

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

KAREN URESTE,
PLAINTIFF,

v.

Case No. 4:23-cv-798

INDEPENDENCE CAPITAL RECOVERY, INC., and
HARTFORD CASUALTY INSURANCE COMPANY
DEFENDANTS

COMPLAINT AND JURY DEMAND

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).
2. Supplemental Jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. This action arises out of violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq* (hereinafter referred to as "FDCPA"), and the Texas Finance Code § 392.001, *et seq* (hereinafter referred to as "TFC") by Independence Capital Recovery, Inc. ("ICR").

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.
5. Plaintiff resides in this Judicial District.

PARTIES

6. Plaintiff, Karen Ureste ("Plaintiff"), is an adult individual residing in Denton County, Texas.
7. ICR is a New York professional corporation operating from the greater Buffalo, New York area.

8. ICR can be served in the state of Texas via its registered agent, National Registered Agents, Inc., at 1999 Bryan Street, Suite 900, Dallas, TX 75201.
9. Defendant Hartford Casualty Insurance Company (“Hartford”) is the surety company for the bond ICR has on file with the Texas Secretary of State, bond number 57BSBIH0772. Hartford is liable for acts committed by ICR pursuant to, and to the extent provided by, Chapter 392 of the Texas Finance Code and a bond secured pursuant thereto, as well as any other applicable law.
10. Hartford is a foreign entity that can be served in the state of Texas via its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas, 75201.

FACTUAL ALLEGATIONS

11. Sometime prior to the filing of this Complaint, Plaintiff allegedly incurred a financial obligation that was used primarily for personal, family or household purposes (hereinafter the "Account"). Specifically, the alleged account is an credit card account, the funds from which were used to pay for various personal effects, but were not used in any way for business or commercial purposes.
12. The Account allegedly went into default with the original creditor prior to the filing of this Complaint.
13. Plaintiff disputes the balance of the Account ICR attempted to collect.
14. Plaintiff is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3) and Tex. Fin. Code § 392.001(1).
15. The Account constitutes a “debt” as that term is defined by 15 U.S.C. § 1692a(5) and is a “consumer debt” as that term is defined by Tex. Fin. Code § 392.001(2).

16. ICR is a company that receives placement of defaulted accounts for the sole purpose of collecting those accounts for a commission earned when the account is collected. A debt buyer, believed to be United Holding Group, placed the Account with ICR for the purpose of ICR collecting on the Account and earning a percentage of whatever amount it collected.

17. ICR is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and Tex. Fin. Code § 392.001(6), is a “third-party debt collector” as that term is defined by Tex. Fin. Code § 392.001(7).

18. In April 2023, ICR began calling Plaintiff demanding payment on the Account.

19. In a voicemail that ICR left for Plaintiff, ICR said the following:

Good afternoon, Karen Ureste. My name is Andre Stokes. Could you please return my call? There's some important information, madam, I must discuss with you. I don't know if you're aware or not of what's taken place, but it's important you return my call. Hopefully I'll get the opportunity to go over some solutions with you, to try to help you resolve this matter. However, if I don't hear from you or you're unwilling to resolve this matter, I've been instructed to make a decision. My contact number you're gonna need is 716-846-1064. Thank you so much.

(various uses of uh and um omitted)

20. A few days later, ICR left another message for Plaintiff which stated:

Good morning, Karen Ureste. My name is Andre Stokes. I'm calling from ICR regarding your Synchrony Bank PayPal credit account. Could you please return to my call? Unfortunately, Madam, due to the lack of response from you, they're getting ready to make a decision on you regarding, the matter that you have in my office. This is something that you wanna voluntarily resolve, I encourage you to return my call today, (716) 846-1064.

(various uses of uh and um omitted)

21. The voicemails described above falsely implied that ICR had information that Plaintiff needed to call back to ICR to get. The messages further implied that the collection efforts of ICR were more serious than mere debt collection and even implied that involuntary

methods of collection would be used soon if Plaintiff did not call back and repay the Account immediately.

22. ICR intended for Plaintiff to be fearful or at least confused enough to call back and repay the Account.
23. ICR intended for Plaintiff to believe that she was being sued or that some involuntary collection methods, such as garnishment or bank levy, would be used.
24. The communications described above would cause the least sophisticated consumer to believe that she was being sued or that some involuntary collection methods, such as garnishment or bank levy, would be used.
25. At the time these communications were made, ICR did not have the authority to use involuntary collection methods to collect the Account.
26. At the time these communications were made, ICR did not have the present intention of suing Plaintiff on the Account.
27. In all of the telephone communications described above, ICR failed to inform Plaintiff that ICR was a debt collector or that ICR was attempting to collect a debt or that any information obtained from Plaintiff would be used for the purpose of debt collection.
28. In one or more telecommunication with Plaintiff, ICR failed to provide meaningful disclosure of its identity to Plaintiff.
29. ICR never provided Plaintiff with the notices required by 15 U.S.C. § 1692g(a).
30. The purpose for all of the calls and voicemails described above was to attempt to collect the Account.
31. The calls and voicemails conveyed information regarding the Account directly or indirectly to Plaintiff.

