

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RAY G. BRIGGS,
on behalf of Plaintiff and a class,

Plaintiff,

vs.

LAND HOME FINANCIAL SERVICES, INC.
and ATLANTICA, LLC,

Defendants.

Case No. 1:20-cv-04821

Honorable Charles R. Norgle, Sr.

Honorable Beth W. Jantz

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Defendant, Land Home Financial Services, Inc. ("Land Home"), by and through its counsel, and for its Answer and Affirmative Defenses to Plaintiff's Complaint states as follows:

1. Plaintiff, Ray G. Briggs, brings this action to secure redress from unlawful credit and collection practices engaged in by Defendants Land Home Financial Services, Inc. and Atlantica, LLC. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA"), and the Truth in Lending Act, 15 U.S.C. §1601 et seq. ("TILA").

ANSWER: Land Home admits that Plaintiff Briggs brings claims under the FDCPA against it and pursuant to TILA against Defendant Atlantica. Land Home denies it is liable to Plaintiff Briggs and denies the remaining allegations in Paragraph 1 of the Complaint.

2. The FDCPA broadly prohibits unfair or unconscionable collection methods, conduct which harasses or abuses any debtor, and the use of any false or deceptive statements in connection with debt collection attempts. It also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

ANSWER: Land Home admits that Plaintiff Briggs brings claims under the FDCPA against it. Land Home denies it is liable to Plaintiff Briggs and denies the remaining allegations in Paragraph 2 of the Complaint.

3. In enacting the FDCPA, Congress found that: "[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. §1692(a).

ANSWER: Paragraph 3 of the Complaint calls for legal conclusions to which no answer is required. To the extent an answer is required, Land Home denies that it violated the FDCPA.

4. Because of this, courts have held that "the FDCPA's legislative intent emphasizes the need to construe the statute broadly, so that we may protect consumers against debt collectors' harassing conduct," and that "[t]his intent cannot be underestimated." *Ramirez v. Apex Financial Management LLC*, 567 F.Supp.2d 1035, 1042 (N.D. Ill. 2008).

ANSWER: Paragraph 4 of the Complaint calls for legal conclusions to which no answer is required. To the extent an answer is required, Land Home denies that it violated the FDCPA.

5. The FDCPA encourages consumers to act as "private attorneys general" to enforce the public policies and protect the civil rights expressed therein. *Grabill v. Trans Union, LLC*, 259 F.3d 662, 666 (7th Cir. 2001).

ANSWER: Paragraph 5 of the Complaint calls for legal conclusions to which no answer is required. To the extent an answer is required, Land Home denies that it violated the FDCPA.

6. Plaintiff seeks to enforce those policies and civil rights which are expressed through the FDCPA, 15 U.S.C. §1692 et seq.

ANSWER: Land Home lacks knowledge of the facts sufficient to admit or deny the allegations in Paragraph 6 of the Complaint, and therefore denies the same.

7. TILA requires disclosures at the inception of consumer credit transactions and at specified points thereafter. One of the requirements of TILA is that when a residential mortgage loan is sold, the "new creditor" provide a notice within 30 days.

ANSWER: Paragraph 7 of the Complaint calls for legal conclusions to which no answer is required. To the extent an answer is required, Land Home denies that it violated TILA.

8. Plaintiff was misled and confused by the conduct complained of herein.

ANSWER: Land Home lacks knowledge of the facts sufficient to admit or deny the allegations in Paragraph 8 of the Complaint, and therefore denies the same.

VENUE AND JURISDICTION

9. Venue and personal jurisdiction in Cook County are proper because:

- a. Defendants' communications were received by Plaintiff within Cook County;
- b. Each Defendant is a foreign business entity that does or transacts business within Cook County.

ANSWER: Land Home admits the allegations in Paragraph 9 of the Complaint. Further answering, Land Home states that venue is proper in this Court.

PARTIES

10. Plaintiff Ray G. Briggs is a resident of Glenwood, Illinois.

ANSWER: Land Home admits the allegations in Paragraph 10 of the Complaint.

11. Defendant Land Home Financial Services, Inc. is a California corporation with offices at 3611 South Harbor Boulevard, Suite 100, Santa Ana, CA 92704. It does business in Illinois. Its registered agent and office is Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, IL 62703.

ANSWER: Land Home admits the allegations in Paragraph 11 of the Complaint.

