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THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

NO. 68601-1

LARRY M. KASOFF,

Appellant,

v.

CCB CREDIT SERVICES INC., an Illinois corporation,

Respondent.

BRIEF OF APPELLANT LARRY M. KASOFF

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68601-1
LARRY M. KASOFF
APPELLANT
CCB CREDIT SERVICES INC.
RESPONDENT
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I. INTRODUCTION

This litigation arises out of the collections efforts by CCB Credit Services Inc. (“CCB”), a licensed out-of-state collection agency, to collect an alleged consumer debt that was allegedly owed by Plaintiff Larry M. Kasoff (“Kasoff”) to Wells Fargo Bank, N.A (“Wells Fargo”). Plaintiff alleges that CCB violated RCW 19.16.250(8)(c)¹, as then in effect, in collection of a claim, and, that he is therefore entitled to a declaration that RCW 19.16.450 applies to the disputed, alleged debt.

II. ASSIGNMENTS OF ERROR AND STATEMENT OF ISSUES

A. Assignment of Errors

1. The trial court erred in entering judgment, dated March 7, 2012, granting CCB’s motion for summary judgment that CCB did not violate the itemization requirements in RCW 19.16.250(8)(c) when sending Kasoff the initial letter without an itemization
2. The trial court erred in entering judgment, dated

¹ RCW 19.16.250 was amended, effective July 22, 2011, under LAWS OF WASHINGTON 2011 1st sp.s. c 29 § 2, 2011 c 162 § 1; 2011 c 57 § 1 All citations to RCW 19.16.250 and its sections and subsections in this brief, unless context requires otherwise, are to the version of RCW 19.16.250 as in effect in July 2010 when CCB was trying to collect from Kasoff.

March 7, 2012, granting CCB's motion for summary judgment that CCB did not violate RCW 19.16.250(8)(c)(ii) by ceasing collection rather than making reasonable efforts to get the requested RCW 19.16.250(8)(c)(ii) information

B. Issues Pertaining to Assignments of Error

1. Defendant CCB, a licensed collection agency, sent or caused to be sent an initial letter to Plaintiff Kasoff without itemizing the alleged claim because its client Wells Fargo did not provide CCB with such information. Under the circumstances presented, is Kasoff entitled to a declaration that CCB violated RCW 19.16.250(8)(c)? (Assignment of Error No. 1)

2. Is a licensed collection agency who does not provide an itemization containing the information in RCW 19.16.250(8)(c)(ii) in the initial letter to the alleged debtor required to make a reasonable effort to obtain such information upon the written request of the debtor? or can the collection agency simply cease collection of the claim instead? (Assignment of Error No. 2)

III. STATEMENT OF THE CASE

On July 2, 2010, CCB Credit Services Inc. (“CCB”), a collection agency licensee, was authorized by Wells Fargo Bank, N.A. (“Wells Fargo”) to collect on an alleged debt allegedly owed by Larry M. Kasoff (“Kasoff”) to Wells Fargo by a contract. CP 95, ¶ 2. Kasoff disputes the alleged debt, and, among other things, points to statements by Wells Fargo that indicate such alleged debt has been paid. CP 2, ¶¶ 8-9; CP 8-35 (Ex. A to the Complaint). In sending the account to CCB, Wells Fargo only sent CCB a singular amount to collect which did not further specify the amount of the original obligation or the amount of interest and fees that were added to the original obligation. CP 95, ¶ 2. On or about July 6, 2010, CCB sent or caused to be sent to Kasoff, an initial letter (“CCB Letter”) dated July 6, 2010 that specified that the amount owing was \$27,167.36 without itemization of the original obligation, interest, and late fees added by Wells Fargo. CP 96, ¶ 3 and CP 37 (Ex. B to the complaint which is a redacted copy of the CCB Letter).

Also, on July 6, 2010, CCB initially contacted Kasoff with regard to the alleged debt. CP 96, ¶ 4. Kasoff orally indicated that he disputed the alleged debt and CCB informed him that they were ceasing collection of the alleged debt. CP 96, ¶ 4. However, subsequent to CCB telling

Kasoff it had stopped collection of the alleged debt, CCB went ahead and pulled a copy of Kasoff's credit report. CP 97, ¶ 9. CCB marked the account closed in their computers on July 7, 2010. CP 96, ¶ 5.

