

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

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4 JEANNETTE M. GRAMMATICO,

5 Plaintiff,

6 V.

91-CV-467

7 STERLING, INC,

8 Defendant.

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10 TRANSCRIPT OF PROCEEDINGS held in and for  
11 the United States District Court, Northern District of  
12 New York, at the United States Federal Building, 15 Henry  
13 Street, Binghamton, New York 13901, on Friday, December 27,  
14 1991, before the HON. THOMAS J. McAVOY, United States  
15 District Court Judge.

16 APPEARANCES:

17 FOR THE PLAINTIFF:

18 UAW LEGAL SERVICES PLAN  
19 BY: O. RANDOLPH BRAGG, ESQ.

20 FOR THE DEFENDANTS:

21 GREEN, HERSHDORFER & SHARPE  
22 LORRAINE JABLONSKI, ESQ.  
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1                   THE COURT:    I appreciate your arguments.  
2   The Court understands that you are claiming that you are  
3   not a debt collector within the meaning of the Act so  
4   you're not covered by its terms.  And I understand that you  
5   are arguing that you are not a debt collector within the  
6   meaning of 1692(a)(6).  You also said that the principal  
7   purpose of Sterling's business is selling jewelry, not the  
8   collection of debts; and because it doesn't collect debts  
9   for another, it's collecting debts for Kay Jewelers because  
10  it owns Kay Jewelers and it's really collecting its own  
11  debt.  And the Court understands your argument in that  
12  regard.  And also you say you come directly within the  
13  exclusion of 1692(a)(6)(b).  But, again, I think it is  
14  relevant to the second sentence of 1692(a)(6), which says  
15  the term debt collector does include any creditor who, in  
16  the process of collecting his own debt, uses any name other  
17  than his own.

18                   You say it didn't use anything other than  
19  its own.  You said it used its own name, Sterling.  
20  However, the debtor would have no way of knowing that.  
21  This goes on to say, "uses any other name than his own  
22  which would indicate that a third person is collecting or  
23  attempting to collect such debts."  If you look at the  
24  letter sent to plaintiff, they indicate they are from  
25  Sterling, Inc.  So the question is would this indicate that.

1 a third person is collecting the debt of Kay Jewelers', or  
2 is Sterling, Inc, and Kay Jewelers one and the same? But  
3 there isn't any indication of that. And your argument is  
4 based upon the corporate relationship. And as far as I'm  
5 concerned, I believe I'm going to hold that that is not in  
6 line with the plain meaning and purpose of the statute.

7 The plain meaning of the second sentence of  
8 1692(a)(6) would indicate that if the letter indicates to  
9 the consumer that a third person's collecting a debt, then  
10 it's an abuse of the statutory purpose. Further, the  
11 statute itself provides that the purpose of the Act is to  
12 protect consumers against debt collection abuses. So, it's  
13 a fair inference from this purpose that it's the impact on  
14 the consumer, not the technical corporate realities of the  
15 situation, which govern the application of the second  
16 sentence. The central focus of the statute is the impact  
17 on the consumer, and so there is a question for the jury to  
18 decide of what was meant. In this case, of course, it  
19 isn't deciding any jury question. I'm just denying your  
20 motion for summary judgment.

21 I have to read it under the existing case  
22 law, read the situation in the light most favorable to the  
23 plaintiff. So, taking into consideration the Britton  
24 decision and McNabb decision, the Court is going to deny  
25 your motion for summary judgment, keeping in mind the

1 principles of Anderson versus Liberty Lobby and Celotex  
2 decisions.

3 Now, the motion for summary judgment, motion  
4 of the plaintiff for partial summary judgment. On two of  
5 your four claims you're not moving, as I understand it,  
6 what you just told the Court under (e)(5) or (e)(10), but  
7 under (e)(11) you are saying that the defendant failed to  
8 provide a debt collection warning. And the Pipiles versus  
9 Credit Bureau of Lockport, Inc, case and Emanuel case that  
10 you mentioned indicate that the requirements of the section  
11 are that all communications clearly state that the debt  
12 collector is attempting to collect a debt and that any  
13 information obtained will be used for that purpose. The  
14 case here is similar to the facts in Emanuel. So, the  
15 Court's going to grant summary judgment for the plaintiff  
16 on the 1692(e)(11) issue.

17 Also, with respect to the 1692(g) issue, the  
18 plaintiff points out correctly that the defendant failed to  
19 give validation notice as required by that section pursuant  
20 to Baker versus GC Services Corporation, which is a Ninth  
21 Circuit case, and Riveria versus MAB Collections, which was  
22 a case out of the Western District of New York. Both cases  
23 stand for the proposition asserted by the plaintiff and the  
24 defendant really doesn't dispute this issue. So I'm going  
25 to grant partial summary judgment to the plaintiff on the -

1 1692(g) issue. The Court will not grant partial summary  
2 judgment as to the (e)(5) and (e)(10) issues.

3 Now, with respect to the counterclaim, the  
4 Leatherwood case as mentioned by plaintiff's counsel, which  
5 was decided by Judge Elfvin in the Western District, a  
6 counterclaim which was similar to this one was dismissed,  
7 because the claim and the counterclaim, while they are  
8 really maybe offshoots of the same transaction, they do  
9 involve different legal duties, different standards, and  
10 different bodies of law. And each claim, the main claim in  
11 this action and the counterclaim, would involve different  
12 evidence to support them.

13 So, I'm going to dismiss the counterclaim  
14 under Rule 13(a). So, the plaintiff's counsel may submit  
15 an order in accordance with this decision.

16 MR. BRAGG: Yes, your Honor.

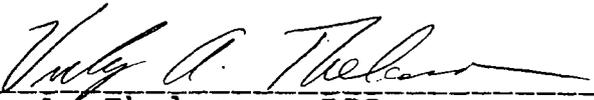
17 MS. JABLONSKI: Thank you, your Honor.

18 THE COURT: Thank you.

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CERTIFICATION:

I, VICKY A. THELEMAN, RPR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

  
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Vicky A. Theleman, RPR  
United States Court Reporter  
U.S. District Court - NDNY

DATED: February 10, 1992.