12. Land Home Financial Services, Inc. holds itself out as a "special servicer" of

residential mortgage loans. (<https://servicing.lhfs.cotninp1-services>)

ANSWER: Land Home admits the allegations in Paragraph 12 of the Complaint. Land Home also performs other services.

13. A "special servicer" is mortgage industry jargon for a servicer that services delinquent or nonperforming loans, as opposed to current loans.

ANSWER: Land Home admits the allegations in Paragraph 13 of the Complaint.

14. Land Home Financial Services, Inc. uses the mails, telephone system and internet in conducting its business.

ANSWER: Land Home admits the allegations in Paragraph 14 of the Complaint.

15. Land Home Financial Services, Inc. holds a debt collection license from the Illinois Department of Financial and Professional Regulation.

ANSWER: Land Home admits the allegations in Paragraph 15 of the Complaint.

16. Land Home Financial Services, Inc. regularly collects delinquent debts allegedly owed to others, and is a debt collector as defined in the FDCPA.

ANSWER: Paragraph 16 calls for a legal conclusion for which no answer is required. Land Home admits that it collects delinquent debts allegedly owed to others, but denies that it "regularly" does so.

17. Land Home Financial Services, Inc. has filed more than 50 foreclosure and collection lawsuits and claims in consumer bankruptcies in Illinois.

ANSWER: Land Home admits the allegations in Paragraph 17 of the Complaint.

18. Defendant Atlantica, LLC is a limited liability company organized under Delaware law with offices at 2001 Western Ave., Ste. 400, Seattle, WA 98121. It does business in Illinois. Its registered agent and office is Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, IL 62703.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 18 of the Complaint, and therefore denies the same.

19. The principal occupant of the offices at 2001 Western Ave., Ste. 400, Seattle, WA 98121 is a debt collection law firm, Weinstein & Riley PS.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 19 of the Complaint, and therefore denies the same.

20. Atlantica, LLC is one of a number of entities operated from the same offices for the purposes of acquiring and liquidating consumer debts of various types.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 20 of the Complaint, and therefore denies the same.

21. Atlantica, LLC files hundreds of foreclosure and collection lawsuits against consumers, in which Atlantica, LLC is the plaintiff. At least 12 such lawsuits have been filed in Illinois. It also files claims against consumers in bankruptcy proceedings.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 21 of the Complaint, and therefore denies the same.

22. On information and belief, the principal business of Atlantica, LLC is the liquidation of consumer debts.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 22 of the Complaint, and therefore denies the same.

23. On information and belief, the sole source of revenue of Atlantica, LLC is the liquidation of consumer debts.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 23 of the Complaint, and therefore denies the same.

24. Atlantica, LLC is a debt collector as defined in the FDCPA.

ANSWER: Land Home lacks knowledge sufficient to admit or deny the allegations in Paragraph 24 of the Complaint, and therefore denies the same.

25. At all times, Land Home Financial Services, Inc. has been acting with respect to Plaintiff as the authorized agent of Atlantica, LLC.

ANSWER: Paragraph 25 of the Complaint calls for a legal conclusion to which no answer is required. To the extent an answer is required, Land Home admits that it acted on behalf of Atlantica in certain situations and denies that it was the authorized agent for Atlantica in all situations.

FACTS

26. Effective April 10, 2020, servicing of a mortgage loan secured by Plaintiff's residence in Glenwood, Illinois was transferred from SN Servicing Corporation to Land Home Financial Services Inc.

ANSWER: Land Home admits the allegations in Paragraph 26 of the Complaint.

27. On March 24, 2020, Plaintiff was sent a notice by SN Servicing Corporation (Exhibit 1) advising of such transfer of servicing. The notice identified the creditor or owner of the loan as Atlantica, LLC, 2001 Western Ave., Ste. 400, Seattle, WA 98121. It also stated that SN Servicing Corporation had been acting on behalf of Chalet Series IV Trust.

ANSWER: Land Home admits only that Plaintiff purports to attach a March 24, 2020 letter as Exhibit 1 to the Complaint. Land Home lacks knowledge sufficient to admit or deny the remaining allegations in Paragraph 27 of the Complaint, and therefore denies the same.

28. On April 20, 2020, Plaintiff was sent a notice by Land Home Financial Services Inc. (Exhibit 2) stating that the ownership of the loan had been transferred on March 10, 2020.

ANSWER: Land Home admits the allegations in Paragraph 28 of the Complaint.

