

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

In Re: DOROTHY MARIE WHEELER : CASE NO: 10-11701
: CHAPTER 7

DOROTHY MARIE WHEELER : ADVERSARY NO: 11-01001
Plaintiff :
: VERSUS :
: GLAY H. COLLIER II, :
THOMAS C. MCBRIDE, and :
MCBRIDE & COLLIER :
Defendants :

AMENDED COMPLAINT

Now Into Court through undersigned counsel comes the Plaintiff, Dorothy Marie Wheeler, who amends the complaint pursuant to Rule 15 of the Federal Civil Rules of Civil Procedure and as allowed by Pretrial Orders of the Court as follows:

1.

Plaintiff filed for relief under chapter 7 of the Title 11 of the United States Code (hereinafter referred to as the Bankruptcy Code) on June 12, 2010. Plaintiff's case number is 10-11701 filed in the United States Bankruptcy Court for the Shreveport

Division of the Western District of Louisiana. Plaintiff is a natural person and a resident of and is domiciled in Bossier Parish, Louisiana.

2.

Made defendant herein is Glay H. Collier II, who is a resident of and is domiciled in Bossier Parish, Louisiana. Glay H. Collier II is an attorney and a partner in the law firm of McBride & Collier. Glay H. Collier II has a law office located at 920 Pierremont Road, Suite 511, Shreveport, LA 71106 and an office located at 320 Pine Street, Monroe, LA 71201 (hereinafter Glay H. Collier II will be referred to as "Collier").

3.

Made defendant herein is Thomas C. McBride, who is a resident of and is domiciled in Rapides Parish, Louisiana. Thomas C. McBride is an attorney and a partner in the law firm of McBride & Collier. Thomas C. McBride has a law office located at 201 Jackson Street, Suite 101, Alexandria, LA 71301 (hereinafter Thomas C. McBride will be referred to as "McBride").

4.

Made defendant herein is the law firm of McBride & Collier, a Louisiana General Partnership that maintains or previously maintained a law office at 920 Pierremont Road, Suite 511, Shreveport, LA 71106, and a law office at 320 Pine Street, Monroe, LA 71201, and a law office at 201 Jackson Street, Suite 101, Alexandria, LA 71301.

5.

Made defendant herein is Continental Casualty Insurance Company, a foreign insurance company authorized to do and doing business in the State of Louisiana, which may be served through the Secretary of the State of Louisiana, POB 94125, Baton Rouge, LA 70805.

6.

This Court has jurisdiction of this action pursuant to 28 U.S.C. §1334(b), 1331, 1337, and 15 U.S.C. §1640(e). This is a proceeding arising under Title 11 of the United States Code. Additional causes of action asserted here arise from the same facts herein and arise in or related to a case under Title 11 of the United States Code.

7.

This is a core proceeding under 28 U.S.C. §157(b)(1), §157(b)(2)(A), and §157(b)(2)(O).

8.

To the extent any portion of this complaint is not a core proceeding within the meaning of 28 U.S.C. §157, Plaintiff consents to the entry of final orders of the Bankruptcy Judge in this proceeding.

9.

Collier and the law firm of McBride & Collier represented plaintiff in the chapter 7 bankruptcy proceeding until that representation was terminated by order of the court on January 7, 2011.

10.

The defendants did not execute a written contract with plaintiff explaining clearly and conspicuously the services the defendant would provide the plaintiff, the fees and charges for such services, and the terms of payment; nor did the defendants provide the plaintiff a copy of a fully executed contract.

11.

The plaintiff's chapter 7 bankruptcy petition was filed on June 12, 2010, and she received her discharge in bankruptcy on October 4, 2010.

12.

The defendants' claims for attorney fees, costs, and expenses against the plaintiff were prepetition claims, and defendants' claims were not excepted from discharge in bankruptcy pursuant to any part of §523 of the Bankruptcy Code.

13.

The plaintiff did not enter into a reaffirmation agreement with the defendants pursuant to §524(c) reaffirming the defendants' claim.

14

The defendants' claims for attorney fees, costs, and expenses against the plaintiff have been discharged in bankruptcy.

15.

The plaintiff's bankruptcy schedule I reflect current monthly income of \$1,547.19 and her bankruptcy schedule J show current monthly expenditures of \$1,547.19, which left her with \$0.00 monthly net income.

16.

Plaintiff's bankruptcy schedule J does not provide for any monthly expenditure to the defendants.

17.

