

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Ami Dunn,

Plaintiff,

v.

**Global Trust Management, LLC, and
Frank Torres,**

Defendants.

Case Number: _____

Ad Damnum: \$2,000 + Atty Fees & Costs

JURY TRIAL DEMANDED

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, *Ami Dunn*, (“**Ms. Dunn**”), by and through her attorneys, Seraph Legal, P.A., and complains of the Defendants, *Global Trust Management, LLC* (“**GTM**”) and **Frank Torres** (“**Torres**”) (collectively, “**Defendants**”), stating as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Ms. Dunn against Defendants for violations of the *Fair Debt Collection Practices Act*, 15 U.S.C. § 1692, *et. seq.* (“**FDCPA**”) and the *Florida Consumer Collection Practices Act*, Section 559.55, Florida Statutes *et. seq.* (“**FCCPA**”).

JURISDICTION AND VENUE

2. Subject matter jurisdiction for Ms. Dunn’s FDCPA claims arises under the FDCPA, 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1331.

3. Supplemental jurisdiction for Ms. Dunn's FCCPA claims arises under 28 U.S.C. §1367.

4. The Defendants are subject to the provisions of the FDCPA and FCCPA and are subject to the jurisdiction of this Court pursuant to Fed. R. Civ. P. 4(k).

5. Venue is proper in the Middle District of Florida, pursuant to 28 U.S.C. §1391(b)(2), because the events giving rise to this cause of action occurred in this District and every party resides in this district.

PARTIES

6. **Ms. Dunn** is a natural person who at all times relevant resided in Tampa, Hillsborough County, Florida and is a *consumer* as defined by the FDCPA and the FCCPA, 15 U.S.C. § 1692a(3) and Section 559.55(8), Florida Statutes, respectively.

7. **GTM** is a Florida limited liability company with a principal business address of **4805 W Laurel St., Suite 300, Tampa, FL 33607**.

8. GTM is registered with the Florida Office of Financial Regulation as a *Consumer Collection Agency* ("**CCA**"), holding license number **CCA9902589**. **SEE PLAINTIFF'S EXHIBIT A.**

9. As a licensed CCA with its principal place of business in the State of Florida, GTM knows, or should know, the requirements of the FDCPA and FCCPA.

10. **Torres** is a natural person who, on information and belief, resides at **70 Davis Blvd, Apt 9, Tampa, FL 33606**.

11. Torres is the Chief Operations Manager and Chief Compliance Officer of GTM. Through these roles, Torres is responsible for management decisions at GRM,

including determining which debts should be collected and how they are collected, and ensuring compliance with state and federal consumer protection statutes.

12. The Defendants are “debt collectors” within the meaning of the FDCPA, 15 U.S.C. §1692a(6), and the FCCPA, Section 559.55(7), Florida Statutes, in that they use instrumentalities of commerce, including postal mail, interstate and within the state of Florida, for their business, the principal purpose of which is the collection of debts, and/or they regularly collect or attempt to collect, directly or indirectly, debts owed or asserted to be owed another.

FACTUAL ALLEGATIONS

The Debt

13. Ms. Dunn allegedly obtained a loan (the “**Debt**”) from an internet-based payday loan company called Mobiloans, LLC (“**Mobiloans**”).

14. The loan from which the Debt arose was a *payday* loan – a short-term, unsecured loan which carried an interest rate in excess of 400 percent annually, which exceeds the threshold of usury pursuant to Florida statutes by more than a factor of 10.

15. The Debt arose from a loan primarily for family, personal, and household purposes, specifically a payday loan for personal purposes, and meets the definitions of “debt” under the FDCPA, 15 U.S.C. § 1692a(5), and the FCCPA, Section 559.55(6), Florida Statutes.

16. Ms. Dunn disputes owing the Debt.

Mobiloans

17. Mobiloans is an online “payday lender” operating from the website www.Mobiloans.com.

18. Mobiloans’ website states that Mobiloans makes loans at interest rates between 206% annually and 442% annually. **SEE PLAINTIFF’S EXHIBIT B.**

19. These figures assume that payments are made on-time. Often, the effective APR charged is much higher than 442%, due to the addition of late fees or rollover fees.

20. Pursuant to Section 687.02(1), Florida Statutes, all contracts for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatsoever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest, is usurious and in violation of the law.

21. Section 687.071, Florida Statutes, renders the issuing of a loan with annual interest rates greater than 45% a felony.

