

NORFOLK, SS.

COMMONWEALTH OF MASSACHUSETTS

DEDHAM DISTRICT COURT  
CIVIL ACTION NO.: 1354 CV 0462

MIDLAND FUNDING, LLC as	)
Assignee of FIA CARD SERVICES,	)
N.A. / WORLDPOINTS,	)
Plaintiff	)
v.	)
JUDY JUBA,	)
Defendant	)

**ORDER DENYING PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S AMENDED COUNTERCLAIM**

Upon consideration of the oral arguments and memoranda of the parties, as well as relevant case law, this Court issues the following findings and rulings:

In reviewing a motion to dismiss, a court accepts facts contained in the complaint, and all reasonable inferences deducible therefrom, as true. *Coraccio v. Lowell Five Cents Sav. Bank*, 415 Mass. 145, 147, (1993). A complaint must contain factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief. *Innacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). In ruling on a 12(b)(6) motion, a court may also take into consideration matters of public record, orders, items in the record of the case, and exhibits attached to the complaint. *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000).

In this case, the defendant, in her counterclaim, alleges that the plaintiff, either directly or indirectly, engages in debt collection by way of credit reporting, sending collection letters through its agents and filing lawsuits against consumers like the defendant. Because the plaintiff does not have a license to act as a debt collector, the defendant is alleging that the plaintiff's actions are a violation of G.L. c. 93, §24A ("the Debt Collection Law"), G.L. c. 93A, and the federal Fair Debt Collection Practices Act.

Under G.L. c. 93, §24, a "debt collector" is any person who uses an instrumentality of interstate commerce or the mails in any business, the principal purpose of which is collection of a debt, or who regularly attempts to collect, either directly or indirectly, the debt of another. Any person who engages in debt collection, either directly or indirectly, must first obtain a license from the Commonwealth. See G.L. c. 93, §24A(a). A violation of the Debt Collection Law can constitute a violation of G.L. c. 93A. *Gomes v. Midland Funding, LLC*, 839 F. Supp. 2d 417, 419 (2012).

Because the Debt Collection Law was modeled on the federal Fair Debt Collection Practices Act (FDCPA), federal courts offer considerable insight on the interpretation of the Debt Collection Law, specifically what constitutes a “debt collector”. Under the FDCPA and the Debt Collection Law, businesses that buy defaulted debts can be considered debt collectors. *McKinney v. Cadleway Properties, Inc.*, 548 F. 3d 496 (7th Cir. 2008). Furthermore, a complaint served directly on a consumer (by an attorney) to facilitate debt-collection efforts (on behalf of his client) can be subject to the FDCPA. *Donohue v. Quick Collect, Inc.*, 592 F. 3d 1027, 1031-1032 (9th Cir. 2010). Despite the exceptions to the Debt Collection Law, businesses cannot prevent their activity from falling under the definition of a debt collector merely by hiring an attorney or purchasing debt that is already in default. Finally, a business may fall under the definition of debt collector even though it is collecting debt for itself, and not the “debt of another”. See *Ruth v. Triumph P 'Ships*, 577 F. 3d 790, 796-797 (7th Cir. 2009).

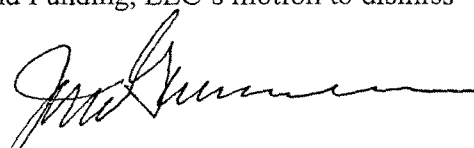
The definition of “debt collector” is essentially the same in the FDCPA and the Debt Collection Law. Therefore, based on the foregoing federal precedents interpreting the term debt collector, Midland Funding cannot necessarily insulate itself by simply hiring a lawyer to collect debt, or collecting debt that is already in default.

Midland Funding, LLC defined itself as a “passive” buyer in its letter soliciting an advisory opinion from the Commissioner of Banks on Midland’s requirement to be licensed. Ltr. From Ashley L. Taylor, Jr., Troutman Sanders, LLP, to Hon. David L. Cotney, Commissioner of Banks, *Opinion Request*, 2 (October 30, 2013). In forming its opinion, the Commissioner of Banks relied on this conclusory statement put forth by Midland. In its request for an advisory opinion, Midland also states that Midland Credit Management (not Midland Funding, LLC) is the only entity involved in direct collection activities. However, the Debt Collection Act covers direct *and indirect* activities. Furthermore, Exhibit A of the defendant’s counterclaim seems to show that Midland Funding, LLC reported the defendant to TransUnion for her failure to pay a debt. Credit reporting is not a “passive” activity, and the defendant alleges in her counterclaim that this is a regular practice of Midland. In this case, dismissal of the defendant’s counterclaim is not warranted where there is an unsettled issue of fact whether or not Midland Funding, LLC engaged in any direct or indirect collection activities, including credit reporting.

In her amended counterclaim, the defendant has pleaded enough facts to plausibly suggest that Midland Funding, LLC is a debt collector engaged in direct or indirect collection activities, and is in violation of the Debt Collection Law as well as the FDCPA by failing to obtain a license.

It is hereby ORDERED that the Plaintiff, Midland Funding, LLC’s motion to dismiss defendant’s amended counterclaim is DENIED.

Dated: July 11, 2014

  
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Honorable James McGuinness  
Dedham District Court