

JUDGMENT FOR PLAINTIFF(S)

DOCKET NUMBER

201123SC001102

Trial Court of Massachusetts
District Court Department
Small Claims Session



CASE NAME CLAUDETTE MATHISEN vs. THE LAW OFFICES OF GARY H. KREPPPEL, P.C. AS HE IS GARY H. KREPPPEL

PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT

P01 CLAUDETTE MATHISEN

CURRENT COURT

Springfield District Court
50 State Street
Hall of Justice
Springfield, MA 01103-2002
(413) 735-6000

DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT

D01 THE LAW OFFICES OF GARY H. KREPPPEL, P.C. as he is GARY H.

PAYMENT REVIEW SCHEDULED FOR
11/01/2011 02:00 PM.

←←←←←
WHEN
YOU
MUST
APPEAR
←←←←←

ROOM/SESSION

Courtroom 5

PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

P01 CLAUDETTE MATHISEN
1134 WORCESTER STREET
INDIAN ORCHARD, MA 01151

FURTHER ORDERS OF THE COURT

JUDGMENT ORDERED AMENDED TO
INCLUDE ATTORNEY FEES(\$1,000.00)
upon submission of affidavit.

ATTORNEY FOR PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

P01 GEORGE E. BOURGUIGNON, Jr.
LAW OFFICE OF GEORGE E. BOURGUIGNON, JR.
73 STATE STREET
SUITE 15
SPRINGFIELD, MA 01103

On the above claim, after trial by a judge, the Court has entered JUDGMENT IN FAVOR OF THE PLAINTIFF(S) listed above.

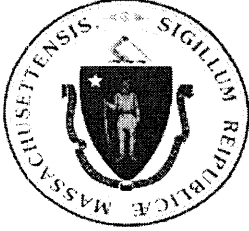
The defendant(s) must pay the plaintiff(s) the "Judgment Total" shown below, plus additional postjudgment interest under General Laws c. 235 § 8 at the "Annual Interest Rate" shown below from the "Date Judgment Entered" shown below until the date of payment. The defendant(s) is required by law to pay the plaintiff(s) that total amount. Unless the defendant(s) failed to appear, the defendant(s) has a right of appeal within 10 days after receiving notice of this judgment. See the enclosed instructions for additional information.

The Court also issued a PAYMENT ORDER ordering the defendant(s) to pay the total amount by 09/07/2011.

The Court also scheduled this matter for a next event on the date shown above, at which both parties must appear unless excused. **The defendant(s) is subject to arrest for failing to appear.** See the enclosed instructions.

1. Date of Breach, Demand or Complaint		
2. Date Judgment Entered		4/29/2011
3. Number of Days of Prejudgment Interest (Line 2 - Line 1)		8/8/2011
4. Annual Interest Rate of 0.00% / 365 = Daily Interest Rate		101
5. Single Damages		0.000000%
6. Prejudgment Interest (lines 3x4x5)		\$125.77
7. Double or Treble Damages Awarded by Court (where authorized by law)		\$0.00
8. Costs	Filing Fee & Surcharge (G.L. c. 218 § 23 & c. 262 § 4C)	\$0.00
9.	Attorney Fees Awarded by Court (where authorized by law)	\$0.00
10.	Other Costs Awarded by Court	\$1,000.00
11. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (lines 5+6+7+8+9+10)		\$0.00
DATE JUDGMENT ENTERED	CLERK-MAGISTRATE/ASST. CLERK	\$1,125.77
8/8/2011	X	

Commonwealth of Massachusetts
Trial Court
SPRINGFIELD DIVISION
SMALL CLAIMS DEPARTMENT



From the Office of James M. Whalen, Esq.,
Magistrate

Springfield District Court
50 State Street, Rm. 214
Springfield, Massachusetts 01103
Phone: 413-748-8674
email: james.whelen@jud.state.ma.us

June 30, 2011

Claudette C. Mathisen vs. Law Office of Gary H. Kreppel, P.C.

1123SC 1102

Type of Claim: Contract; Alleged Violation of Statute
FDCPA; 93A.

Summary

This matter essentially concerns the substance of a dunning letter sent to the Plaintiffs by the Defendant law firm, dated February 17, 2010. Plaintiffs allege that the letter constitutes 'overshadowing,' a violation of the federal Fair Debt Collection Practices Act' 15 U.S.C. 1592(e)(5), as well as M.G.L. Ch. 93A §§ 2 and 9.

Plaintiff asserts the following Counts::

1. The Defendant improperly communicated directly with the Defendants at a time when it knew that the Defendants were represented by counsel;
2. The Defendant did not intend to bring suit on a matter involving a debt of only \$600.00. Plaintiffs maintain that the 'threat' to collect through suit on such a debt, without a bona fide intention to carry through, would constitute a violation of the FDCPA;
3. That certain language contained within the plaintiff's February 17th letter constituted *overshadowing*; specifically, the words following the introductory paragraph, which read as follows:

:

“It is our intention to resolve this matter informally, provided we receive your cooperation in settling this claim. ***However, please note that our client has authorized litigation without further notice.***” (Bold and italics added)

The statutorily required ‘verification notice’ appears at the bottom center of the page.

Finding(s), Ruling(s) and Decision

The case is not mooted by the discharge of the underlying debt.

Count 1:

As to this assertion, the court finds that the Defendant did not know that the Plaintiffs were represented at the time, and so the Defendant prevails on this point;

Count 2:

As to this aspect of the case, the Plaintiffs have failed to carry their burden of proof. With insufficient evidence, this point also goes in favor of the Defendant.

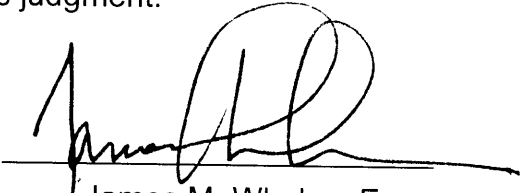
Count 3:

The court finds, in the eyes of the ‘least sophisticated consumer,’ that the sentence highlighted above, beginning with the word, “However...” could easily cause confusion by communicating a conflicting message to the reader. On the one hand, the debtor is told that she has the right to have the debt verified within thirty days of receiving the letter. Yet, she is also informed that, “[O]ur client has authorized litigation without further notice.” The reasonable question in the debtor’s mind would be whether her requesting verification would trigger the bringing of the suit against her immediately and without further notice, at a point sooner than the expiration of the thirty day period within which she was informed that she could otherwise request verification. This language tends to chill the debtor’s ~~grant~~ of a statutory right under the FDCPA.

As such, the language employed is *malum prohibitum* and constitutes a *per se* violation of M.G.L. ch. 93A. When asked by the court what the plaintiff experienced when she received the letter, she testified that she was somewhat upset, and that she almost immediately handed the letter to her husband. There was no evidence of any palpable, extraordinary,

physical injury flowing from the receipt of the offending communication. As such, the evidence is insufficient to warrant the award of damages for emotional distress or the like.

Therefore, the court imposes a \$25.00 dollar damage award under 93A, and trebles same to \$75.00. A reasonable attorney's fee will be awarded upon submission of an Affidavit by plaintiff's counsel detailing the particulars within two weeks of receipt of this judgment.

A handwritten signature in black ink, appearing to read 'James M. Whalen', written over a horizontal line.

James M. Whalen, Esq.,

Magistrate,

Springfield District Court