22. Pursuant to Section 687.071(7), Florida Statutes, **no loan made in violation of this statute shall be an enforceable debt in the State of Florida.**

23. Florida’s usury statutes, like those of other states, are designed to “protect against the oppression of debtors through excessive rates of interest charged by lenders.” *Sheehy v. Franchise Tax Bd.*, 84 Cal.App.4th 280, 283, 100 Cal. Rptr. 2d 760 (2000).

24. Any person who willfully makes such a loan, in addition to criminal sanctions, forfeits the right to collect payment for the loan, as such loans are “void as

against the public policy of the state as established by its Legislature.” *Richter Jewelry Co. v. Schweinert*, 169 So. 750, 758-59 (Fla. 1935).

25. Further, Mobiloans was never licensed by the Florida Office of Financial Regulation to act as a payday lender, nor was it a federally-chartered bank, nor did it hold any kind of regulatory license.

26. The loan from which the Debt arose charged fees in excess of 400% and is thus unenforceable under Florida Statute.

27. The Debt is thus unenforceable against Ms. Dunn.

Transfer of the Debt to Summit

28. Around September 2018, the Debt was purchased by GTM.

29. On information and belief, Torres, in his managerial capacity, was responsible for making the decision to purchase the Debt.

30. The alleged balance of the loan was \$1,198.76.

31. When the Defendants agreed to purchase the Debt from Mobiloans, they were well aware of the illegal provenance of the Debt -- that it originated from an unlicensed online lender which originated loans at interest rates far in excess of 400% annually, and they knew the loans were in no way enforceable against Florida residents, such as Ms. Dunn.

32. Defendants purchased the Debt despite knowledge of its unenforceability and illegality, for the express purpose of attempting to collect the Debt from Ms. Dunn using false threats, harassment, intimidation, and other similar collection methods.

33. Indeed, a large percentage of the debts GTM purchases are from Mobiloans and other similar online loansharks.

34. These charged-off loans are often purchased for pennies on the dollar, and, generally, are obtained by unsophisticated consumers who are unlikely to be aware of their legal rights and even less likely to know the debts are not enforceable against them.

35. GTM operates its own call center and employs its own debt collectors in Tampa, Florida.

36. Following its purchase of the Debt, GTM, itself, attempted to collect the Debt from Ms. Dunn; however, GTM also utilizes third-party collection agencies with whom it contracts to collect the debts it purchases.

37. Indeed, sometime around October 2018, the Defendants assigned the Debt to GMA Investments, LLC, and a Nevada debt collector conducting business under the name “Summit Receivables” (“**Summit**”).

38. Summit is a separate entity existing wholly apart from GTM.

39. In assigning the Debt to Summit for collection, the Defendants were specifically instructing Summit to attempt to collect from Ms. Dunn, despite knowledge that the Debt was usurious and unenforceable. GTM disclosed personal information regarding Ms. Dunn and the Debt to Summit, including, without limitation:

- a. Ms. Dunn’s name and status as a debtor;
- b. The current creditor and original creditor of the Debt;
- c. Ms. Dunn’s address and phone number; and,

d. The fact that Ms. Dunn allegedly owed \$1,198.76 arising from a payday loan with Mobiloans.

40. Ms. Dunn never consented to have her personal information disclosed to Summit, or any third party debt collector.

41. Summit is not a law office, an attorney, nor a *Consumer Reporting Agency* (“CRA”).

42. The Debt has not been reduced to judgment.

43. The Defendants’ assignment of the Debt to Summit was for the sole purpose of collection.

44. The Defendants therefore disclosed information regarding a consumer and her debt to a non-attorney, non-CRA third party, Summit, in connection with the collection of a debt.

45. By assigning the Debt to Summit for collection, the Defendants represented that the Debt was valid and owed, and that the Defendants had the legal ability and authority to collect the Debt.

46. Summit, itself, has a long and public history of non-compliance with state and federal consumer protection statutes – *e.g.*, in June 2018, Summit was sent a notice of intent to impose civil penalty and to impose a cease and desist order by Jorge Perez, Banking Commissioner for the State of Connecticut, for unlawfully collecting debt in Connecticut. See *In The Matter Of: GMA Investments, LLC d/b/a Summit Receivables NMLS # 1217898*. As a result, Summit was sanctioned by the State of Connecticut and ordered to pay \$400,000.