29. The April 20, 2020 notice (Exhibit 2) also purported to contain the "notice of debt" required by the Fair Debt Collection Practices Act.

ANSWER: Land Home admits the allegations in Paragraph 29 of the Complaint.

30. The April 20, 2020 notice was the first communication relating to the debt sent to

Plaintiff by Land Home Financial Services, Inc.

ANSWER: Land Home denies the allegations in Paragraph 30 of the Complaint.

31. During March-April 2020, the loan was behind. Plaintiff has been a debtor in a Chapter 13 since November 1, 2017. The plan has not yet been completed.

ANSWER: Land Home admits the allegations in Paragraph 31 of the Complaint.

32. Exhibit 2 does not purport to state the amount of the debt. It states the original principal amount of the debt when it was originated in 1998, but not what was owed on April 20, 2020.

ANSWER: Land Home denies the allegations in Paragraph 32 of the Complaint.

33. Exhibit 2 is a form document regularly used by Land Home Financial Services, Inc.

ANSWER: Land Home denies the allegations in Paragraph 33 of the Complaint.

34. Exhibit 2 is filled out by a computer in a standardized manner.

ANSWER: Land Home denies the allegations in Paragraph 34 of the Complaint.

COUNT I — FAIR DEBT COLLECTION PRACTICES ACT — CLASS CLAIM

35. Plaintiff incorporates paragraphs 1-34.

ANSWER: Land Home adopts and incorporates its Answers to Paragraphs 1-34 as though fully set forth herein.

36. This claim is against Land Home Financial Services, LLC.

ANSWER: Land Home admits the allegations in Paragraph 36 of the Complaint.

37. Land Home Financial Services, LLC violated 15 U.S.C. §1692g(a) by failing to state the amount of the debt at the time letters in the form of Exhibit 2 were sent.

ANSWER: Land Home denies the allegations in Paragraph 37 of the Complaint.

38. Section 1692g(a) provides:

§ 1692g. Validation of debts

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

ANSWER: Land Home admits that the above-referenced language is part of Section 1692g(a) of the FDCPA. Land Home denies that it is liable to Plaintiff Briggs or that it violated this Section.

CLASS ALLEGATIONS

39. Plaintiff brings this claim on behalf of a class.

ANSWER: Land Home admits that that Plaintiff attempts to bring Count I on behalf of the class, but denies that a class should be certified.

40. The class consists of (a) all individuals with addresses in Illinois (b) to whom Land Home Financial Services, LLC sent a notice in the form represented by Exhibit 2 (c) which failed to state, identified as such, the amount of the debt as of the date of the notice (d) which notice was sent on or after a date one year prior to the filing of this action.

ANSWER: Land Home admits that that Plaintiff attempts to bring Count I on behalf of the class, but denies that a class should be certified or that Land Home failed to comply with the FDCPA.

41. On information and belief, there are more than 35 class members, and the class is so numerous that joinder of all members is not practicable.

ANSWER: Land Home denies the allegations in Paragraph 41 of the Complaint.

42. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether Land Home Financial Services, LLC sends notices in the form represented by Exhibit 2 which fail to state, identified as such, the amount of the debt as of the date of the notice; and
- b. Whether doing so violates the FDCPA.

ANSWER: Land Home denies the allegations in Paragraph 42 of the Complaint, including sub-paragraphs a-b.

43. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

ANSWER: Land Home denies the allegations in Paragraph 43 of the Complaint.

44. A class action is appropriate for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights; and
- c. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

ANSWER: Land Home denies the allegations in Paragraph 44 of the Complaint, including sub-paragraphs a-c.

COUNT II — TRUTH IN LENDING ACT — INDIVIDUAL CLAIM

Count II is not pled against Land Home. As a result, no answer is made thereto. To the extent that the allegations are pled against Land Home, it denies that it is liable under Count II.

AFFIRMATIVE DEFENSES

Defendant, Land Home Financial Services, LLC (“Land Home”), by and through its undersigned counsel, and for its Affirmative Defenses to Plaintiff’s Complaint, states as follows:

1. Land Home affirmatively states that any violation of the Fair Debt Collection Practices Act was not intentional and would have resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error. These procedures and protocols are reasonably adapted to avoid a violation of the Fair Debt Collection Practices Act, such as the one alleged in this case.

2. If Land Home is found to be vicariously responsible for the alleged conduct of any other party, Land Home is entitled to rely upon the bona fide error defense of that other party as its own affirmative defense because any legal principle that creates vicarious liability also creates the ability to claim additional defenses to that vicarious conduct.

