

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEAST DIVISION

DEWAYNE HARGIS and)
JUDY HARGIS,)
)
Plaintiffs,) Civil Action No. 00-CV-74
)
)
v.)
)
AAA COLLECTIONS, INC. and)
CITY OF COOKEVILLE, TENNESSEE),
)
Defendants.) JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, **et seq.** (hereinafter "FDCPA") which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. This action is also brought as a civil rights action because the Defendants acted under color of law in threatening the termination of utility services of the Plaintiffs for the purposes of collecting a debt which was not owed by DeWayne Hargis and for which the Plaintiff Judy Hargis was no longer liable because the debt was over ten years old.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) as well as 42 U.S.C. § 1983 as federal questions are presented herein regarding the violation of a federal statutes as well as rights to which Plaintiffs are entitled under the Fourteenth Amendment to the United States Constitution.

III. PARTIES

3. Plaintiffs, Dewayne and Judy Hargis are husband and wife residing in Putnam County, Tennessee.

4. Defendant, AAA Collection & Counseling Service, Inc., (hereinafter, "AAA"), is engaged in the business of collecting debts in Tennessee with its principal place of business located at 16 South Washington Avenue, Room 203, Cookeville, Tennessee 38501.

a. The principal purpose of Defendant AAA is the collection of debts using the mails and telephone as well as the state court system;

b. AAA regularly attempts to collect debts alleged to be due another; and,

c. AAA was acting in collusion with the City of Cookeville for the purposes of collecting a debt by threatening the termination of utility service, and was a state actor acting under color of law.

5. The Defendant City of Cookeville Tennessee ("City") is a municipality located in Putnam County, Tennessee engaged in the

operation of a public utility service also know as the Cookeville
Electric Department.

IV. FACTUAL ALLEGATIONS

6. On or about May 22, 2000, Plaintiffs Dewayne Hargis and Judy Hargis went to World Finance Corporation at which time Judy Hargis applied for a consumer loan.

7. While at World Finance, Judy Hargis learned that her credit report contained adverse credit information. She was told by a representative of World Finance that this adverse credit information had been reported by Defendant AAA.

8. This information reflected that Ms. Hargis owed medical debts which had, in fact, been paid.

9. The following day the plaintiffs contacted AAA about the adverse information that they reported to credit reporting agencies. During this discussion, AAA alleged that Ms. Hargis owed a debt to the City of Cookeville from 1989.

10. Plaintiff Dewayne Hargis asked AAA to remove the adverse credit information from Ms. Hargis' credit file since the debt was over seven years old. AAA then asked for Mr. Hargis' Social Security number and stated this information was necessary to verify that they were actually speaking with him. AAA then told Mr. Hargis about the utility bill allegedly owed to the City of Cookeville.

11. The following day, a representative of the City of Cookeville Electric Department came to the Hargises' residence and gave a notice that there was a past due bill. The notice stated that if the account was not settled within three days, the Hargises'

utility service would be discontinued (copy of notice attached as Exhibit 1).

12. Upon receipt of that notice, plaintiffs went to the City of Cookeville Electric Department. They were told that after their telephone conversation with Defendant AAA, AAA had immediately notified the City of Cookeville that Judy Hargis was formerly Judy King, and that she was residing with her husband, Dewayne Hargis.

13. The account that the defendants attempted to collect and continue to collect through their threats to disconnect the Hargises' utility service was opened by Ms. Hargis before her marriage to Mr. Hargis.

14. Ms. Hargis' name at the time the account was opened was Judy King.

15. The City of Cookeville told Mr. Hargis that he must pay the bill from 1989 or his utilities would be shut off.

16. Although the Hargises disputed the debt, Mr. Hargis entered into a utility payment extension agreement.

17. The Hargises felt they had no choice other than to make arrangements to pay the debt because they feared they would lose the home they are renting from the Cookeville Housing Authority if their electric service was terminated.

18. Because the Hargises had no money, Mr. Hargis pawned the title to his automobile in order to obtain money to make the initial payment required by the City of Cookeville.

19. The City of Cookeville instructed the Hargises that they would not accept the payment as arranged under the utility payment extension agreement, and told them to make the payments to AAA

20. As a result of the acts alleged above, plaintiffs suffered injuries including, but not limited to, embarrassment, frustration, mental anguish, depression, and loss of time in attempting to resolve these issues, and fear that drove them to seek a loan with an annual percentage rate of almost seventy percent (70%), all to avoid being rendered homeless by constructive eviction due to the loss of utility service.

V. COUNT I - AAA VIOLATIONS OF THE FDCPA

21. AAA violated the FDCPA. Defendant's violations include, but are not limited to, the following:

(a) by attempting to collect a debt that was over ten years old, AAA falsely represented the character, amount, or legal status of the debt in violation of 15 U.S.C. § 1692e(2)(A); and

(b) AAA used false representations or deceptive means to collect or attempt to collect the debt in violation of 15 U.S.C. § 1692e(10).

19. As a result of the above violations of the FDCPA, Defendant AAA is liable to the Plaintiff in the sum of Plaintiff's

actual damages, statutory damages, and costs and attorney's fees.

20. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiffs to pay the alleged debt.

21. All allegations within any part of this Complaint are included in all counts raised within the Complaint as if fully set forth within Count I or Count II.

**VI. COUNT II - DEFENDANTS' VIOLATION OF
PLAINTIFFS' RIGHTS TO DUE PROCESS AND EQUAL
PROTECTION PURSUANT TO 42 U.S.C. § 1983**

22. Electric utility service is a necessity of modern life.

23. The City is obligated to provide services to all its customers equally without discrimination and may not arbitrarily terminate utility services without good and sufficient cause.

24. The Plaintiff, Dewayne Hargis, was not delinquent on any bill owed to the City and owed the Defendants no bills for prior service at any location.

25. The City violated plaintiffs' right to due process by its failure to give plaintiffs a reasonable period of time for a meaningful opportunity to be heard.

26. The City had no valid governmental interest in threatening the termination of utility services to Dewayne Hargis for an unpaid bill for which he had no legal responsibility to pay.

27. The irrational, unreasonable, and irrelevant basis for terminating utility services based on another party's unpaid bill is violative of the equal protection of the law and due process of the law under the Fourteenth Amendment of the United States Constitution.

28. Defendant AAA and the City were at all times acting jointly under color of law in an attempt to force Dewayne Hargis to pay for a debt which he was not legally obligated to pay.

WHEREFORE, plaintiffs respectfully prays that judgment be entered against the defendants in the amount of:

- (a) actual damages in the amount to be proven at trial;
- (b) statutory damages pursuant to 15 U.S.C. § 1692k of \$1,000.00 for each violation of the FDCPA;
- (c) litigation expenses and costs and reasonable attorney's fees of the Harris Law Firm pursuant to 15 U.S.C. § 1692k and as allowed for the prevailing party in an action brought under 42 U.S.C. § 1983; and
- (d) For such other and further relief as may be just and proper including a trial by a jury.

Respectfully submitted,

Samuel J. Harris, BPR#17392
P.O. Box 873
Cookeville, TN 38503
Telephone: (931) 372-7227

Marla K. Williams, BPR No. 014167
Rural Legal Services of Tennessee, Inc.
9 So. Jefferson Avenue, Suite 102

Cookeville, Tennessee 35801
Telephone: (931) 528-7436

ATTORNEYS FOR PLAINTIFFS