

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LISA MYERS, <i>et al.</i>)	CASE NO. CV 14 825638
)	
Plaintiffs,)	
)	JUDGE BRENDAN J. SHEEHAN
v.)	
)	
AMY CLUM HOLBROOK, <i>et al.</i> ,)	
)	OPINION AND JUDGMENT
Defendants.)	ENTRY
)	

I. FACTS AND ISSUES PRESENTED.

This matter is before the Court on Defendant Amy Clum Holbrook and the law firm of Weltman, Weinberg & Reis Co., L.P.A.'s Motion for Judgment on the Pleadings. The issues have been fully briefed to the Court.

Plaintiffs Lisa Myers, Andrew Myers and Ronald Myers brought this action based upon proceedings before the Guernsey County Court of Common Pleas ("Guernsey County action"). In the Guernsey County action, Defendants were counsel for Pawnee Leasing Corporation to collect on a commercial debt against Shenandoah Trucking Services, Defendant Ronald Myers and Defendant Lisa Myers. After obtaining a default judgment against Defendants Ronald and Lisa Myers, Defendants executed on the judgment and garnished assets of Defendants. Included in the execution was a bank account jointly held by Lisa Myers with her son, Defendant Andrew Myers. Plaintiffs allege that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. 1692.

II. LAW AND ANALYSIS.

A. Applicable Standard of Review.

A motion for judgment on the pleadings under Civ. R 12 (C) presents a question of law, and the court may look to only the allegations in the pleadings and documents incorporated by reference or attached to the pleadings. Judgment on the pleadings is appropriate where the plaintiff has failed to allege a set of facts which, if true, would establish the defendants' liability. *Walters v. First Natl. Bank of Newark* (1982), 69 Ohio St.2d 677, 433 N.E.2d 608. While the factual allegations of the complaint are taken as true, unsupported conclusions are insufficient. See *Moya v. DeClemente*, 8th Dist. No. 96733, 2011 Ohio 5843, ¶ 10.

B. Plaintiffs' Claim.

The current case presents unusual circumstances because Plaintiffs' allegations in their Complaint are directly contradicted by the docket to the Guernsey County action, which Plaintiffs quote and reference throughout their Complaint. For example, Plaintiffs allege:

5. The Guernsey County Court of Common Pleas' docket showed the term "unreadable" on the only evidence of service attempted by Pawnee against Ronald and Lisa Myers.
6. On September 17, 2010, the Guernsey County court ordered Pawnee to "investigate the possibilities of utilizing alternative methods to obtain service."
7. Subsequent to September 17, 2010, the docket of the previous action shows no further attempts at service of the Complaint and Summons upon Ronald or Lisa Myers.
8. Subsequent to September 17, 2010, the docket of the previous action shows that Pawnee pursued default judgment, and then garnishment against Ronald Myers, Lisa Myers, and later Andrew Myers. Andrew Myers was never named as a Defendant in the prior suit.

Complaint, P. 5-8.

In fact, the docket clearly reflects "SERVICE SUCCESSFUL" as to both Ronald and Lisa Myers, the directive to use alternative methods of service related to Shenandoah Trucking Services that had not yet been served, and no garnishment was ever sought against Andrew Myers. Although the Court must construe allegations in Plaintiffs' favor, it cannot ignore facts and adopt distortions of the record.

It is clear from Plaintiffs' Complaint that the Guernsey County action was a collection action against three defendants, Shenandoah Trucking Services and Ronald and Lisa Meyers. Plaintiffs failed to allege that the underlying debt was non-commercial or that they were consumers for purposes of the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA only applies to "debts" which are "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 USCS § 1692a.

Because the debt at issue is a commercial debt, no cause of action under the FDCPA is available and Plaintiffs' claim fails.

C. Other Potential Claims.

Plaintiffs assert that they have also brought claims for conversion and unjust enrichment. The only time "conversion" or "unjust enrichment" appear in the Complaint is in Plaintiffs' prayer for relief. While Ohio is a notice pleading jurisdiction, Civ. R. 8 requires more than a single word appended to a detailed claim for relief on other grounds. As the Eighth District Court of Appeals recently stated:

[T]he complaint * * * need [***8] not state with precision all elements that give rise to a legal basis for recovery as long as fair notice of the nature of the action is provided. However, the complaint must contain either direct allegations on every material

point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial.

Tuleta v. Medical Mut. of Ohio, 8th Dist. No. No. 100050, 2014-Ohio-396, P16, quoting *Fancher v. Fancher*, 8 Ohio App.3d 79, 83, 8 Ohio B. 111, 455 N.E.2d 1344 (1st Dist.1982).

The Court finds that Plaintiffs failed to state claims for conversion or unjust enrichment by merely mentioning the terms in their prayer for relief. The Court further finds that claims for conversion and unjust enrichment would fail as a matter of law under the facts of this matter.

Conversion is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights." *State ex rel. Toma v. Corrigan*, 92 Ohio St. 3d 589, 592, 2001-Ohio-1289, 752 N.E.2d 281, quoting *Joyce v. Gen. Motors Corp.*, 49 Ohio St. 3d 93, 96, 551 N.E.2d 172, 175 (1990). It is clear from the face of the Complaint that any acquisition of funds occurred through garnishment proceedings in the Guernsey County action. Defendants initiated garnishment based upon a valid judgment that was marked "Final" by the trial court. "A person that acts pursuant to a facially valid judgment must be able to rely upon that judgment without concern of being sued in conversion if that judgment is later reversed or nullified, or the judgment would have no meaning at all." *Ahlers v. Pettinelli*, 8th Dist. Case No. 86257, 2006-Ohio-1199, P13-P16, citing *Penrod v. Pros. Attorney of Scioto Cty.*, Scioto App. Nos. 1771, 1818, 1990 Ohio App. LEXIS 1403 (Apr. 4, 1990).

To prevail on a claim for unjust enrichment, a plaintiff must prove by a preponderance of the evidence that: (1) the plaintiff conferred a benefit upon the defendant, (2) the defendant had knowledge of such benefit, and (3) the defendant retained that benefit under circumstances in

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 2nd day of September, 2014.

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