4. If discovery reveals that any debt identified in the Plaintiff’s complaint is subject to an agreement requiring the parties to submit any dispute between them to arbitration, then there is no subject matter jurisdiction over the Plaintiff’s complaint.

5. Plaintiff’s and/or putative class members’ statutory claims, including those brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692, *et seq.*, are inapplicable and/or barred by the applicable limitations of liability provisions, damage caps, and defenses

provided for in the statutes referred to in the complaint. This includes, but is not limited to, the claim for declaratory relief and/or equitable injunctive relief as may be contemplated by the phrase “[s]uch further relief as the court deems just and proper,” which relief is not allowed to individual plaintiffs under the FDCPA.

6. If Land Home is found to have violated any of the statutory provisions cited in the causes of actions in Plaintiff’s Complaint, then the claims are barred, in whole or in part, by Defendant’s reasonable procedures to assure compliance with the same statutes.

7. To the extent that Defendant is found to have violated any of the statutes referred to in the causes of action within Plaintiff’s Complaint, such violation(s) were unintentional, not willful, and/or the result of actions or failures to act by third-parties.

8. Plaintiff’s and putative class members’ damages, if any, were not caused by Land Home but were caused by superseding, intervening acts by another person and/or entity for which Land Home is not responsible and over which and which Land Home had no authority or control, including that third-party’s employees, agents and independent contractors.

9. Land Home is not vicariously liable for the actions of an independent, separate company.

10. Plaintiff’s and/or putative class members’ claims may be barred, in whole or in part, by the applicable statutes of limitations, statute of repose and/or laches.

11. Plaintiff’s and/or putative class members’ claims for actual damages may be barred, in whole or in part, by the failure to mitigate.

12. Plaintiff and/or putative class members have not suffered any compensable or actual damage(s).

13. Certain of Plaintiff's and/or putative class members' claims are barred, in whole or in part, by settlement, payment, waiver, estoppel, and/or release.

14. Land Home reserves the right to amend its list of defenses and rely on alternative or other affirmative, special or other defenses not listed herein to the extent necessary in light of the facts revealed through discovery or otherwise, and Land Home, by pleading certain defenses, does not assume the burden of proving any defense but merely controverts Plaintiff's allegations.

15. If discovery reveals that any debt identified in the Plaintiff's complaint is subject to an agreement which limits the Plaintiff's potential recovery, then Plaintiff is not entitled to the relief sought herein.

WHEREFORE, Defendant, LAND HOME FINANCIAL SERVICES, INC., prays that Plaintiff Ray G. Briggs' Complaint be dismissed with prejudice, for its costs incurred herein, and for such further and other relief as the Court deems just and equitable.

Respectfully Submitted,

LAND HOME FINANCIAL SERVICES,
INC., Defendant

By: /s/ Timothy R. Herman
One of its Attorneys

Timothy R. Herman (Bar No. 6301721)
Clark Hill PLC
130 E. Randolph St. | Suite 3900
Chicago, Illinois 60601
T: (312) 985-5950 | F: (312) 985-5574
therman@clarkhill.com
Attorney for Land Home Financial Services, Inc.

CERTIFICATE OF SERVICE

I, Theresa Cumpton, an attorney, certify that I served or caused to be served the attached *Answer and Affirmative Defenses* to each party at the address below on September 11, 2020:

Daniel A. Edelman (dedelman@edcombs.com)

Cathleen M. Combs (ccombs@edcombs.com)

Tara L. Goodwin (tgoodwin@edcombs.com)

Daniel Scott Miller (dmiller@edcombs.com)

courtecl@edcombs.com

Edelman, Combs & Goodwin, LLC

20 South Clark Street, Suite 1500

Chicago, IL 60603-1824

Counsel for Plaintiffs

Aaron M. Waite

Weinstein & Riley, P.S.

aaronw@w-legal.com

2001 Western Ave., Suite 400

Seattle, WA 98121

4530 S. Eastern Ave. Ste 9

Las Vegas, NV 89119

3703 W. 6200 S.

Salt Lake City, UT 84129

Counsel for Defendant Atlantica LLC

/s/ Theresa Cumpton

Under penalties as provided by law pursuant to Section 1109 of the Code of Civil Procedure, the above signed certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the above signed certifies as aforesaid that he verily believes the same to be true