IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

HUGO SAN MARTIN and
MELISSA SAN MARTIN,

Plaintiffs,

v.

LAW OFFICES OF DAVID J. STERN, P.A.

Defendant.

_________________________________/

COMPLAINT

Plaintiffs Hugo San Martin and Melissa San Martin sue Defendant Law Offices of David J. Stern, P.A. and allege:

I. PARTIES JURISDICTION AND VENUE

1. This is an action for damages brought by two individual consumers for Defendant's violation of The Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et. seq.* (hereinafter "FDCPA"), The Florida Consumer Collection Practices Act, §559.72, Fla. Stat. (2009), (hereinafter FCCPA), and the common law of the State of Florida.

2. This Court's jurisdiction arises under 15 U.S.C. §1692k(d) and 28 U.S.C. § 1337. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the related state law claims.

3. Plaintiffs are natural persons, over the age of 18, residing in the City of Port St. Lucie, in St. Lucie County, Florida.

4. Defendant Law Offices of David J. Stern, P.A. (hereinafter "Stern.") is a Florida corporation with its principle place of business in the City of Plantation, Broward County, Florida.

5. Although Stern is a law firm, it contracts with a number of related entities to perform various services related to the collection of debts arising from residential mortgage loans. At least one of these related entities is a publicly traded company.

6. Stern and its related entities exclusively represent and serve mortgage servicers, mortgage lenders, and mortgage investors. Stern files a substantial percentage of all mortgage foreclosure lawsuits that are filed in the State of Florida.

7. The principle portion of Stern's activities involves the collection of consumer debts using the mails and telephone. Stern regularly attempts to collect debts alleged to be due to another.

8. Stern is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6).

II. FACTUAL ALLEGATIONS

9. Plaintiffs own and reside in a home located in Port St. Lucie Florida.

10. When Plaintiffs purchased their home, they obtained a mortgage loan from Pinnacle Financial Corporation D/B/A/ Tri-Star Lending Group.

11. On or about August 31st, 2009, Stern filed a foreclosure lawsuit and related lis pendens in Florida's 19th Judicial Circuit in and for Saint Lucie County.

12. This foreclosure lawsuit was filed on behalf of "HSBC Bank USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR NAAC MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-1", who was the party plaintiff in that action. That entity claimed to own Plaintiffs mortgage obligation.

13. However, before suit was filed, Plaintiffs had never heard of the foreclosure plaintiff.

14. For purposes of the lawsuit filed against Plaintiffs, Stern had been retained by, and reported to, a mortgage servicer known as “America’s Servicing Company.”

15. The foreclosure complaint alleged that Plaintiffs had not made their monthly mortgage payments since May 1st, 2009.

16. In fact, all of Plaintiffs’ mortgage payments had been paid in full when they were due.

17. Plaintiffs attempted to communicate with America’s Services Company to advise it of the apparent error. However, they were referred to Stern.

18. Plaintiffs also attempted to advise Stern of the apparent error that gave rise to the wrongful filing of the foreclosure lawsuit.

19. However, none of the Stern representatives that Plaintiffs spoke with were responsive to Plaintiffs’ concerns. Rather than investigate Plaintiffs’ claims that there had been an error, all of Stern’s representatives insisted that Plaintiffs pay the entire amount claimed, or lose their home.

20. In response to Plaintiffs’ communications, Stern sent Plaintiffs the letter attached hereto as Exhibit “A.” In that letter, Stern demands that Plaintiffs pay a total of $16,993.50. However, Plaintiffs did not actually owe any of those charges.

21. Many of these improper charges related to services allegedly preformed by Stern or entities related to Stern.

22. The total amount of attorneys fees claimed was more than the amount that Stern charged to America’s Servicing Company or to the foreclosure plaintiff.

23. No charges relating to mediation had been incurred.

24. Since they were unable to resolve the matter with Stern, Plaintiffs retained undersigned counsel to represent them in the defense of the foreclosure action.

25. Plaintiffs, through undersigned counsel, sent correspondence both by certified mail and email, attempting to alert Stern that the foreclosure had been brought in error.

26. Although Stern's employees acknowledged some of this correspondence, Stern never took any corrective action.

27. Ultimately the foreclosure lawsuit was resolved through a mediated settlement agreement whereby Wells Fargo agreed to dismiss the wrongfully filed foreclosure and attempt to ameliorate some of the damage it had caused Plaintiffs. A true and correct copy of this settlement agreement is attached hereto as Exhibit "B."

COUNT I – VIOLATION OF FDCPA

28. Plaintiffs repeat, re-allege, and incorporate by reference paragraphs 1 through 28 above.

29. Stern violated 15 U.S.C § 1692e(2) by making false representations concerning both the character and amount of the debt it was attempting to collect. Stern also made false representations concerning the services Stern and its related entities rendered and compensation that Stern and its related entities were entitled to receive.

30. Stern violated 15 U.S.C § 1692f(1) by attempting to collect additional amounts that were not authorized by the agreement creating the debt. These amounts include inflated charges for services performed by Stern and related entities. The amounts

that Stern demanded Plaintiffs pay was higher than the amount Stern's client agreed to pay for the identical services.

