

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

JESSICA L. GUZMAN,

Plaintiff,

v.

Case No.:

BARCLAYS BANK DELAWARE and
CAPITAL MANAGEMENT SERVICES, L.P.,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, defendant, Capital Management Services, L.P. (“CMS”), through undersigned counsel, hereby removes the above-captioned civil action from the County Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, to the United States District Court for the Southern District of Florida, West Palm Beach Division. The removal of this civil case is proper because:

1. CMS is a named defendant in this civil action filed by plaintiff, Jessica L. Guzman (“plaintiff”), in the County Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, titled *Jessica L. Guzman v. Barclays Bank Delaware and Capital Management Services, L.P.*, Case No. 2024-CC-001814 (hereinafter the “State Court Action”).

2. CMS removes this case on the basis of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, as plaintiff’s Complaint claims relief based on alleged practices in violation of federal law.

3. This Court also has supplemental jurisdiction over plaintiff’s Florida Consumer Collections Practices Act and breach of contract claims pursuant to 28 U.S.C. § 1367 as they are so related to plaintiff’s FDCPA claim that they form part of the same case or controversy. Accordingly, this action may be removed to this Court pursuant to 28 U.S.C. § 1441.

4. Pursuant to 28 U.S.C. § 1446(b), CMS has timely filed this Notice of Removal. CMS was served with plaintiff’s Complaint on February 14, 2024. This Notice of Removal is filed within 30 days of receipt of the Complaint by CMS.

5. Attached hereto as **Exhibit A** and incorporated by reference as part of the Notice of Removal are true and correct copies of the state docket and filings in the State Court Action. No further proceedings have taken place in the State Court Action.

6. The only other remaining defendant, Barclays Bank Delaware (“Barclays”) has not filed an appearance in the State Court Action, nor is any proof of service in the docket. On information and belief, Barclays has not yet been served with plaintiff’s lawsuit, and CMS has accordingly complied with 28 U.S.C. § 1446(b)(2)(A).

7. A copy of this Notice of Removal is being served upon plaintiff and filed concurrently with the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida.

WHEREFORE, Defendant, Capital Management Services, L.P., hereby removes to this Court the State Court Action.

Dated: March 15, 2024

Respectfully Submitted,

/s/ Thomas J. Fox

Thomas J. Fox, Esq.

Florida Bar No. 1050198

SESSIONS, ISRAEL & SHARTLE, LLC

3350 Buschwood Park Drive, Suite 195

Tampa, Florida 33618

Telephone: (813) 890-2467

Facsimile: (877) 334-0661

tfox@sessions.legal

Counsel for Defendant,

Capital Management Services, L.P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March 2024, a copy of the foregoing was filed electronically via CM/ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system, including plaintiff's counsel as described below.

Thomas Bellinder, Esq.
Law Offices of Robert S. Gitmeid & Assoc., PLLC
180 Maiden Lane, 27th Floor
New York, NY 10038
Thomas.B@gitmeidlaw.com

/s/ Thomas J. Fox

Attorney

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

JESSICA L. GUZMAN, Plaintiff, – against – BARCLAYS BANK DELAWARE and CAPITAL MANAGEMENT SERVICES, L.P., Defendants.	Civil Action No. COMPLAINT DEMAND FOR JURY TRIAL
---	---

COMPLAINT

Plaintiff, Jessica L. Guzman (hereinafter “Plaintiff”), by and through her attorneys, the Law Offices of Robert S. Gitmeid and Associates, PLLC (“Gitmeid”), by way of Complaint against Defendants, Barclays Bank Delaware (“Barclays”) and Capital Management Services, L.P., (“Capital”), collectively (“Defendants”) alleges as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant Barclays’ breach of contract, Barclays’ violations of the Florida Consumer Collection Practices Act, § 559, et seq. (hereinafter the “FCCPA”) and Capital’s violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereafter “FDCPA”). The FCCPA and the FDCPA prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, Jessica L. Guzman, is an adult citizen residing in Boynton Beach, FL.
3. Defendant Barclays is a for-profit business entity with a registered agent, Corporation Service Company, located at 251 Little Falls Drive, Wilmington, DE 19808.
4. Defendant Capital is a collection agency with a registered agent, Corporation Service Company, located at 251 Little Falls Drive, Wilmington, DE 19808.
5. This Court has jurisdiction over this matter pursuant to Title VI. Civil Practice and Procedure § 48.193(1)(a)(1), because Barclays and Capital regularly conduct business in Florida.
6. Venue in Palm Beach County, Florida is proper pursuant to Title VI. Civil Practice and Procedure § 47.051 because the contract of settlement entered into between the parties arises from a consumer obligation entered into in the State of Florida in this judicial district.

FACTUAL ALLEGATIONS

7. The debt at issue arises out of an alleged transaction which was primarily for personal, family or household purposes and falls within the definition of “debt” for purposes of § 559.55(6).
8. On or about June 20, 2023, Plaintiff, via her debt settlement representative, entered into a settlement agreement with Capital to settle and close her Barclays account ending in [REDACTED]
9. Pursuant to the terms of the agreement, Plaintiff agreed to make three (3) payments totaling \$4,658.00. A copy of the settlement letter is attached herein as **Exhibit A**.
10. On June 22, 2023, Capital was provided with Plaintiff’s banking information and preauthorization to take all payments in accordance with the settlement agreement.

