

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**MAGISTRATE JUDGE NOLAN**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL ACQUISITIONS & MANAGEMENT  
CORP., a corporation,

RM FINANCIAL SERVICES, INC., a corporation,

CAPITAL PROPERTIES HOLDINGS, INC.,  
a corporation,

CARIBBEAN ASSET MANAGEMENT, LTD.,  
a corporation,

REESE WAUGH,

JEROME KUEBLER,

ERIC WOLDOFF,

GEORGE OTHON, and

JEFFREY GARRINGTON,

Defendants.

Civil Action No. 04-00000

**RECEIVED**

DEC - 2 2004

RICHARD P. THOMAS  
CLERK, U.S. DISTRICT COURT

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l, to secure temporary, preliminary, and permanent injunctive

relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. § 1692 et seq.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1692l. This action arises under 15 U.S.C. § 45(a) and 15 U.S.C. § 1692l.

3. Venue in the Northern District of Illinois is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

4. At all times material to this complaint, Defendants have maintained a substantial course of trade in the collection of debts, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **PARTIES**

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 et seq. The FTC is charged, inter alia, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the FDCPA, 15 U.S.C. § 1692 et seq., which prohibits deceptive and unfair collection practices. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the FDCPA, and to secure such equitable relief as may be appropriate in each case, including consumer redress. 15 U.S.C. §§ 53(b) and 1692l(a).

6. Defendant Capital Acquisitions and Management Corp. ("CAMCO"), was

incorporated in Illinois in 1997, then reincorporated in Delaware in 2003, and has its principal place of business located in Rockford, Illinois. At all times relevant to this complaint, CAMCO has transacted business in this district and throughout the United States.

7. Defendant RM Financial Services, Inc. ("RM"), was incorporated in Georgia and has its principal place of business in Norcross, Georgia. At all times relevant to this complaint, RM has transacted business in this district and throughout the United States.

8. Defendant Capital Properties Holdings, Inc. ("CPH"), was incorporated in Illinois in 2002, and has its principal place of business located in Rockford, Illinois. At all times relevant to this complaint, CPH has transacted business in this district and throughout the United States.

9. Defendant Capital Asset Management, Ltd. ("CAM"), was incorporated in the British Virgin Islands in 2002, and has its principal place of business located in Montego Bay, Jamaica. At all times relevant to this complaint, CAM has transacted business in this district and throughout the United States.

10. Defendant Reese Waugh is the executive vice president, the chief operating officer and a director of CAMCO, is the executive vice president and chief operating officer of RM, the secretary and a director of CPH, and the secretary/treasurer of CAM. Waugh resides in Genoa, Illinois. At all times relevant to this complaint, acting alone or in concert with others, Waugh has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. Waugh has transacted business in this district and throughout the United States.

11. Defendant Jerome Kuebler is vice president of operations of CAMCO. Kuebler resides in Sycamore, Illinois. At all times relevant to this complaint, acting alone or in concert

with others, Kuebler has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. Kuebler has transacted business in this district and throughout the United States.

12. Defendant Eric Woldoff is the president and a director of CAMCO, the treasurer/secretary and a director of RM, a director of CPH, and the president and a director of CAM. Woldoff resides in Boca Raton, Florida. At all times relevant to this complaint, acting alone or in concert with others, Woldoff has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. Woldoff has transacted business in this district and throughout the United States.

13. Defendant George Othon is an officer, director, or otherwise an agent of CAMCO, and the president and a director of CPH. Mr. Othon resides in St. Charles, Illinois. At all times relevant to this complaint, acting alone or in concert with others, Mr. Othon has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. Mr. Othon has transacted business in this district and throughout the United States.

14. Defendant Jeffrey Garrington is an officer, director, or otherwise an agent of CAMCO. Mr. Garrington resides in Rockford, Illinois. At all times relevant to this complaint, acting alone or in concert with others, Mr. Garrington has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this complaint. Mr. Garrington has transacted business in this district and throughout the United States.