In response to receiving the CCB Letter, Kasoff, on July 10, 2010, sent CCB a written request, *inter alia*, requesting the RCW 19.16.250(8)(c)(ii) information since it was not contained in the CCB Letter. CP 97, ¶ 10; CP 39-41 (copy of Plaintiff's letter). However, in response, rather than making reasonable efforts to get the requested information and provide it to Kasoff, CCB, through its legal counsel, sent Kasoff a letter indicating in writing that they had ceased collection of the debt and that Kasoff should communicate with Wells Fargo to get the requested information. CP 97, ¶ 11 and CP 43 (copy of letter to Kasoff by CCB's counsel).

In November 2011, Kasoff brought this Uniform Declaratory Judgment Act ("UDJA") action against CCB in King County Superior Court. CP 6. Initially, Defendant CCB filed a motion to dismiss for failure to state a claim because Kasoff failed to plead any actual damages which would be required under the Washington Consumer Protection Act ("WCPA"). *See* CP 47-52. The motion was denied because Kasoff did not sue under the WCPA and did not ask for any relief under the WCPA. CP 72-73 and CP 122, 124.

After filing an answer and amended answer, CP 69-71 and CP 75-78, respectively, CCB filed a motion for summary judgment which was granted by the trial court. CP 79-89. The motion for summary judgment addressed 3 issues: (1) whether Wells Fargo was a necessary party to the UDJA action; (2) whether CCB violated RCW 19.16.250(8)(c)(ii) as then in effect; and (3) whether Plaintiff's claims were barred under the statute of limitations. *See, e.g.* CP 80. Plaintiff argued that: (1) Wells Fargo was not a necessary party, (2) CCB clearly violated RCW 19.16.250(8)(c) because (a) it did not provide an itemization as required under RCW 19.16.250(8)(c)(i) stating the amount owing on the original obligation at the time CCB received the claim for collection; and (b) CCB had a duty to exercise reasonable efforts to get the requested RCW 19.16.250(8)(c)(ii) information regardless of whether it had ceased collection subsequent to the sending of the CCB Letter, and that (3) the action was not barred under the applicable statute of limitations,. CP 98-113. CCB responded that the complaint did not put them on notice that Plaintiff claimed that CCB violated RCW 19.16.250(8)(c)(i). CP 160-166. The court denied the motion for summary judgment on the first grounds, granted the motion on the second grounds that RCW 19.16.250(8)(c) was not violated and declared the third grounds moot in light of its finding that RCW 19.16.250(8)(c) was not violated under the circumstances of the case. CP

168-170.

In ruling that RCW 19.16.250(8)(c) was not violated under the circumstances, the trial court interpreted RCW 19.16.250(8)(c) to not require an itemization including the amount of the original obligation owing at the time it was received for collection by the licensee because such an itemization would have the net effect of the licensee always knowing the amount specified in RCW 19.16.250(8)(c)(ii) by subtraction of the amounts specified in RCW 19.16.250(8)(c)(i),(iii)-(vi) from the total amount of the claim. RP 20-27 (March 2, 2012 pp. 7-14). Since RCW 19.16.250(8)(c)(ii) explicitly states such information only has to be provided “if such information is known by the licensee or employee,” there is no way to give effect to that language and not make it superfluous while still requiring an itemization of the amounts specified in all the other RCW 19.16.250(8)(c) subsections. RP 26-27 (March 2, 2012 pp. 13-14)

The trial court also ruled that CCB did not need to make reasonable efforts upon Plaintiff’s written request pursuant to RCW 19.16.250(8)(c)(ii) if CCB ceased collection of the alleged debt. CP 170; RP 49 (March 2, 2012 p. 36).

