

CAUSE NO.: 2007-25798

HARRIS COUNTY, ET AL.

PLAINTIFFS,

V.

JOSE DE LA CRUZ IRAHETA, ET AL.

DEFENDANTS.

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IN THE DISTRICT COURT

125TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

CLERK OF DISTRICT COURT
HARRIS COUNTY, TEXAS
JAN 10 10:11:38

DEPUTY

**DEFENDANT JOSE DE LA CRUZ IRAHETA'S
ORIGINAL ANSWER, COUNTER-CLAIM, AND CROSS-CLAIM**

NOW COMES Defendant Jose De La Cruz Iraheta, a named Defendant, in the above-entitled and numbered cause, and file this Original Answer, and show the Court:

I. Discovery

1. Defendant will conduct discovery pursuant to Rule 190, Texas Rules of Civil Procedure "TRCP", Discovery Control Plan, Level 2.

II. Parties

2. Defendant/Counter-Plaintiff/Cross-Plaintiff Jose De La Cruz Iraheta ("Mr. Iraheta") is a legal resident of the State of Texas, a member of the United States Air Force, currently on active duty federal military service. Defendant Mr. Iraheta, and is currently stationed outside of the State of Texas at Robins Air Force Base, Warner Robins, Georgia.

3. Plaintiffs/Counter-Defendants are listed and described in Plaintiffs' First Amended Petition, Paragraph I, "PLAINTIFF(S)".

4. Cross-Defendant, Lineburger Goggan Blair & Sampson, L.L.P., ("Linebarger") is a domestic Limited Liability Partnership. It's presence before the Court is specified in paragraph VI, Plaintiffs' First Amended Petition, is "represented by the attorney whose name is signed", Pankaj R. Parmar, is before the Court for all purposes, and no further service of process is required.

III. General Denial

5. Defendant, Mr. Iraheta, denies each and every allegation stated in Plaintiffs' First Amended Petition, and demand strict proof thereof as required by the TRCP and the Texas Civil Practice and Remedies Code.

IV. Specific Denials and Affirmative Defenses

6. Defendant, Mr. Iraheta, specifically denies the allegations specified in Paragraph III, Plaintiffs' First Amended Petition, and demands strict proof of the "TOTAL DUE" amount claimed; denies that there are "delinquent taxes"; denies there are penalties, interests, and costs justly due, owing and unpaid to Plaintiffs.

7. Defendant, Mr. Iraheta, with regards to Paragraph IV, Plaintiffs' First Amended Petition, specifically denies and demands strict proof thereof that "all of the taxes were authorized by law and legally imposed"; specifically denies and demands strict proof thereof that Plaintiffs now have a lien on each tract of real property and each item of personal property; specifically denies, pursuant to Rule 54, TRCP, and demands strict proof thereof, "that all things required by law to be done have been done properly by the appropriate officials and all conditions precedent have been met."

8. Furthermore, Defendant Mr. Iraheta demand that Plaintiffs clarify the generalization of the personal property against which a lien is asserted by Plaintiffs, individually and jointly, to secure the payment of all alleged amounts itemized in the foregoing tax suit. Plaintiffs are required, by Texas Property Tax Code § 33.43(a)(9), to separately describe each real and personal property. Plaintiffs Mr. Iraheta asks this Court to either order repleading or strike that request from Plaintiffs' pleading.

9. For further answer, if necessary Mr. Iraheta asserts that all of Plaintiffs' alleged causes of action regarding the delinquency of Mr. Iraheta's tax account, penalties, interests, and all other costs and damages claimed are barred by waiver and/or statute.

10. For Further answer, if necessary Mr. Iraheta asserts that this lawsuit is possibly barred by the Texas Property Tax Code and or the Servicemember Civil Relief Act.

V. Counter-Claim

11. Defendant/Counter-Plaintiff Mr. Iraheta brings this his Counter-Claim against Plaintiffs for all, and each, but not limited to, the following:

a. Negligent conduct at failing to maintain adequate oversight of records by acting unreasonably to accurately report Defendant Mr. Iraheta's valid military waiver, tax account status, and failing to supervise the conduct of its collection agent, Cross-Defendant Linebarger;

b. negligent conduct at failing to convey to Plaintiffs' collection agent, Cross-Defendant Linebarger, Defendant Mr. Iraheta's active duty military status, current and valid Military Property Owner's Waiver, pursuant to Texas Property Tax Code § 31.02;

c. negligent conduct and tortious interference in the business relationship of Mr. Iraheta in having, and wrongfully asserting, a lien against Defendant Mr. Iraheta's lawful, just, and proper right, title, and interest in his real and personal property;

d. negligent conduct depriving him of the right to use his properties as collateral in financial transactions; and

d. negligent conduct in wrongfully authorizing the filing of the frivolous suit stating the causes of action outlined in Plaintiffs' First Amended Petition.