32. The calls and voicemails constituted “communication[s]” as defined by 15 U.S.C. § 1692a(2).
33. The only reason that ICR communicated with Plaintiff was to attempt to collect the Account.
34. The statements and actions of Defendants constitute illegal communication in connection with debt collection.
35. All of the conduct by Defendants and/or their employees and/or agents alleged in the preceding paragraphs was done knowingly and willfully and purposefully.
36. As a direct and proximate result of the aforesaid actions, Plaintiff seeks damages pursuant to 15 U.S.C. § 1692k(a).

RESPONDEAT SUPERIOR

37. The representative(s) and/or collector(s) at ICR were employee(s) and/or agent(s) of ICR at all times mentioned herein.
38. The representative(s) and/or collector(s) at ICR were acting within the course and/or scope of their employment at all times mentioned herein.
39. The representative(s) and/or collector(s) at ICR were under the direct supervision and/or control of ICR at all times mentioned herein.
40. The actions of the representative(s) and/or collector(s) at ICR are imputed to their employer, ICR.

COUNT I: VIOLATIONS OF THE FDCA 15 U.S.C. § 1692, et seq.

41. The previous paragraphs are incorporated into this Count as if set forth in full.
42. The act(s) and omission(s) of ICR and its representative(s), employee(s) and/or agent(s) violated 15 U.S.C. § 1692(d)(6) and § 1692(e)(2)&(3)&(4)&(5)&(8)&(10)&(11) and § 1692f(6) and § 1692g(a).
43. Pursuant to 15 U.S.C. § 1692k Plaintiff seeks damages, reasonable attorney's fees and costs.

COUNT II: VIOLATIONS OF THE TEXAS FINANCE CODE

44. The previous paragraphs are incorporated into this Count as if set forth in full.
45. The act(s) and omission(s) of ICR and its representative(s), employee(s) and/or agent(s) violated Tex. Fin. Code §392.301(a)(7)&(8) and §392.304(a)(3)&(5)&(8)&(14)&(16)&(17)&(19).
46. Pursuant to Tex. Fin. Code § 392.403, Plaintiff seeks statutory damages, actual damages, injunctive relief, and reasonable attorney's fees and costs from ICR.

COUNT III: IMPUTED LIABILITY OF HARTFORD CASUALTY INSURANCE

47. The previous paragraphs are incorporated into this Count as if set forth in full.
48. The act(s) and omission(s) of ICR and their representative(s), employee(s) and/or agent(s) in violation of Tex. Fin. Code §392.301(a)(7)&(8) and §392.304(a)(3)&(5)&(8)&(14) (16)&(17)&(19) are imputed to Hartford pursuant to Tex. Fin. Code § 392.102.
49. Pursuant to Tex. Fin. Code § 392.403, Plaintiff seeks damages, reasonable attorney's fees and costs from Hartford.

COUNT IV: INVASION OF PRIVACY (INTRUSION ON SECLUSION)

50. In the alternative, without waiving any of the other causes of action herein, without waiving any procedural, contractual, statutory, or common-law right, and incorporating all other

allegations herein to the extent they are not inconsistent with the cause of action pled here, ICR is liable to Plaintiff for invading Plaintiff's privacy (intrusion on seclusion). ICR intentionally intruded on Plaintiff's solitude, seclusion, or private affairs, and such intrusion would be highly offensive to a reasonable person.

51. Plaintiff suffered actual damages as a result of ICR's intrusion in the way of fear, anxiety, stress, sleeplessness, mental anguish mild depression and/or distraction from normal life.

JURY TRIAL DEMAND

52. Plaintiff is entitled to and hereby demands a trial by jury.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following:

53. Judgment in favor of Plaintiff and against Independence Capital Recovery, Inc. as follows:

- a. Statutory damages in the amount of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2);
- b. Actual damages pursuant to 15 U.S.C. 1692k(a)(1);
- c. Reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k(a)(3); and
- d. Such other and further relief as the Court deems just and proper.

54. Judgment in favor of Plaintiff and against Independence Capital Recovery, Inc. and Hartford Casualty Insurance Company, jointly and severally, as follows:

- a. Actual damages pursuant to Tex. Fin. Code § 392.403(a)(2);
- b. An injunction permanently enjoining ICR following trial of this cause from committing acts in violation of the Texas Finance Code as cited herein pursuant to Tex. Fin. Code § 392.403(a)(1);
- c. Reasonable attorneys fees and costs pursuant to Tex. Fin. Code § 392.403; and

d. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jeffrey D. Wood

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