendants have no legitimate legal basis for the positions advocated in said letters to Plaintiffs. Hess Kennedy’s illegitimate letters lack factual or legal support.

24. In an effort to squeeze within the terms of the Fair Credit Billing Act, 15 U.S.C. § 1666, *et seq.* (“FCBA”), the letters claim that the entire credit card balance is in dispute. The Hess Kennedy letters are not “billing error notices” pursuant to the FCBA. The letters are not related to an actual disputed bill or charge. Upon information and belief, many consumers are not even aware when the letter is sent by Hess Kennedy.

25. The letters are intended not only to disrupt Plaintiffs' businesses, but also to interfere with Plaintiffs' contractual relationships with its consumers.

26. To date, through this conspiracy, Hess Kennedy, Campos, and its affiliates have sent more than eight thousand (8,000) letters to Plaintiffs allegedly disputing the balances of over 7,300 accounts.

27. Upon information and belief, Defendants instruct consumers to stop making payments on their debts. To date, the aggregate balance of the accounts Defendants have challenged through this unlawful conspiracy is more than sixteen million dollars (\$16,000,000).

28. Plaintiffs have attempted by correspondence to contact its consumers to advise of the receipt of the correspondence from Defendants. In its correspondence to the consumers, Plaintiffs explain the consumers must give the Plaintiffs authorization to allow communication with the law firms regarding the consumer's account. (As an example, see Letter from Capital One Bank to Margaret Ellard (January 17, 2007) attached as Exhibit "5".)

29. Plaintiffs have notified Hess Kennedy that their actions are interfering with the contractual relations between the Plaintiffs and their consumers. Plaintiffs wrote Hess Kennedy and stated:

Capital One Financial Services, Inc. and its affiliates ("Capital One") are in receipt of hundreds of letters from your firm making identical unsubstantiated allegations that lack factual or legal merit. The letters appear to be part of a concerted effort by you and your firm to delay, and impede, without any legal basis, Capital One's ability to collect outstanding credit card debt. Capital One has no duty to respond to the letters.

Further these activities by you and your firm constitute, among other things, tortious interference with business relations. This letter serves as notice that

Capital One will pursue all available legal remedies should these activities continue.

Capital One demands that you cease and desist all communications of this nature. This letter serves as notice to your firm and its clients that Capital One hereby reserves all rights against you, your firm, and all associated individuals and entities.

(See Letter from Capital One to Hess Kennedy & Company (July 24, 2007) attached as Exhibit "6".) Nevertheless, Defendants have continued to engage in this scheme and conspiracy even after Plaintiffs' notice.

30. Upon information and belief, individual Defendants and affiliates are using the limited liability companies and corporations as a shell and are disregarding the corporate form in order to shield themselves from liability. Hess Kennedy, Campos, and The Consumer Law Firm, LLC are all located on North University Drive in Coral Springs, Florida.

V. CAUSES OF ACTION

**COUNT ONE
CREDIT REPAIR ORGANIZATION ACT**

31. Plaintiffs adopt and reallege the allegations contained in all preceding paragraphs the same as is set forth fully herein.

32. The purpose of the Credit Repair Organization Act ("CROA") is "to protect the public from unfair or deceptive advertising and business practices by credit repair organizations." 15 U.S.C. § 1679(b).

33. A credit repair organization is defined as, among other things "any person who uses any instrumentality of interstate commerce or the mails to . . . provide . . . any service, in return for the payment of money or other valuable consideration, for the express or implied

purpose of -- (i) improving any consumer's credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i)." 15 U.S.C. § 1679a(3). None of the Defendants are exempted from the act as each is clearly a credit repair organization as defined by CROA.

34. The Credit Repair Organization Act prohibits the Defendants from, among other things, making misleading or untrue representations of the services of the credit repair organization. 15 U.S.C. § 1679b(3).

35. In violation of 15 U.S.C. § 1679b, upon information and belief, Defendants, among other things, violate CROA in numerous ways, including but not limited to, making promises to consumers regarding their credit, and request payment from consumers in order to eliminate debt that Defendants feel can be ignored.

36. In performing these actions, Defendants are credit repair organizations, as defined by the Credit Repair Act.

37. Additionally, these actions are interfering with the contractual relationship between Plaintiffs and their consumers, and these actions are unfair business practices.

38. Defendants have sent well over 8,000 letters relating to more than 7,300 of Plaintiffs accounts. Although Plaintiffs have requested that these letters cease, Defendants continue to intentionally interfere with the business relationship of Plaintiffs and their consumers.

39. Defendants instruct consumers to stop making payments on their debts. To date, the aggregate balance of the accounts Defendants have challenged through this unlawful conspiracy is more than sixteen million dollars (\$16,000,000).

40. CROA provides liability to any person who is damaged by the failure of another to abide by the terms of the act which includes the Defendants actions making false statements to individuals and participating in this scheme. 15 U.S.C. § 1679g.

41. As a direct and proximate result of the intentional misleading statements and information provided by Defendants to Plaintiffs' consumers in violation of the CROA, Plaintiffs have incurred significant financial loss, including but not limited to, delayed payment from over 7,300 accounts, loss of interest payments and the costs and fees associated with pursuing payment of debt from consumers. The Act provides for actual damages for the amount of damage sustained as a result of the Defendants' liability under the act, punitive damages, and attorney's fees. 15 U.S.C. § 1679g.

WHEREFORE, Plaintiffs pray that this Court award Plaintiffs the following:

- A. compensatory damages;
- B. punitive damages;
- C. pre-judgment interest;
- D. costs;
- E. attorneys' fees;
- F. equitable relief; and
- G. any other relief to which Plaintiffs may be entitled.