15. Defendants CAMCO, RM, CPH, CAM, Waugh, Kuebler, Woldoff, Othon, and

Garrington are "debt collectors" as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

### **DEFENDANTS' BUSINESS ACTIVITIES**

16. Defendants CAMCO, RM, CPH, CAM, Waugh, Kuebler, Woldoff, Othon, and Garrington (collectively, "the Defendants"), engage in the purchase and collection of consumer debts that are past the permissible reporting periods imposed by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 and 1681c, and that are beyond states' statutes of limitations ("time-barred debts").

17. The Defendants have been collecting time-barred debts nationwide since CAMCO was incorporated in 1997. RM merged with CAMCO in 2001.

18. The Defendants have operated offices, from which they attempt to contact consumers, in Rockford, Illinois; Schaumburg, Illinois; Fort Lauderdale, Florida; Norcross, Georgia; Marietta, Georgia; and Montego Bay, Jamaica.

19. The Defendants purchase time-barred debts, primarily credit card, revolving charge card, and installment debts, at a substantial discount from large commercial retailers or credit card issuers nationwide. The Defendants have claimed to have purchased over \$2 billion in "non-performing receivables."

20. The Defendants' collectors attempt to collect time-barred debts or debts that have been discharged in bankruptcy through dunning letters and telephone calls to consumers.

21. The Defendants' collectors often threaten to sue, garnish the wages of, or attach the property of, consumers who do not pay the Defendants for these alleged debts. In truth, however, the Defendants have no intention to take legal action against these consumers, and any

legal action would be unsuccessful in any event.

22. In many cases, the Defendants' collectors claim to be working with government authorities, stating or suggesting that consumers would face arrest and/or imprisonment if they did not pay the Defendants.

23. Similarly, the Defendants' collectors often threaten to take steps to damage the credit of such consumers, sometimes timing their calls to coincide with a consumer's application for new credit. In truth, the Defendants have no intention to report information to credit bureaus about these consumers, and such outdated information would not appear on credit reports pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

24. The Defendants' collectors also engage in a variety of abusive practices in their contacts with consumers. For example, the Defendants' collectors regularly call consumers at work, even if they were told that such calls are prohibited by the consumers' employers or the consumers notify the collector that such calls are inconvenient. Defendants' collectors also harass consumers' neighbors, family and co-workers in an attempt to embarrass or put pressure on consumers to pay the debts.

25. The Defendants' collectors frequently use abusive or profane language to intimidate consumers, scream at consumers and leave threatening messages on consumers' answering machines.

26. In a substantial number of cases, the consumers the Defendants target are not even the people who incurred the alleged debt the Defendants are trying to collect.

27. Although Defendants CAMCO, RM, Waugh and Kuebler entered into a Consent Decree with the FTC, entered on March 24, 2004, *U.S. v. Capital Acquisitions & Mgt. Corp., et*

*al.*, No. 04-C-50147 (N.D. Ill. - Western Division), the Defendants' illegal conduct has continued unabated.

### **VIOLATION OF SECTION 5 OF THE FTC ACT**

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

#### **COUNT ONE**

29. On numerous occasions since March 24, 2004, in connection with the collection of debts, the Defendants have represented to consumers, expressly or by implication, that if the consumer does not pay the Defendants, the Defendants can and will take actions that will have a significant adverse effect on the consumer's credit report.

30. In truth and in fact, a consumer's failure to pay the Defendants cannot and will not have a significant adverse effect on the consumer's credit report.

31. Therefore, the Defendants' representations as set forth in Paragraph 29 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT TWO**

32. On numerous occasions since March 24, 2004, in connection with the collection of debts, the Defendants have represented to consumers, expressly or by implication, that:

- (a) the consumer can be arrested or imprisoned for failing to pay the Defendants;
- (b) the consumer has a legal obligation to pay the Defendants; or
- (c) if the consumer does not pay the Defendants, the Defendants can or will

take formal legal action against the consumer, such as filing suit, seizing or attaching property, or garnishing wages.

33. In truth and in fact:
- (a) the consumer cannot be arrested or imprisoned for failing to pay the Defendants;
  - (b) the consumer is not legally obligated to pay the Defendants; and
  - (c) if the consumer does not pay the Defendants, the Defendants cannot or will not take formal legal action against the consumer, such as filing suit, seizing or attaching property, or garnishing wages.