VI. Cross-Claim Against Linebarger.

12. Cross-Defendant Linebarger's principal line of commerce is the collection business. Cross-Defendant Linebarger is liable to Cross-Plaintiff Mr. Iraheta pursuant to the Tex. Finance Code § 392.001, Texas Debt Collections Act, ("Act") because: Linebarger is a collection agency as the term is defined under the Act; Defendant Mr. Iraheta did not owe the amount of debt sought; Linebarger made no effort to verify the accuracy of the alleged debt despite Mr. Iraheta's numerous written and telephone notices in the past asserting his active duty military status and valid military waiver pursuant to Texas Property Tax Code § 31.02; and Linebarger acted unreasonably in failing to avoid such errors and not file the frivolous and bad-faith suit now before the Court.

13. The actions of Linebarger in violation of the Texas Debt Collection Act also constitutes a violation of Tex. Bus. & Com. Code § 17.50, Deceptive Trade Practices Act ("DTPA"). Pursuant to Tex. Bus. & Com. Code Ann. § 17.505(a), Counter-Plaintiff will not seek monetary and other damages for DTPA violations until 60 days have elapsed from Counter-Defendant's receipt of Counter-Plaintiff's DTPA required notice. As such, no abatement of the proceedings by the Court is required by statute or case law.

VII. Common Law Negligence

14. Plaintiffs had a duty to Defendant/Counter-Plaintiff Mr. Iraheta to exercise reasonable care in determining whether Mr. Iraheta's tax account was actually delinquent, given Mr. Iraheta's valid military waiver, before turning over a wrongfully identified delinquent account that included illegally levied penalties

and interests to Cross-Defendant Linebarger. However, instead of exercising such care, Plaintiffs hired Linebarger to collect a debt, and file suit for, a debt that Mr. Iraheta did not owe, or in the alternative, a debt that wrongfully included illegally levied penalties and interests; and in the further alternative file a tax suit in violation of the Texas Property Tax Code. These actions were a breach of the duty Plaintiffs owed to Mr. Iraheta and was the proximate cause of false information giving rise to Plaintiffs' civil claim causing damage to Mr. Iraheta by hindering his ability to use his property as collateral, undue stress and duress in defending Plaintiffs frivolous civil suit.

15. Cross-Defendant Linebarger had a duty to Defendant/Cross-Plaintiff to exercise reasonable care to ensure that Mr. Iraheta actually owed the amount claimed, to validate the delinquency status given Mr. Iraheta's valid military waiver, and not to violate Mr. Iraheta's rights, relating to military personnel, as provided in the Texas Property Tax Code. Linebarger breached this duty by doing absolutely nothing to verify the actual amount owed by Mr. Iraheta, verify the delinquency of his tax account, take notice that Plaintiffs had a valid military waiver of penalty and interest on file. Defendant/Counter-Plaintiff provided written notice, on more than one occasion, to Linebarger regarding his active duty military status and valid military waiver. However, Linebarger did nothing to correct its files and allowed information it knew, or should have known, to be false, and/or incorrect, to remain in its collection file of Defendant/Counter-Plaintiff's tax account. This actions were the proximate cause of Linebargers' continuous collection efforts, in violation of the Act, the lien asserted against Mr. Iraheta's real and personal property, and the undue stress and duress of defending against the frivolous and wrongful civil claim filed by and on behalf of Plaintiffs/Counter-Defendants.

VIII. Damages

16. As a result of all the incidents described in the foregoing action, and those to be orally plead at time of trial, Defendant/Counter-Plaintiff/Cross-Plaintiff Mr. Iraheta has suffered several damages and expenses directly and indirectly associated with consequences brought forth by Plaintiffs/Counter-Defendants' and Cross-Defendant's negligence and actions.