Collier and the law firm of McBride & Collier filed the disclosure of compensation of attorneys for the debtor stating: "[F]or legal services I have agreed to accept \$1,901.00; Prior to the filing of this statement I have received (blank); and Balance Due \$1,901.00"; however, the defendants intended to collect more than this sum from the plaintiff.

18.

Prior to the bankruptcy filing defendants had plaintiff sign a "Credit/Debit Authorization Form" authorizing defendants to debit her account for 22 bi-weekly payments of \$100 each for a total of \$2200. The defendants restricted the payment method of their claim to electronic debiting of the plaintiff's bank account.

19.

Plaintiff did not sign any agreement to authorize a debit from her bank account after the bankruptcy filing. An authorization signed pre-filing cannot make debits made after the bankruptcy filing presumptively voluntary.

20.

After the bankruptcy petition was filed, the plaintiff did not demonstrate a willingness to voluntarily have money in her bank account electronically debited by the defendants and applied to a dischargeable debt.

21.

After the bankruptcy petition was filed, Collier and the law firm of McBride & Collier electronically debited the plaintiff's bank account to collect attorney fees and/or advanced costs as follows:

- a. \$100.00 on 6/21/2010;
- b. \$100.00 on 7/5/2010;
- c. \$100.00 on 7/19/2010;
- d. \$100.00 on 8/2/2010;
- e. \$100.00 on 8/16/2010;
- f. \$100.00 on 8/30/2010;
- g. \$100.00 on 9/13/2010;
- h. \$100.00 on 9/27/2010;
- i. \$100.00 on 10/11/2010;
- j. \$100.00 on 10/25/2010;
- k. \$100.00 on 11/08/2010; and
- l. \$100.00 on 12/6/2010

22.

The defendants' claims against plaintiff were discharged in bankruptcy, and were not owed by plaintiff after the bankruptcy petition was filed.

23.

The plaintiff requested that Collier and the law firm of McBride & Collier cease debiting her bank account; however, defendants did not stop debiting her bank account.

24.

Collier and the law firm of McBride & Collier knew or should have known that collecting the claim for fees and charges arising from the representation of the plaintiff in the chapter 7 bankruptcy proceeding violated the stay provisions of 11 USC §362(a)(6) for money collected after the bankruptcy petition was filed and before the bankruptcy discharge was granted.

25.

Collier and the law firm of McBride & Collier knew or should have known that collecting the claim for compensation and any advanced costs arising from the representation of the plaintiff in the chapter 7 bankruptcy proceedings violated the discharge injunction provisions of 11 USC §524(a)(2) for money collected after the bankruptcy discharge was granted.

26.

The collection practices of Collier and the law firm of McBride & Collier caused monetary injury to plaintiff for the money collected from her bank account after the bankruptcy petition was filed.

VIOLATION OF THE AUTOMATIC STAY AND INTENTIONAL AND WILLFUL

VIOLATION OF THE AUTOMATIC STAY OF 11 USC §362(a)(6)

27.

Each specific act of Collier and the law firm of McBride & Collier of electronically debiting the plaintiff's bank account, after the bankruptcy petition and before her discharge in bankruptcy was granted, was a specific act of willful violation of the automatic stay provision of §362(a)(6) of the Bankruptcy Code.

28.

Plaintiff is entitled to a judgment finding that the collection practices of Collier and the law firm of McBride & Collier willfully violated §362(a)(6) of the Bankruptcy Code, when money was collected from plaintiff by debiting her bank account after the bankruptcy petition was filed and before the bankruptcy discharge was granted, and further awarding the Plaintiff actual damages, including costs and attorney fees, and punitive damages for injuries pursuant to §362(k) of the Bankruptcy Code.

VIOLETION OF THE DISCHARGE INJUNCTION OF §542(a)(2)

29.

Plaintiff re-alleges all the allegations in the proceeding paragraphs as if fully set forth herein.

30.

Plaintiff is entitled to a judgment finding that the collection practices of Collier and the law firm of McBride & Collier violated the injunction pursuant §524(a)(2) of the Bankruptcy Code, when money was collected by electronically debiting the

plaintiff's bank account after the bankruptcy discharge was granted, and further awarding Plaintiff actual damages, including costs and attorney fees, and punitive damages for violation of the permanent injunction of §524(a)(2) of the Bankruptcy Code in conjunction with §105(a) of the Bankruptcy Code.

CLAIM FOR REIMBURSEMENT PURSUANT TO La C.C. art 2299

31.

