

Capital One Uses False Contracts To Collect Debt, Suit Says

By Keith Goldberg

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Law360, New York (October 16, 2012, 4:58 PM ET) -- Capital One Bank USA NA was hit with a putative class action in Pennsylvania federal court on Friday that claims the bank knowingly used false and inapplicable credit card agreements to pursue debt collections against its cardholders.

The suit filed in Pennsylvania's Eastern District claims that Capital One is directing third-party collection attorneys to pursue actions against cardholders using customer agreements that were created years after the credit cards were originally issued, a violation of the Fair Debt Collection Practices Act, as well as state consumer protection laws.

"It is clearly impossible for an original contract dated after the date of a credit card issuance to act as the governing agreement between the parties, except as an amendment or modification of the original contract," the complaint said. "Yet, as this complaint will substantiate, Capital One has committed to writing and has disseminated to its national collection attorney base its instruction and authorization to all of its collection attorneys throughout the United States of America to use its false contracts as the governing contracts for credit card holders who are the subject of collection efforts."

Named plaintiff Robert Wheeler applied for and was issued a Capital One credit card in 2004, according to the complaint.

In August, Wheeler was sued in Pennsylvania state court by Nudelman Klemm & Golub PC, a New Jersey law firm representing Capital One that sought collection of an alleged defaulted credit card payment in 2009. Capital One had originally sued Wheeler in small claims court, but Wheeler won, according to the complaint.

However, the customer agreement submitted by the firm that it accused Wheeler of breaching was dated the year 2010. Both the customer agreement and the state court complaint indicate that it is not an amendment or modification to any prior agreement, the complaint said.

Therefore, Nudelman, Klemm & Golub are trying to collect a debt that allegedly resulted from a credit card issued in 2004 and defaulted in 2009 by using a customer agreement issued in 2010, Wheeler's complaint said.



Documents

Complaint

Case Information

Case Title

WHEELER v. CAPITAL ONEBANK (USA), N.A. et al

Court

Pennsylvania Eastern

Nature of Suit

Other Statutes: Consumer Credit

Case Number

2:12-cv-05848

Judge

MITCHELL S. GOLDBERG

Date Filed

October 15, 2012

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Banking

Fast-Tracking Abandoned Residence Foreclosures In Ill.

A new Illinois law — going into effect June 1, 2013 — provides clarity for dealing with inventories of abandoned properties and statutory immunity for securing such properties prior to foreclosure. While lenders and servicers need to prepare for new requirements and filing fees, the law also removes uncertainty and litigation risks, say attorneys with Locke Lord LLP.

Judge Won't Nix Charges Against Atty In Racketeering Case

A New Jersey federal judge on Tuesday denied a motion to dismiss charges against an attorney accused of taking part in a racketeering and securities fraud scheme to loot a now-defunct Texas mortgage company, dismissing his argument that the charges against him are too vague and difficult to prove.

DOL Blasts Bankers' Precedent In Loan Officer OT Row

The U.S. Department of Labor on Friday pressed the D.C. Circuit to affirm a ruling upholding the agency's reclassification of mortgage loan officers as eligible for overtime pay, saying the precedent that the industry group challenging the change is citing for support should be overturned.

Class Action

US Steel's Booze Testing Doesn't Violate ADA, Judge Says

A Pennsylvania federal judge ruled Wednesday that the Americans with Disabilities Act doesn't prohibit U.S. Steel Corp. from administering random alcohol screenings to new workers as a safety precaution, tossing a proposed class action lodged by the U.S. Equal Employment Opportunity Commission.

Verifications To Pay \$5M To Settle Background Check Claims

Background screening company Verifications Inc. has agreed to pay nearly \$5 million to resolve a putative class action alleging the company failed to properly notify consumers when it ran background checks for employers, according to a filing in Virginia federal court Wednesday.