47. The Defendants knew or should have known of Summit's history of non-compliance.

48. True to form, Summit utilized illegal collection methods when trying to collect the Debt from Ms. Dunn.

49. For example, on November 20, 2018, Summit called and left the following message:

This call is for Ami Dunn. If this is not Ami Dunn, please hang up. My name is Melvin, and I'm with Summit Receivables. I'm calling you regarding your Mobiloan LLC account and an outstanding balance of \$1,198.76. It's very important that you contact my office *immediately* so that we can get this matter resolved *voluntarily*. My number is 844-498-6545 and my extension is 9031. This communication is from a debt collector and an attempt to collect a debt.

50. Ms. Dunn also received a voicemail from Summit on November 30, 2018, stating:

My name is Melvin and I'm calling you from Summit Receivables. I'm calling again about a matter which may concern you. We left several documented, time-stamped messages involving a personal business matter in our office. *You have failed to respond and leave us no other option but to move forward with different avenues to resolve this issue.* Please contact me at 1-844-498-6545. This communication is from a debt collector, this is an attempt to collect a debt.

51. On December 18, 2018, Ms. Dunn spoke with a Summit collection agent identifying himself as "Mr. Whitehead" ("Whitehead").

52. Whitehead expressed to Ms. Dunn that she needed to pay the Mobiloan debt *immediately*, since he had been instructed to "send out a verification of employment" to Ms. Dunn's employer, as she had been "reported for possible account deposit fraud."

53. Whitehead asked Ms. Dunn several times if she would like to resolve the matter “voluntarily,” and added in one instance that “voluntary” payment would stop Summit from “sending out documents to your employer.”

54. Whitehead also stated that not paying the loans was “the same thing as passing a bad check in your state.”

55. Pursuant to Section 832.05(2)(a), Florida Statutes, writing a worthless check for an amount over \$300 is a felony.

56. Thus, Whitehead was accusing Ms. Dunn of having committed a crime by not paying back a disputed loan with illegal interest rates which render the entire loan unenforceable, and also expressly threatened to communicate with Ms. Dunn’s employer despite knowing that the Debt had not been reduced to judgment.

57. Communicating with a person’s employer regarding a debt that has not been reduced to judgment is a *per se* violation of the FDCPA, 15 U.S.C. § 1692c(b) and the FCCPA, Section 559.72(4), Florida Statutes.

58. On December 19, 2018, Summit called Ms. Dunn and left a voicemail stating:

It looks like you had a conversation with a representative here in another department and some of the notes kind of put you in a negative light. I really wanted to speak to you to give you an opportunity to respond on your behalf and let me know if there was anything I can take into consideration before I do turn in my recommendation. I don’t have a lot of time to try to make contact with you so I’d really appreciate a call back as soon as you get this message. Let me give you my number 1-844-498-6545. If you would call me back as soon as you get this message as this is an attempt to collect a debt and any information obtained will be used for that purpose. I’m really looking forward to you call back today. Thanks so much.

59. This voicemail falsely implies that legal action will occur if the Debt is not paid, as the unidentified pre-recorded “representative” claims that she will be turning in a “recommendation” and wants to provide Ms. Dunn with an opportunity to “respond” on her own behalf.

60. Likewise, the voicemail would be misleading to an unsophisticated consumer, as it implies that the Debt is valid and enforceable against Ms. Dunn, when, to the contrary, the Debt arose from a usurious and unenforceable payday loan.

61. Considering Summit’s long and checkered history of non-compliance with the FDCPA and similar consumer protection statutes, the Defendants knew, or should have known, that Summit would engage in prohibited conduct in its attempts to collect the Debt from Ms. Dunn.

62. On information and belief, Summit’s willingness to collect unenforceable debt and engage in these sorts of false threats and intimidation were *precisely* the reasons the Defendants hired Summit to attempt to collect the Debt.

63. The Defendants chose to place the Debt for collection with Summit *because of* Summit’s propensity for illegal collection tactics, which creates a significantly higher rate of return on the Defendants’ investment.

Failure to Comply with Section 559.715, Florida Statutes

64. Section 559.715, Florida Statutes requires that the assignee of a consumer debt give the debtor written notice of the assignment 30 days prior any action taken to collect the debt.

65. The Defendants never sent Ms. Dunn notice of assignment of the Debt.

66. Indeed, no entity has sent Ms. Dunn notice of assignment of the Debt.

67. The Defendants' assignment of the Debt to Summit was in connection with the collection of a debt, and the Defendants instructed Summit to collect the Debt immediately from Ms. Dunn, despite knowing that no written notice in compliance with Florida Statutes had been sent to her.