11. The first payment cleared and posted without issue. Proof of Payment attached hereto as **Exhibit B.**
12. On October 24, 2023, Capital advised that the account was recalled to Barclays.
13. That same day, Plaintiff's debt settlement representative contacted Barclays and requested that the settlement agreement be honored.
14. Barclays advised that they did not have the account and that it was placed with Capital.
15. Plaintiff's debt settlement representative explained that Capital stated the account was recalled, but Barclays insisted that the account was still placed with Capital.
16. Between November 9, 2023 and November 13, 2023, Capital continued to deny having the account.
17. On December 4, 2023, Barclays confirmed that the account was in-house, but refused to honor the agreement and demanded renegotiation for \$7,124.00.
18. On or about January 10, 2023, Counsel for Plaintiff sent a letter to Barclays and Capital outlining the facts and circumstances of the account and requested a discussion. The letter is attached hereto as **Exhibit C.**
19. To date, Defendants have not responded.
20. At all times pertinent hereto, Defendants acted by and through their agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of the Defendants herein.
21. At all times pertinent hereto, the conduct of Defendants, as well as that of their agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal law and the rights of the Plaintiff herein.

FIRST CAUSE OF ACTION

(Violations of the Florida Consumer Collection Practices Act)

22. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.
23. It is the purpose of the FCCPA to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts. Fla. Stat. Ann. § 559.55.
24. FCCPA § 559.72(9) prohibits a person from claiming, attempting, or threatening “to enforce a debt when such person knows that the debt is not legitimate...”
25. FCCPA § 559.730(b) states that “fraud, misrepresentation, deceit, negligence, or incompetence in a collection transaction” is grounds for disciplinary action and administrative remedies.
26. FCCPA § 559.77(5) states that, in applying the FCCPA “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act (“FDCPA”). FDCPA 15 U.S.C. § 1692(f) prohibits the use of unfair or unconscionable practices to collect a debt, including collection of any amount not authorized by the contract or law. FDCPA 15 U.S.C. § 1692e(2)(a) prohibits the false representation of the character, amount, or legal status of any debt. FDCPA 15 U.S.C. § 1692e(10) prohibits any false, misleading, or deceptive representation or means in connection with the collection of a debt.
27. Defendant Barclays violated the FCCPA by demanding the account re-settle for more than the original agreement.
28. Defendant Barclays violated the FCCPA by failing to honor a valid agreement.

29. Defendant Barclays violated the FCCPA by failing to accept the remaining payments due in accordance with a valid agreement.

30. Barclays knew or should have known that its actions violated the FCCPA. Additionally, Barclays could have taken the steps necessary to bring its actions within compliance of the FCCPA but neglected to do so and failed to adequately review its actions to ensure compliance with said laws.

31. As a result of the above violations of the FCCPA, Barclays is liable to Plaintiff for actual damages, statutory damages, attorney's fees and costs.

SECOND CAUSE OF ACTION
(Violations of the FDCPA)

32. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.

33. FDCPA 15 U.S.C. § 1692e(10) prohibits any false, misleading, or deceptive representation or means in connection with the collection of a debt.

34. Capital's actions violated the FDCPA by deceptively entering into an agreement with Plaintiff which they never intended to abide by or intended to breach.

35. Capital's actions violated the FDCPA by failing to accept the remaining payments in accordance with a valid agreement.

36. As a result of the above violations of the FDCPA, Capital is liable to Plaintiff for actual damages, statutory damages, attorney's fees, and costs.

THIRD CAUSE OF ACTION
(Breach of Contract)

37. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.

38. Barclays' actions constitute a breach of contract when they refused to honor a valid agreement.
39. Barclays' actions constitute a breach of contract when they refused to accept the remaining payments due under the agreement.
40. As a result, of Defendant's breach of contract, Plaintiff has suffered actual and monetary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that judgment be entered against Defendants as follows:

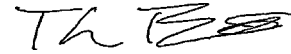
41. That judgment be entered against Defendant Barclays for actual and monetary damages accrued by Plaintiff as a result of Defendant's breach of contract;
42. That judgment be entered against Defendant Barclays for actual damages pursuant to Fla. Stat. Ann. § 559.77(2);
43. That judgment be entered against Defendant Barclays for statutory damages pursuant to Fla. Stat. Ann. § 559.77(2);
44. That the Court award costs and reasonable attorney's fees pursuant to Fla. Stat. Ann. § 559.77(2);
45. That judgment be entered against Capital for actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
46. That judgment be entered against Capital for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A); and
47. That the Court grant such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

48. Plaintiff demands a trial by jury in this action of all issues so triable.

Dated: February 4, 2024

Respectfully Submitted,



Thomas Bellinder, Esq. (FL Bar No. 65254)
Law Offices of Robert S. Gitmeid & Assoc., PLLC
180 Maiden Lane, 27th Floor
New York, NY 10038
Tel: (212) 226-5081
Fax: (212) 208-2591
Email: Thomas.B@gitmeidlaw.com