COUNT TWO
TORTIOUS INTERFERENCE WITH
CONTRACTUAL OR BUSINESS RELATION

42. The Plaintiffs adopt and reallege the allegations contained in all preceding paragraphs the same as if set forth fully herein.

43. Defendants, individually, collectively, and by means of their conspiracy, have purposefully, knowingly and without justification interfered with the contractual and business relations between Plaintiffs and their consumers.

44. Defendants knew and know of the existence of the contractual or business relationships between Plaintiffs and their consumers that, among other things, require consumers to pay Plaintiffs the amount of any charges to the credit card account as well as other fees, charges and interest.

45. Defendants intentionally seek to interfere and have interfered with those contractual and business relationships by seeking to prevent and have prevented consumers from paying legitimate amounts owing to Plaintiffs and by seeking to preclude Plaintiffs from collecting legitimate amounts consumers owe Plaintiffs.

46. Defendants intentionally seek to interfere and have interfered with those contractual and business relationships by attempting to create an unbearable burden on Plaintiffs to respond to unauthorized and improper requests for the production of documents related to the credit card accounts of Plaintiffs' consumers.

47. The Defendants knowingly and intentionally interfered with and caused the disruption of the contractual relationships between Plaintiffs and their consumers by sending

more than eight thousand (8,000) letters to Plaintiffs fraudulently “disputing” the valid debt of over 7,300 accounts. This intentional interference has caused a breach of the relationship between Plaintiffs and their consumers.

48. Defendants have no justification for their interference with Plaintiffs contractual and business relationships with its consumers.

49. But for the Defendants’ wrongful and intentional interference, Plaintiffs would not have received and responded to thousands of baseless, fraudulent letters from the Defendants.

50. As a direct and proximate result of the foregoing intentional interference by Defendants, Plaintiffs have sustained an undetermined amount of monetary damages due to:

- b) the receipt of and the response to the thousands of letters sent by Defendants;
- c) the disruption of Plaintiffs’ communications with its consumers;
- d) the disruption of Plaintiffs’ receipt of payments from its consumers; and
- e) the disruption of Plaintiff’s rights to attempt to collect the balances due on the credit card accounts of its consumers.

WHEREFORE, Plaintiffs pray that this Court award Plaintiffs the following:

- A. compensatory damages in excess of \$75,000;
- B. punitive damages;
- C. pre-judgment interest;
- D. costs;

- E. attorneys' fees;
- F. equitable relief; and
- G. any other relief to which Plaintiffs may be entitled.

COUNT THREE
CONSPIRACY

51. Plaintiffs adopt and reallege the allegations contained in all preceding paragraphs the same as is set forth fully herein.

52. Defendants conspired to defraud Plaintiffs of money owed on consumers' credit card accounts and to intentionally interfere with contractual or business relations between Plaintiffs and their consumers.

53. Upon information and belief, Defendants conspired to solicit consumers via the internet and falsely promised to have all debt decreased and/or eliminated. The consumers tendered payment to CCCA for their application services. CCCA then transfers the consumers to one of the defendant law firms, where the law firm sends out an identical form letter to Plaintiffs for each individual the law firms claim to represent.

54. As a proximate result of this conspiracy and the fraudulent and deceitful conduct of Defendants, Plaintiffs have incurred significant financial loss, including but not limited to, delayed payment from over 7,300 accounts, loss of interest payments and the costs and fees associated with pursuing payment of debt from consumers.

WHEREFORE, Plaintiffs pray that this Court award Plaintiffs the following:

- H. compensatory damages in excess of \$75,000;
- I. punitive damages;

- J. pre-judgment interest;
- K. costs;
- L. attorneys' fees;
- M. equitable relief; and
- N. any other relief to which Plaintiffs may be entitled.

COUNT FOUR
PERMANENT INJUNCTION

55. Plaintiffs adopt and reallege the allegations contained in all preceding paragraphs the same as is set forth fully herein.

56. As a direct and proximate result of the foregoing intentional interference by the Defendants, Plaintiffs have suffered immediate and irreparable injury, loss, harm and damage and will continue to suffer this irreparable harm in the future if Defendants are not enjoined from continuing to solicit Plaintiffs' consumers, represent Plaintiffs' consumers, attempting to disrupt Plaintiffs' businesses with fraudulent correspondence, and interfere with Plaintiffs' contractual relations with its consumers.

57. Plaintiffs have no adequate remedy at law for said injuries, in that, among other things, Plaintiffs will continue to receive correspondence from Defendants attempting to stop payment from consumers on valid debts unless the Defendants' wrongful conduct is enjoined.

58. Further, upon information and belief, other credit card issuers are facing similar influxes of correspondence from the Defendants seeking to cease all communication with consumers. The public interest will be served by enjoining these Defendants from soliciting consumers.

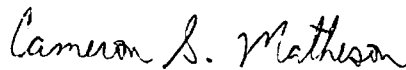
WHEREFORE, Plaintiffs pray that this Court award Plaintiffs the following:

- A. monetary damages in excess of \$75,000;
- B. a temporary restraining order
- C. preliminary and permanent injunctive relief on Counts I, II, and III of the Complaint; and
- D. any other relief to which Plaintiffs may be entitled.

Dated: March 6, 2008

Respectfully submitted,

CAPITAL ONE BANK (USA) N.A.,
CAPITAL ONE, N.A.,
CAPITAL ONE AUTO FINANCE, INC.



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