

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

MARGARET MURTAGH,

Index No.: 09-

Plaintiff,

VERIFIED COMPLAINT

-against-

ZWICKER & ASSOCIATES, ANDREW DICK,
AMERICAN LEGAL PROCESS, GENE GAGLIARDI
and WILLIAM SINGLER,

Defendant.

FILED
OCT - 7 2009
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Plaintiff, by her attorneys the Law Office of John M. Murtagh, as and for her complaint states:

1. Plaintiff is a former American Express cardholder and a resident of Westchester County, NY.
2. Defendant Zwicker & Associates is a law firm with offices in Rochester, NY.
3. Defendant Andrew Dick is an attorney licensed to practice in the State of New York and, upon information and belief, the managing attorney in defendant Zwicker's Rochester, NY office.
4. American Legal Process ("ALP") is a licensed New York State process service agency located in Garden City, NY.
5. William Singler is the President of defendant ALP.
6. Gene Gagliardi is and employee or agent of defendant ALP and a resident of the State of New York.

Background

1. In or about 2004, the plaintiff was the victim of identity theft when her American Express credit card account was used to make multiple unauthorized purchases.
2. Immediately upon discovering the unauthorized use of the credit card, plaintiff reported the same to the Yonkers, NY police department which investigated same.
3. Immediately after discovering the unauthorized use of the credit card, plaintiff also reported the same to the defendant's principal, American Express Travel Related Services ("American Express"), which also, purportedly, undertook an investigation.
4. American Express thereafter acknowledged the illegal use of the credit card but refused to remove all of the unauthorized charges from the plaintiff's account.
5. Thereafter, despite having due notice that plaintiff disputed the amount due on her credit card, American Express retained the law firm of defendant Zwicker & Associates and, specifically, its local New York counsel, defendant Andrew Dick to file an action against plaintiff in the Supreme Court of the State of New York, Westchester County styled American Express Travel Related Services v. Margaret Murtagh, Index No.: 07-6943 (the "action").
6. Defendants Zwicker and Dick in turn retained the office of defendant ALProcess, its President, defendant Singler and its employee and agent, defendant Gagliardi to serve the summons and complaint.
7. In fact, the defendants and its agents never served plaintiff and falsified an affidavit of service which they then caused to be filed with the court.

8. Thereafter, without ever obtaining jurisdiction over plaintiff defendants Zwicker and Dick entered a default judgment against defendant in the Supreme Court Westchester County.
9. Upon learning that a default judgment had been entered against her, plaintiff moved to vacate the default judgment and to dismiss based on her sworn affidavit that she was never served with process and that the defendants had, therefore, never obtained jurisdiction over her nor provided her a full and fair opportunity to litigate the claims against her.
10. In opposition to plaintiff's motion, defendant's Zwicker and Dick filed an affirmation affirmed by defendant Dick relying on the affidavit of defendant Gagliardi as to his alleged service of the summons and complaint.
11. In a decision and order entered on June 5, 2009 the Court, according equal weight to the Gagliardi affidavit and to the plaintiff's affidavit, determined that a question existed as to service of process and set the matter down for a traverse hearing.
12. The parties were directed to appear in the Central Calendar Part on July 16, 2009 for the purpose of scheduling a date for the traverse hearing.
13. On July 16, 2009, plaintiff appeared by counsel in the Central Calendar Part of the Supreme Court, Westchester County. Defendants Zwicker and Dick failed to appear at either the first or the second call of the calendar.
14. Only five days after the court appearance at which counsel for defendants Zwicker and Dick failed to appear, the New York State Attorney General filed suit on behalf of the Honorable Ann Pfau, Chief Administrative Judge of the New York Unified Court System, against thirty-five different law firms, including the defendant Zwicker, all of

which had employed ALP. That suit alleges that nearly 100,000 default judgments have been entered in the New York Courts based upon false affidavits from process servers working for defendant ALP including defendant Gagliardi.

15. Upon information and belief, defendant Singler had been indicted by the Attorney General months earlier following a lengthy criminal investigation involving, among others, defendant Zwicker.

16. According to the criminal complaint, defendant Singler organized and orchestrated defendant ALP's fraudulent activities including preparing, notarizing and filing thousands of legal documents submitted to the New York Courts in which his process servers purportedly swore individuals had been served when they had not.