IV. ARGUMENT

A. A claim must be itemized in the initial letter to the debtor

pursuant to RCW 19.16.250(8)(c) and lack of knowledge of such amounts, except as to the specific amounts of interest, service charges, collection costs, or late payment charges as specified in RCW 19.16.250(8)(c)(ii), is not a defense to not providing such information.

Appellate courts review *de novo* trial court's determinations of statutory construction. *See, e.g., State, Dept. of Ecology v. Campbell & Gwinn*, 146 Wash.2d 1, 9, 43 P.3d 4 (2002). Therefore, this Court's review of the trial court decision is *de novo*.

The court's fundamental objective in statutory construction is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Id.*

RCW 19.16.250(8)(c) as in effect during the relevant time states in relevant part:

No licensee or employee of a licensee shall:

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists ***unless*** it shall indicate in clear and legible type:

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, ***an itemization*** of the claim asserted ***must be made including:***

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, ***if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a***

reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(emphasis added)

Plaintiff is seeking a declaration that such subsection was violated by CCB in collection of a claim such that RCW 19.16.450 applies to the alleged debt. RCW 19.16.450 specifies:

If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation.

1. RCW 19.16.250(8)(c)(ii) requires, not the aggregate total of all amounts specified in RCW 19.16.250(8)(c)(ii), but the actual individual amounts of interest, service charges, collection costs, or late payment charges and, as a result, the “if known” language can be reconciled with the requirement to provide the itemization

As the statute clearly states, an itemization of the claim **must** be made and clearly CCB did not make even an attempt at such an

itemization including, for example, the amount of the original obligation owed at the time CCB received it for collection, nor could it with the information supplied by Wells Fargo. *See*, CP 37 and CP 95-96, ¶ 2 (where CCB admits it only got a single amount from Wells Fargo as to the amount to collect without a further itemization of the claim). The plain language of the RCW 19.16.250(8)(c) subsection only allows a licensee not to provide the amounts, if there are any, for lack of knowledge regarding the information specified in RCW 19.16.250(8)(c)(ii), not RCW 19.16.250(8)(c)(i). If the legislature had intended the itemization would only need to be provided “if known by the licensee or employee,” they would have inserted this language in subsection (c) itself rather than in only one of the enumerated, roman-numeraled sub-subsections.

Contrary to the arguments made by Kasoff at the hearing and the trial court’s interpretation of the statute in light of Kasoff’s arguments, RCW 19.16.250(8)(c)(ii) requires the specification of the amount of each of the interest, service charges, collection costs, and late payment charges – and potentially for each party that may have added them.²

In other words, while Kasoff believed that a proper

² In this case, Wells Fargo, or one of its affiliates, is the original creditor and CCB was the first third-party trying to collect on such alleged debt. Thus, the only party who could have added these charges to the original obligation is Wells Fargo.

itemization of a hypothetical claim of \$11,000 would like something like:

Original Obligation Currently Owed (RCW 19.16.250(8)(c)(i) ³	\$10,000
Interest, service charge, collection costs, or late payment charges added before receiving the debt for collection (RCW 19.16.250(8)(c)(ii))	\$1,000
Interest or service charge added after receiving the debt for collection (RCW 19.16.250(8)(c)(iii))	\$0
Collection costs, if any, that the licensee is attempting to collect (RCW 19.16.250(8)(c)(iv))	\$0
Attorneys' fees (RCW	\$0

³ The citations to the statute and the explicit zero dollars (\$0) are included here for the sake of clarity. While it is arguably not required under the statute, it is still a best practice for a collection agency to explicitly indicate zero dollars if there is none for a given amount. This is especially true where the RCW 19.16.250(8)(c)(ii) amounts are known to be zero because it allows an alleged debtor to (1) distinguish between the licensee not knowing and there being none; and (2) prevents unnecessary requests to get such information.