Costco Faces Class Action Over Contaminated Crab Spread

Costco Wholesale Corp. and GoldCoast Salads Inc. were hit Wednesday with a proposed class action alleging that consumers were exposed to listeria-tainted crab spread that was eventually recalled.

Commercial Contracts

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Collection agencies and financial institutions have been hit with several recent suits in the Eastern District of Pennsylvania over these collection practices, including a 2011 suit against Capital One that is still pending, according to the complaint. That shows that the bank and its collection attorneys systematically use false documentation to support alleged contractual obligations asserted against consumers they have sued in order to collect alleged debt, the complaint said.

"These wrongful collection activities are intended by the defendants to secure collection from those whom the United States Congress has defined as the 'least sophisticated consumer,'" the complaint said.

The suit, which also names Nudelman Klemm & Golub, seeks to establish a class of Capital One cardholders who have been the subject of debt collection suits in which the bank has used the customer agreements as evidence.

Capital One has faced plenty of recent scrutiny over its card practices. In July, the bank agreed to pay \$210 million to settle deceptive credit card marketing allegations made by the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency.

Under a pair of consent decrees, Capital One agreed to reimburse up to 2.5 million customers a total of \$150 million for deceptive marketing of so-called add-ons to credit cards as well as unfair billing practices. All but \$10 million of the \$150 million total will go to 2 million consumers with low credit scores that were either pressured into purchasing or given false information regarding payment protection, credit monitoring and other add-ons to their cards.

On top of the \$150 million in restitution to customers, Capital One agreed to pay a \$25 million fine to the CFPB and a \$35 million fine to the OCC.

Capital One is also facing multidistrict litigation accusing it of illegally manipulating debit card transactions to collect hundreds of millions of dollars in excessive overdraft fees, in violation of its contracts and state consumer protection laws.

A representative for Capital One couldn't immediately be reached for comment Tuesday.

Wheeler is represented by Stuart A. Eisenberg and Carol B. McCullough of McCullough Eisenberg LLC.

Counsel information for the defendants wasn't immediately available Tuesday.

The case is Wheeler v. Capital One Bank USA NA et al., case number 2:12-cv-05848, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Evan Weinberger. Editing by Katherine Rautenberg.

maintain regular, open dialog at the senior-most levels of the organization, and that aren't afraid to put the contract aside and think about new and better ways to achieve individual and collective goals — even if it means a complete restructuring of the relationship, say Gerald Quirk and David Wittenberg of Choate Hall & Stewart LLP.

Halliburton Faces \$300M Arbitration Over Fracking Secrets

Halliburton Energy Services Inc. was hit with a \$300 million arbitration demand by an environmental services firm accusing the oilfield services giant of stealing trade secrets about its fracking liquid treatment operation, despite a nondisclosure agreement between the companies.

11th Circ. Backs BoFA In Fight Over \$1B Vegas Hotel Funding

The Eleventh Circuit on Wednesday rejected claims by more than 40 lenders and investors in the Las Vegas casino and hotel Fontainebleau that Bank of America Corp. wrongfully cut off over \$1.2 billion in funding for the doomed project, affirming two lower courts' decisions.

Pennsylvania

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A Pennsylvania federal judge ruled Wednesday that the Americans with Disabilities Act doesn't prohibit U.S. Steel Corp. from administering random alcohol screenings to new workers as a safety precaution, tossing a proposed class action lodged by the U.S. Equal Employment Opportunity Commission.

NCAA Sues Pa. Gov. Over Law Keeping \$60M Penn State Fine

The NCAA hit Pennsylvania Gov. Tom Corbett and other state officials with a federal lawsuit Wednesday challenging a newly enacted law keeping in state the \$60 million fine it slapped against The Pennsylvania State University over the Jerry Sandusky child molestation scandal.

3rd Circ. Reinstates Former Teleflex Exec's Age Bias Case

The Third Circuit on Wednesday revived a former Teleflex Inc. executive's claims alleging she was terminated because of conflict arising from her age, while the medical device company had argued that she resigned.