68. GTM's own in-house calls were attempts to collect the Debt.

69. Torres was personally involved in the collection efforts of GTM, and was personally responsible for setting the policies by which such conduct was taken and for overseeing such conduct.

70. Torres and GTM are thus jointly and severally liable for violations of the FDCPA and FCCPA.

71. Ms. Dunn has hired the aforementioned law firm to represent her in this matter and has assigned her right to collect fees and costs to the firm.

COUNT I
VIOLATIONS OF THE FDCPA

72. Ms. Dunn adopts and incorporates paragraphs 1 – 71 as if fully restated herein.

73. The Defendants violated **15 U.S.C. § 1692f** when they used unfair or unconscionable means to attempt to collect the Debt, when they assigned the Debt to Summit for collection, despite knowing that the Debt was unenforceable and void, and knowing full well that Summit would utilize illegal methods of collection, including false threats and harassment.

74. The Defendants violated **15 U.S.C. § 1692c(b)** when they communicated information about the alleged Debt to Summit, an unrelated third party. Summit was not an attorney for GTM or Ms. Dunn, was not a CRA, and Ms. Dunn did not consent to the communication.

75. The Defendants violated **15 U.S.C. § 1692e(2)(a)** when they made false representations regarding the character or legal status of the Debt, when they made their own collection attempts and by instructing Summit to collect the Debt from Ms. Dunn, in each matter falsely representing that the Debt was valid and legally enforceable against Ms. Dunn, when the Debt was void as usurious under Florida law.

76. The Defendants violated **15 U.S.C. § 1692e and 1692e(10)** when they used false, deceptive, and misleading representations in connection with the collection of a debt by falsely representing that the Debt was legally enforceable when it was usurious and not enforceable, and by attempting to collect the Debt at all prior to the notification of assignment of debt legally required by Florida statutes.

77. The Defendants violated **15 U.S.C. § 1692e(5)** when they threatened action which could not legally be taken: specifically, the collection of a debt rendered void under Florida law.

78. GTM's actions were willful, intentional, and representative of its regular business practices.

WHEREFORE, Ms. Dunn respectfully requests this Honorable Court enter judgment against GTM and Torres, jointly and severally, for:

- a. Statutory damages of **\$1,000.00**, pursuant to 15 U.S.C. § 1692k(a)(2)(A);

- b. Unspecified actual damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. Reasonable costs and attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3); and,
- d. Such other relief that this Court deems just and proper.

COUNT II
VIOLATIONS OF THE FCCPA

79. Ms. Dunn adopts and incorporates paragraphs 1 – 71 as if fully restated herein.

80. The Defendants violated Section **559.72(9)**, Florida Statutes, when they asserted legal rights that do not exist, specifically, the right to collect a debt from Ms. Dunn, both directly and via a collection agent, when they knew that the subject debt was illegitimate and unenforceable due to: (a) the application of an illegally high interest rate on the principal amount of the Debt; (b) the fact that Mobiloans was never licensed as a deferred presentment provider in the State of Florida; and, (c) their attempt to collect a debt prior to complying with the FCCPA's requirement of notice of assignment of debt.

81. The Defendants violated Section **559.72(9)**, Florida Statutes, when they asserted that the Debt was legitimate despite knowledge to the contrary.

82. The Defendants' conduct was willful and intentional, and was engaged in with a reckless disregard for Ms. Dunn's rights under federal and Florida law.

WHEREFORE, Ms. Dunn respectfully requests this Honorable Court enter judgment for her against the Defendants, jointly and severally, for:

- a. Statutory damages of **\$1,000.00** pursuant to Section 559.77(2), Florida Statutes;
- b. Unspecified actual damages pursuant to Section 559.77(2), Florida Statutes;

- c. Injunctive relief preventing the Defendants from attempting to collect the alleged debt from Ms. Dunn pursuant to Section 559.77(2), Florida Statutes;
- d. Punitive damages for Defendants' intentional and flagrant violations of the FCCPA, pursuant to Section 559.77(2), Florida Statutes;
- e. Reasonable costs and attorney's fees pursuant to pursuant to Section 559.77(2), Florida Statutes; and,
- f. Such other relief that this Court deems just and proper.

JURY TRIAL DEMANDED

Ms. Dunn demands a jury trial on all issues so triable.

Respectfully submitted on September 6, 2019, by:

/s/ *Bryan J. Geiger*

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EXHIBITS:

- A GTM's Florida Consumer Collection Agency License Record
- B Screenshot of Mobiloan's Website, December 18, 2018