19.16.250(8)(c)(v))	
Any other charge or fee (RCW 19.16.250(8)(c)(vi))	\$0

a correct itemization of the same hypothetical debt would need to look more like this:

Original Obligation Currently Owed (RCW 19.16.250(8)(c)(i))	\$10,000
Interest before receiving the debt for collection (RCW 19.16.250(8)(c)(ii))	\$750
Service charge before receiving the debt for collection (RCW 19.16.250(8)(c)(ii))	\$0
Collection costs before receiving the debt for collection (RCW 19.16.250(8)(c)(ii))	\$0
Late payment charges added before	\$250

receiving the debt for collection (RCW 19.16.250(8)(c)(ii))	
Interest or service charge added after receiving the debt for collection (RCW 19.16.250(8)(c)(iii))	\$0
Collection costs, if any, that the licensee is attempting to collect (RCW 19.16.250(8)(c)(iv))	\$0
Attorneys' fees (RCW 19.16.250(8)(c)(v))	\$0
Any other charge or fee (RCW 19.16.250(8)(c)(vi))	\$0

This interpretation is supported the use of the plural form of the word “*items*” in the PROVIDED subclause of RCW 19.16.250(8)(c)(ii). If only a single, aggregate total amount was necessary for RCW 19.16.250(8)(c)(ii), then there would be no need for the licensee to obtain information on *such items* as only a singular item of information would be needed to be obtained. On the other hand, if each of interest, service charges, collection costs, and late payment charges were needed

then there would be multiple items of information to obtain.

This interpretation also gives effect to the “if such information is known by the licensee or employee” language while also preserving the need to supply an itemization for the rest of the amounts specified in RCW 19.16.250(8)(c). Thus, RCW 19.16.250(8)(c)(i) is reconciled with RCW 19.16.250(8)(c)(ii). In other words, while the itemization must add up to the total of the claim, subtraction of the amounts from the other subsections from the total amount of the claim will only result in one aggregate amount for RCW 19.16.250(8)(c)(ii) and not the individual amounts of each of interest, service charges, collection costs, and late fees.

2. RCW 19.16.250(8)(c)’s requirement for an itemization cannot be rendered illusory, superfluous and undetectable of violation by the debtor or his attorney.

The obvious intent of RCW 19.16.250(8)(c) is to provide the debtor with necessary information about the debt for the debtor to evaluate in deciding to pay or what to pay the licensed collection agency. CCB did not and could not provide this information and, therefore, if the trial court’s interpretation of the statute is correct, the intent of the statute is not realized. If the legislature had intended the licensee not need to provide the itemization if not known by the licensee or an employee of the licensee, it would have placed that language in subsection (c) rather than

in subsection (c)(ii) only.

Furthermore, the trial court's interpretation is against the plain unambiguous meaning of the (8)(c) subsection as a whole and, while attempting to prevent the "if known" language from becoming superfluous, ends up making whole subsections, such as RCW 19.16.250(8)(c)(i), meaningless and illusory. Essentially, the trial court encourages a licensee to be ignorant of the itemization. If they are ignorant, a licensee can then use the same form letter that they use in other states that do not have similar requirements and vitiate the explicit requirements of the statute.

In addition, by determining whether RCW 19.16.250(8)(c) is violated based on whether or not the licensee knew the amounts needed to be itemized creates a problem in that the violation of the consumer protection statute depends, not based on what is on the face of the letter, but based on information that the consumer and his attorney do not have access to. The end result is a chilling effect on the use of RCW 19.16.450 based on a violation of RCW 19.16.250(8)(c) and continued violation of both the letter and spirit of RCW 19.16.250(8)(c).

3. Conclusion.

CCB had a requirement to provide an itemization under RCW 19.16.250(8)(c), including the amount owing on the original obligation at the time the alleged debt was received for collection pursuant to RCW 19.16.250(8)(c)(i), when it sent the initial letter to Kasoff. It did not provide such an itemization because Wells Fargo did not supply such information, and, therefore, violated RCW 19.16.250(8)(c) in collection of a claim. Kasoff is entitled to a declaration to this effect and the applicability of RCW 19.16.450 to the alleged debt.