34. Therefore, Defendants' representations as set forth in Paragraph 32 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

**COUNT THREE**

35. On numerous occasions since March 24, 2004, in connection with the collection of debts, the Defendants have communicated with a consumer without the consumer's prior consent given directly to the debt collector or the express permission of a court of competent jurisdiction:

- (a) at times or places that the Defendants knew or should have known to be inconvenient to the consumer, including but not limited to communicating with the consumer at the consumer's place of employment when the debt collector knew or should have known that it is inconvenient for the consumer to receive



such communications, in violation of Section 805(a)(1) of the FDCPA, 15 U.S.C. § 1692c(a)(1); or

- (b) at the consumer's place of employment when the Defendants knew or had reason to know that the consumer's employer prohibited the consumer from receiving such communications, in violation of Section 805(a)(3) of the FDCPA, 15 U.S.C. § 1692c(a)(3).

#### **COUNT FOUR**

36. On numerous occasions since March 24, 2004, in connection with the collection of debts, the Defendants have communicated with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

#### **COUNT FIVE**

37. On numerous occasions since March 24, 2004, in connection with the collection of debts, the Defendants have communicated with a consumer after the consumer has notified the Defendants in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, in violation of Section 805(c) of the FDCPA, 15 U.S.C. § 1692c(c).

### COUNT SIX

38. On numerous occasions since March 24, 2004, in connection with the collection of debts, the Defendants have engaged in conduct the natural consequence of which is to harass, oppress, or abuse a person, in violation of Section 806 of the FDCPA, 15 U.S.C. § 1692d, including, but not limited to:

- (a) Using obscene or profane language or language the natural consequence of which is to abuse the hearer, in violation of Section 806(2) of the FDCPA, 15 U.S.C. § 1692d(2); and
- (b) Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass a person at the number called, in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5).

### COUNT SEVEN

39. On numerous occasions since March 24, 2004, in connection with the collection of a debt, the Defendants have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to:

- (a) Falsely representing the character, amount, or legal status of any debt, in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A);
- (b) Falsely representing or implying that an individual is an attorney or that a communication is from an attorney, in violation of Section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3);
- (c) Falsely representing or implying that nonpayment of a debt will result in

the arrest or imprisonment of a person or the seizure, garnishment, or attachment of a person's property or wages, when such action is not lawful or when the Defendants have no intention of taking such action, in violation of Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4);

- (d) Threatening to take action that is not lawful or the Defendants do not intend to take, such as filing a lawsuit, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5);
- (e) Threatening to communicate with any person credit information that the Defendants know or should have known to be false, in violation of Section 807(8) of the FDCPA, 15 U.S.C. § 1692e(8); or
- (f) Using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10).

#### **COUNT EIGHT**

40. On numerous occasions since March 24, 2004, in connection with the collection of a debt, when the consumer has notified the Defendants in writing within the thirty day period pursuant to Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), that the debt, or any portion thereof, is disputed, the Defendants have continued to attempt to collect the debt before the verification of the debt was provided to the consumer, in violation of Section 809(b) of the FDCPA, 15 U.S.C. §1692g(b).

### **CONSUMER INJURY**

41. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of the Defendants' violations of Section 5(a) of the FTC Act and the FDCPA. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers and harm the public interest.

### **THIS COURT'S POWER TO GRANT RELIEF**

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), empower this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

43. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the Defendants' law violations.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief, including a temporary restraining order, asset freeze, and appointment of a receiver, as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin the Defendants from violating the FTC Act and the FDCPA;
3. Permanently enjoin the Defendants from engaging, directly or indirectly, in the

occupation of debt collector;

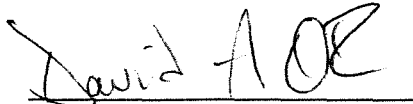
4. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the FTC Act and the FDCPA, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains by Defendants; and

5. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: December 2, 2004

Respectfully submitted,

WILLIAM KOVACIC  
General Counsel

A handwritten signature in black ink that reads "David A. O'Toole". The signature is written in a cursive style with a horizontal line underneath the name.

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