31. Stern violated 15 U.S.C § 1692g(b) by failing to investigate Plaintiffs' repeated disputes, including but not limited to those disputes that were made through counsel, and validating the debt that Stern claimed Plaintiffs owed.

32. In addition to the foregoing, Stern engaged in unconscionable debt collection activity by repeatedly and consistently threatening Plaintiffs with the loss of their home unless they paid the amounts that Stern wrongfully demanded. In doing so, Stern violated the generalized proscription against unconscionable debt collection practices set forth in 15. U.S.C. § 1692f.

33. As a result of the above described violations of the FDCPA, Stern is liable to Plaintiffs for actual damages, statutory damages, litigation costs, and attorneys fees.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor for actual damages, statutory damages pursuant to 15. U.S.C. § 1692k, and litigation costs and attorneys fees also pursuant to 15. U.S.C. § 1692k.

COUNT II – VIOLATION OF FCCPA

34. Plaintiffs repeat, re-allege, and incorporate by reference paragraphs 1 through 27 above.

35. Stern knew or should have known that the debt it was attempting to collect was not legitimate. Because it attempted to collect that debt anyway, Stern violated section 559.72(9), Florida Statutes (2009).

36. Stern's failure to recognize that an error was made was due to the fact that it maintains a highly automated operation where a small number of attorneys handle hundreds, or even thousands, of litigated matters. Most of Stern's attorney employees have little experience, are not adequately supervised and are expected to handle more than 700 matters at a time. As a result, Stern relies on automated computer systems and untrained clerical employees to perform services that would ordinarily be handed by trained and experienced attorneys.

37. Stern administers its operations in this inadequate fashion in order to decrease its overhead and maximize the profits earned both by Stern and related entities.

38. By failing to maintain a reasonable ratio of litigated matters per number of attorney employees, Stern made a business decision that increased the risk that a foreclosure could be incorrectly filed and that the error would not be discovered even if it were brought to Stern's attention by the injured homeowner.

39. Those Stern employees who were aware of the circumstances surrounding Plaintiffs' case exhibited a callous and reckless disregard for Plaintiffs' and their own professional responsibilities.

40. Those Stern employees who were aware of the circumstances surrounding Plaintiffs case and who were also members of the Florida Bar failed to address the situation in a manner that could be reasonably expected of a local attorney demonstrating ordinary skill and prudence.

41. Stern's failure to maintain a reasonable ratio of litigated matters per number of attorney employees, and to properly train and supervise its' attorney

employees, was intentionally designed to unreasonably enhance Stern and its related entities' profitability at the expense of Plaintiffs and other similarly situated homeowners.

42. Stern and its related entities have received tremendous profits as a result of their failure to maintain a reasonable ratio of files per number of attorney employees, and to properly train and supervise its attorney employees. Accordingly, pursuant to section 559.77(2), this Court should exercise its discretion and award sufficient punitive damage to deter Stern from engaging in similar conduct in the future.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor for actual damages, punitive damages, statutory damages, attorneys fees, and litigation costs pursuant to section 559.77(2)

COUNT III – ABUSE OF PROCESS

43. Plaintiffs repeat, re-allege, and incorporate by reference paragraphs 1 through 42 above.

44. By maintaining the foreclosure action it filed against Plaintiffs when it knew or should have known that there was no factual basis for it to do so, Stern made an improper and perverted use of process. It did so for the ulterior purpose of coercing Plaintiffs into paying the amount it demanded, much of which was intended to be paid to Stern and related entities, Stern used the risk that Plaintiffs would lose their home through the wrongfully filed foreclosure lawsuit to coerce Plaintiffs into paying the sums it demanded.

45. Stern's actions were willful, wanton and malicious, in reckless disregard of Plaintiffs rights, and done with the specific intent to injure Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor for actual damages, punitive damages, and litigation costs.

COUNT IV- NEGLIGENCE

46. Plaintiffs repeat, re-allege, and incorporate by reference paragraphs 1 through 42 above.

47. This Count is pled in the alternative.

48. Stern established a highly automated litigation apparatus whereby thousands of foreclosure lawsuits are filed against consumers annually. It did so without making adequate provisions for the training and supervision of the attorneys involved. Accordingly, Stern engaged in contract that gave rise to an easily foreseeable risk that Plaintiffs, and others like them, would be injured.

49. Because it engaged in the conduct described above, Stern had a duty to protect Plaintiffs from the risk that a foreclosure action could be erroneously commenced and wrongfully maintained.

50. Stern failed to adequately discharge that duty.

51. Stern's failures to adequately discharge that duty were motived by an unreasonable effort to decrease its operating costs in an effort to increase its profitability at the expense of Plaintiffs and other similarly situated. Furthermore, when it engaged in this conduct, Stern was aware of the risks and chose to proceed anyway. Accordingly, in addition to actual damages, Stern should be held liable for punitive damages sufficient to deter it from engaging in similar negligent conduct in the future.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor for actual damages, punitive damages, and litigation costs.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial by jury on all claims so triable.

Respectfully Submitted.

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