B. Ceasing collection does not end the duty to make reasonable efforts to provide the requested RCW 19.16.250(8)(c)(ii) information if such information was not contained in the initial letter to Kasoff

RCW 19.16.250(8) regulates the sending, giving, or causing to be sent or given a letter, notice, or other written communication. The default, under the plain language of the statute, is that a licensee cannot send a letter unless they provide certain information in the letter. Therefore, it is the act of sending the letter which is the prohibited act and the one that needs to be done “in collection of a claim.” CCB’s and the trial court’s interpretation of the statute effectively renders the PROVIDED subclause as its own separate subsection of RCW 19.16.250 and ignores that portion of RCW 19.16.250(8) that prohibits the licensee from sending the letter unless the conditions of the rest of RCW 19.16.250(8) are met including

the PROVIDED subclause of RCW 19.16.250(8)(c)(ii).

The statute simply allows the licensee or employee not to know and indicate the RCW 19.16.250(8)(c)(ii) amounts in exchange for the corresponding duty and obligation to go get that information if requested in writing by the debtor. CCB simply ceased collection rather than making reasonable efforts to go get that information. CCB got the benefit of being able to send the letter to Kasoff while not having any of the corresponding burdens required under the plain language of the statute, such as, an itemization including the original obligation or the duty to exercise reasonable efforts to go get the RCW 19.16.250(8)(c)(ii) information.

Furthermore, if the legislature had intended a licensee to be able to cease collection rather than make reasonable efforts to get that information, they would have been more explicit in doing so. The recent amendments to the statute have, in fact, added language to the effect that the licensee shall, have the option to “cease efforts to collect on the debt until this information is provided” for all information requests related to RCW 19.16.250(8) except notably for RCW 19.16.250(8)(c)(ii). RCW 19.16.250(8) (as effective from July 22, 2011). If this was implicit for RCW 19.16.250(8)(c)(ii) than it would have been just as implicit for RCW 19.16.250(8)(b) which was amended to explicitly include the or cease

option. Given that the same exact language in RCW 19.16.250(8)(c)(ii) under the current version of the statute clearly requires the RCW 19.16.250(8)(c)(ii) information be provided regardless of whether the collection agency ceases collection, it follows that the same language did not include an implicit *or cease* option under the previous version of the statute.

In addition, while CCB has raised the concern that, if the duty does not stop when the licensee has ceased collection of the debt, then a licensee could be required to make reasonable efforts years after ceasing to collect, such an argument is a red herring and not at issue here because Kasoff did timely make a written request for the RCW 19.16.250(8)(c)(ii) information. Moreover, under these factual circumstances, CCB exerted more time and expense in getting its Illinois legal counsel to write the letter to Kasoff telling him to go get the information from Wells Fargo than it would have been for CCB to go get the information from Wells Fargo. CP 97, ¶ 11 and CP 43. To the extent it is easy for Kasoff to request the information for a disputed account from Wells Fargo, it should be just as easy or even easier for CCB, who is working on Wells Fargo behalf, to request such information.

V. CONCLUSION

Kasoff is entitled to a declaration that CCB violated RCW 19.16.250(8)(c), as then in effect, in collection of a claim such that RCW 19.16.450 applies with respect to the alleged debt. CCB made no attempt at an itemization of the claim in their initial letter to Kasoff as required by RCW 19.16.250(8)(c), and the trial court's statutory interpretation would make the requirement to provide an itemization, including the amount of the original obligation pursuant to RCW 19.16.250(8)(c)(i), entirely illusory. Moreover, it would encourage collection agencies to become purposely ignorant of details about the itemization of the claim so a licensee does not need to provide such information to a debtor and that is contrary to the intent of the statute. Finally, contrary to the trial court's statutory interpretation, there is a way to give meaning to the "if such information is known by the licensee or employee" language of RCW 19.16.250(8)(c)(ii), without gutting the requirement to provide an itemization including the amount of the original obligation as specified in RCW 19.16.250(8)(c)(i).

Additionally, CCB did not have the option of ceasing collection rather than exercising reasonable efforts to get Kasoff the RCW 19.16.250(8)(c)(ii) information once it sent the initial letter without such information and upon receiving Kasoff's written request for that

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I served in the manner noted below, a true and correct copy of the foregoing document on the following:

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DATED this 31st day of August, 2012, at Seattle, Washington.


Larry M. Kasoff