Plaintiff re-alleges all the allegations in the proceeding paragraphs as if fully set forth herein.

32.

McBride & Collier received payment for claims not owed by plaintiff when the defendants debited the plaintiff's bank account after the bankruptcy petition was filed.

33.

Plaintiff is entitled to judgment against the defendants for reimbursement of the money McBride & Collier electronically debited from plaintiff's bank account after the chapter 7 bankruptcy petition was filed pursuant to La C.C. art 2299.

CLAIM PURSUANT TO 11 USC §528(a)(1)&(2) AND 11 USC §526(c)(1)&(2)

34.

Plaintiff re-alleges all the allegations in the proceeding paragraphs as if fully set forth herein.

35.

The plaintiff is an "assisted person" pursuant to the definition in 11 USC §101(3).

36.

Collier, McBride, and the law firm of McBride & Collier are each a "debt relief agency" pursuant to the definitions "debt relief agency" in 11 USC §101(12A) and the definition of "person" in 11 USC §101(41).

37.

Collier, McBride, and the law firm of McBride & Collier provided bankruptcy assistance to the plaintiff as defined in 11 USC §101(4A) by providing plaintiff with information, advice, counsel, document preparation, attending the creditors' meeting, and appearing in the above captioned and titled bankruptcy case.

38.

Collier, McBride, and the law firm of McBride & Collier intentionally or negligently failed to execute a written contract with plaintiff explaining clearly and conspicuously the bankruptcy assistance services the defendants would provide the plaintiff, the fees and charges for such services, and the terms of payment.

39.

Collier, McBride, and the law firm of McBride & Collier intentionally or negligently failed to provide plaintiff a copy of a fully executed copy of a contract for

bankruptcy assistance services the defendants would provide the plaintiff, the fees and charges for such services, and the terms of payment.

40.

Collier, McBride, and the law firm of McBride & Collier are liable to the plaintiff for the amount of any fees and charges the defendants received in connection with providing bankruptcy assistance, for actual damages, and for reasonable attorneys' fees and costs as allowed in 11 USC §526(c)(1)&(2)(A) for the intentional or negligent failure of Collier, McBride, and the law firm of McBride & Collier to comply with 11 USC §528(a)(1)&(2) as stated hereinabove.

PLAINTIFF CLASS ACTION ALLEGATIONS

41.

Plaintiff re-alleges all the allegations in the preceding paragraphs as if fully set forth herein.

42.

Plaintiff brings this action on behalf of all other similarly situated class members pursuant to Federal Rule of Civil Procedure 23(b)(3). The Plaintiff Class is defined as follows:

All those natural persons:

- (a) Who employed any of the defendants, Collier, McBride, and/or the law firm of McBride & Collier, for legal representation in a chapter 7 bankruptcy proceeding in the Western District of Louisiana;

- (b) Who had their bank accounts electronically debited by any of the defendants, Collier, McBride, and/or the law firm of McBride & Collier, and/or by defendants' employees or agents for the collection, to collect a prepetition claim for bankruptcy assistance services and advanced costs, after a chapter 7 bankruptcy petition was filed;
- (c) Further, with whom the defendants, Collier, McBride, and/or the law firm of McBride & Collier intentionally or negligently failed to execute a written contract that explained clearly and conspicuously the bankruptcy assistance services any of the defendants would provide said person, the fees and charges for such services, and the terms of payment;
- (d) Further, to whom the defendants, Collier, McBride, and/or the law firm of McBride & Collier intentionally or negligently failed to provide a copy of a fully executed written contract that explained clearly and conspicuously the bankruptcy assistance services any of the defendants would provide said person, the fees and charges for such services, and the terms of payment;

43.

The Individual Representative Claimant represents a class which is believed to be so numerous as to make joinder of all individual members impractical. The exact number of the class is not presently known but will be determined through discovery. Further, the Representative Claimant's claims are based upon the same legal theory as are the claims of the other class members and their damages arise out of the same identical or repetitive course of conduct by the defendants.

Accordingly, all class members' claims contain common issues of law and fact which predominate over questions affecting individuals as class members. Because the claims of each individual class member are relatively small, no member of the class has an individual interest controlling prosecution of separate actions, and by concentrating the litigation in one particular forum, consistency and judicial efficiency will be served. Plaintiff is prepared to manage her responsibility of the class with the assistance of her counsel, but may seek additional class representatives in such capacity.

44.