17. Defendant/Counter-Plaintiff/Cross-Plaintiff Mr. Iraheta seeks damages for Plaintiffs/Counter-Defendants' and Cross-Defendant's negligence and actions as follows:

- a) Actual damages within the jurisdictional limit of the Court;
- b) \$99,000.00, individually, from each of the eight Plaintiffs, listed in Paragraph I, Plaintiffs' First Amended Petition, and Cross-Defendant as damage for any lien, auction, sale, foreclosure, or

transfer of right, title, or interest of Mr. Iraheta's real and personal property described in Paragraph III, Plaintiff's First Amended Petition, prior to or during the pendency of this suit, executed by or on behalf of Plaintiffs and/or Cross-Defendant;

- c) Treble and exemplary damages within the jurisdictional limit of the Court, pursuant to Tex. Bus. & Com. Code § 17.50(b)(1) – to be excluded until after 60 days of DTPA required notice;
- d) All economic, exemplary, and special damages, within the jurisdictional limit of the Court, resulting from Plaintiffs' lien against Mr. Iraheta's real and personal properties, violations and deprivation of Mr. Iraheta's rights and interest in the real property described in Paragraph III, Plaintiff's First Amended Petition;
- e) Mental anguish damages in the amount of \$25,000.00 related to the common law negligence of Plaintiffs/Counter-Defendants and Cross-Defendant and the violations of the Texas Debt Collection Act by Linegarber;
- f) Exemplary damages based on Plaintiffs' violations of Mr. Iraheta's right to duly entitled waiver of penalty and interest and Cross-Defendant violations of the Texas Debt Collection Act;
- g) Punitive damages in an amount sufficient to punish Plaintiffs/Counter Defendants and Cross-Defendant and serve as an example and deterrent to other that might be tempted to engage in such egregious conduct;
- h) Costs of suit and Court, and Attorneys' fees; and
- i) Pre-judgment and post judgment interest as provided by law.

IX. Demand for Jury

18. Defendant/Counter-Plaintiff/Cross-Plaintiff respectfully requests a trial by Jury on all causes of action in the foregoing cause.

X. Prayer

19. Defendant prays the Court, after notice and hearing or trial, enters judgment in favor of Defendant, that Plaintiffs take nothing by reason of their petition herein, and awards Defendant the costs of court and suit, attorney's fees, and such other and further relief as Defendant may be duly entitled.

20. Counter-Plaintiff prays the Court, after notice and hearing or trial, enters judgment against Counter-Defendants as enumerated in Paragraph 17(a)-(i) above, that he recover his costs of suit, attorney's fees, pre-judgment and post-judgment interest, and for such other and further relief, special or general, at law or in equity, to which Counter-Plaintiff may be entitled.

21. Cross-Plaintiff Counter-Plaintiff prays the Court, after notice and hearing or trial, enters judgment against Cross-Defendant as enumerated in Paragraph 17(a)-(i) above, that he recover his costs of suit, attorney's

fees, pre-judgment and post-judgment interest, and for such other and further relief, special or general, at law or in equity, to which Cross-Plaintiff may be entitled.

Respectfully submitted,



JOSE D. IRAHETA
Captain, United States Air Force
105 Oglethorpe Drive
Bonaire, Georgia 31005
Telephone (832) 541-3122

**DEFENDANT/COUNTER-
PLAINTIFF/CROSS-PLAINTIFF,
*PRO SE***

CERTIFICATE OF SERVICE

I certify that on this, the May 15, 2007, the foregoing Original Answer, Counter-Claim, and Cross-Claim was served upon the following parties in accordance with the Texas Rules of Civil Procedure.

Via Registered Mail, Return Receipt

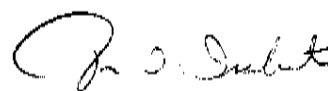
Pankaj R. Parmar
Linebarger Goggan Blair & Sampson, L.L.P.
1301 Travis
Suite 300
Houston, Texas 77002
Attorney for Plaintiffs, Counter-Defendants, and Cross-Defendant

Via U.S. First Class Mail

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Warner Robins, GA 31099

Chase Mortgage Company
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Charles F. Hanger Sr
President
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Mineola, TX 75773-0208

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A Delaware Corporation
1595 Spring Hill Rd
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JOSE D. IRAHETA
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PLAINTIFF/CROSS-PLAINTIFF,
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