17. When the Attorney General announced the Singler indictment in April, he also announced his intention to file suit against law firms which are now the subject of the Pfau action including the defendant Zwicker. Clearly, therefore, defendants were then on notice of both the Singler indictment and the impending civil action at least by April of this year.

18. Yet, despite knowledge of an ongoing investigation by the Attorney General and the indictment in April of its process server, defendants Zwicker and Dick, submitted to the Court the false affidavit of defendant Gagliardi which had been fraudulently notarized by defendant Singler in opposition papers dated May 6, 2009.

19. Despite being on notice that defendant Singler had been indicted for fraud in connection with service of process for it, defendants Zwicker and Dick not only did not advise plaintiff, but filed the service affidavit with this court for a second time knowing it to be false or at a minimum knowing that it was the subject of a criminal investigation

and of questionable veracity yet hoping the court would rely on it to uphold the fraudulently obtained default judgment.

FIRST CAUSE OF ACTION

20. Defendant/ counterclaimant repeats and realleges the allegations of paragraphs 1 through 19 above as if more fully set forth herein.

21. Defendants, their employees, agents and representatives knew that plaintiff did not owe the amounts claimed by them.

22. Defendants, their employees, agents and representatives knew that a genuine dispute existed as to the amount, if any, owed by plaintiff.

23. Defendant, their employees, agents and representatives knew that process was never served on plaintiff and that jurisdiction had never, therefore, been obtained over plaintiff.

24. Despite such knowledge, defendants through their employees, agents and representatives filed a false instrument with the Court causing a judgment to be entered against plaintiff.

25. Defendants acted willfully, maliciously, recklessly, wantonly and with intent to injure plaintiff.

26. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

SECOND CAUSE OF ACTION

27. Plaintiff repeats and realleges the allegations of paragraphs 1 through 26 above as if more fully set forth herein.

28. Defendants' action in causing the preparation of the summons and complaint, filing of the summons and complaint, filing of the default judgment and continuing to prosecute its baseless claim against plaintiff was effected with full knowledge that its claim had been timely disputed, that process had not been served, that jurisdiction had not been obtained and defendant, their agents, employees and representatives nevertheless wrongfully and with intent to harass and injure plaintiff continued to use the legal process to prosecute a baseless claim.

29. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

THIRD CAUSE OF ACTION

30. Plaintiff repeats and realleges the allegations of paragraphs 1 through 30 above as if more fully set forth herein.

31. Defendants' actions as alleged were the direct and proximate cause of severe emotional distress, illness, shock and harm to the emotional well being of the plaintiff.

32. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

FOURTH CAUSE OF ACTION

33. Plaintiff repeats and realleges the allegations of paragraphs 1 through 32 above as if more fully set forth herein.

34. Defendants' knowingly attempted to collect and assert a right to collection fees, attorney's fees, court costs and expenses despite knowing that same were not justly due and legally chargeable and otherwise committed violations of the New York State General Business Law.

35. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

FIFTH CAUSE OF ACTION

36. Plaintiff repeats and realleges the allegations of paragraphs 1 through 35 above as if more fully set forth herein.

37. Defendants were negligent in allowing directly or through their agents, employees or representatives the prosecution of the action against plaintiff and the entry of judgment against plaintiff.

38. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

SIXTH CAUSE OF ACTION

39. Plaintiff repeats and realleges the allegations of paragraphs 1 through 38 above as if more fully set forth herein.

40. Upon information and belief, defendants their agents, employees and representatives knowingly communicated false information to third parties regarding plaintiff's alleged debt to American Express thereby damaging plaintiff's reputation.

41. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

SEVENTH CAUSE OF ACTION

42. Plaintiff repeats and realleges the allegations of paragraphs 1 through 41 above as if more fully set forth herein.

43. Upon information and belief, defendants, their agents, employees and representatives negligently communicated false information to third parties regarding plaintiff's alleged debt to Amreican Express thereby damaging plaintiff's reputation.

44. By reason of the foregoing, plaintiff suffered damages in an amount to be determined by the court.

WHEREFORE, plaintiff requests a judgment against defendants on all causes of action together with her costs and such other and further relief as to the court seems just and proper.

Dated: Yonkers, NY
September 29, 2009

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