There are questions of law and fact common to the class, which predominate over any questions affecting individual members of the class. Among the questions of law and fact common to the Class Members are the following:

(a) Did the defendants violate or willfully violate the automatic stay provision of 11 USC 362(a)(6) by collecting claims for compensation and advanced costs by electronically debiting the plaintiff's and similarly situated class members' bank accounts after the bankruptcy petitions were filed and before these debtors were discharged in bankruptcy?

(b) Did the defendants violate or willfully violate the permanent injunction provision of 11 U.S.C. §524(a)(2) by collecting claims for compensation and advanced costs by electronically debiting the plaintiff's and similarly situated class members' bank accounts after the debtors were discharged in bankruptcy?

(c) Are the plaintiff and similarly situated class members entitled to reimbursement from the defendants of the money defendants electronically debited

from their bank accounts after the bankruptcy petitions were filed pursuant to La C.C. art 2299?

(d) Did Collier, McBride, and/or the law firm of McBride & Collier intentionally or negligently fail to execute a written contract with plaintiff and similarly situated class members explaining clearly and conspicuously the bankruptcy assistance services the defendants would provide the plaintiff, the fees and charges for such services, and the terms of payment?

(e) Did Collier, McBride, and/or the law firm of McBride & Collier intentionally or negligently fail to provide either plaintiff and similarly situated class members a copy of a fully executed contract that explained clearly and conspicuously the bankruptcy assistance services any of the defendants would provide the fees and charges for such services, and the terms of payment?

45.

Representative Claimant and all others similarly situated class members are additionally entitled to attorney's fees to the extent provided by applicable law.

46.

Representative Claimant requests that undersigned counsel be appointed as Class Counsel.

LIABILITY OF PARTNERSHIP AND PARTNERS

47.

The general partnership of McBride & Collier and the partners, Thomas C. McBride and Glay H. Collier II, share according to law liability covering the defendants' acts herein.

Professional Liability Insurance

48.

The defendants are insured by an insurance policy issued by Continental Casualty Insurance Company, which may cover the defendants' acts herein.

Wherefore the plaintiff requests she be allowed to amend her complaint as stated herein.

PLAINTIFF AS REPRESENTATIVE CLAIMANT requests an order certifying the class and appointing the undersigned attorneys be appointed as class counsel.

PLAINTIFF INDIVIDUALLY AND AS REPRESENTATIVE CLAIMANT AND ALL SIMILARLY SITUATED CLASS MEMBERS PRAY that the defendants, Collier, McBride, and the law firm of McBride & Collier, and Continental Casualty Insurance Company be duly cited, and after due proceedings had, there be judgment herein in favor of Representative Claimant and all similarly situated Class Members and against the defendants according to law (insolido where applicable) for actual damages, statutory damages, fees, attorney's fees and costs, plus punitive damages pursuant to 11 U.S.C. 362(k), 11 U.S.C. §524(a)(2), and 11 USC §105(a) as authorized by law for violations of law and causes of action associated herein.

FURTHER PLAINTIFF INDIVIDUALLY AND AS REPRESENTATIVE CLAIMANT AND ALL SIMILARLY SITUATED CLASS MEMBERS PRAYS there be judgment in favor of the plaintiff and all similarly situated Class Members and against the defendants, Collier, McBride, and the law firm of McBride & Collier, and Continental Casualty Insurance Company, according to law (insolido where applicable) for

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

In Re: DOROTHY MARIE WHEELER : CASE NO: 10-11701
: CHAPTER 7

DOROTHY MARIE WHEELER : ADVERSARY NO: 11-01001
Plaintiff :
:
VERSUS :
:
GLAY H. COLLIER II, :
THOMAS C. MCBRIDE, and :
MCBRIDE & COLLIER :
Defendants :

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing amended complaint was served both electronically through the Bankruptcy Court (cm/ecf) by depositing a copy of the same in the U.S. Mail, with the proper postage attached, and addressed to:

Allen & Gooch, A Law Corporation
James H. Gibson
David J. Ayo
2000 Kaliste Saloon Rd, Suite 400 (70508)
POB 81129
Lafayette, LA 70509-1129
Attorney for Glay H. Collier, II, Thomas
C. McBride, and McBride & Collier

Deutsch, Kerrigan & Stills, L.L.P.
William E. Wright
Charlotte Meade
755 Magazine Street
New Orleans, LA 70130-3672
Attorneys for Continental Casualty Company

On this the 29th day of June 2011.

/s/ Ralph Scott Bowie
