

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT FOR
THE PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-202

CXXX-MB

STUDENT LOAN SOLUTIONS, LLC,

Plaintiff,

ANSWER AND AFFIRMATIVE DEFENSES

vs.

DEN

Defendant.

ANSWER, AFFIRMATIVE DEFENSES

NOW COMES Defendant, DENNIS FRIZELL HARRIS (Hereinafter named "Defendant"), through his attorneys The Law Offices of Brian P. Parker, P.C. and Brian Parker (Fl. License 980668) and hereby file the Court Ordered Answer and Affirmative Defenses to Plaintiff Student Loan Solutions, LLC's complaint and states as follows:

1. Admitted for jurisdictional purposes only as Defendant denies that Plaintiff is entitled to any relief against the named Defendant.
2. Admitted for jurisdictional purposes only as Defendant denies that Plaintiff is entitled to any relief against Defendant.
3. Admit and demand strict proof thereof.
4. Denied, and demand strict proof thereof. **Please see Exhibit 1.**
5. Denied, and demand strict proof thereof. **Please see Exhibit 1.**
6. Denied, and demand strict proof thereof. **Please see Exhibit 1 and Affirmative Defenses regarding the Statute of Limitations.**
7. Denied, and demand strict proof thereof as to what the case is based upon.
8. Denied as to this Plaintiff, and demand strict proof thereof as Defendant did not agree to this or have a part in the Note Disclosure Agreement he is now facing in this lawsuit.
9. Denied, Defendant incorporates Paragraph #8 and further states that it demands strict proof thereof as this note was not agreed upon to hold client to its terms.
10. Denied, and demand strict proof thereof as to this Plaintiff.

11. Denied as to this Plaintiff, and demand strict proof thereof as there exists no assignment attached to the lawsuit under the law of this jurisdiction for Plaintiff to be able to sue Defendant.
12. Denied, and demand strict proof thereof as no assignment or proof is attached to the lawsuit under the law of this jurisdiction.
13. Denied, and demand strict proof thereof as to this Plaintiff.
14. Denied, and demand strict proof thereof and further, the lawsuit is filed beyond the statute of limitations from the date of the balance acceleration sent to us by two letters in 2013 and 2014 at Exhibit 2.
15. Denied, and demand strict proof thereof with no proof Plaintiff owns the debt against this Defendant and the debt was accelerated already back in 2013 and 2014 so the statute of limitations makes this lawsuit untimely. Please see Exhibit 2.
16. Denied, and demand strict proof thereof and further as to this Plaintiff when there is no proof the debt is owed by Defendant to Plaintiff under the law of the jurisdiction this lawsuit is operating under.
17. Denied as to this Plaintiff and further, as to the compound and numerous allegations in one paragraph making it impossible to properly answer the allegations in #17.

WHEREFORE, Defendants respectfully pray that a No-Cause of Action and Dismissal be entered against Plaintiff and for such other and further relief as justice may require.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE **Failure to Attach Sufficient Documents**

Plaintiff has styled its complaint as a Breach of Agreement that Plaintiff was assigned from Bank of America with the underlying claim in Plaintiff's Complaint appearing to be for a breach of contract. The documents which Plaintiff has attached to the complaint refer to complicated interest calculations, penalty fees and other fees with a Note Disclosure Statement which are not readily explainable and cannot be calculated with the information contained within those documents. Florida Rule of Civil Procedure 1.130 provides in part that "All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action maybe brought or defense made,

or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading.” Even if Plaintiff is seeking recovery upon a theory of Account Stated to escape the evidentiary burden associated with filing a claim for breach of contract, the fact remains that Plaintiff has taken the position that a contract existed and thus Plaintiff’s complaint is “brought” upon a contract under the meaning of Fla. R. Civ. P. 1.130. Plaintiff cannot escape Florida Rule of Civil Procedure 1.130 by filing a complaint based upon a contract but not including proof of why the contract is owned by Student Loan Solutions, LLC.

SECOND AFFIRMATIVE DEFENSE
Account Stated with No Affidavit or Assignment

In promulgating the Florida Rules of Civil Procedure, the Florida Supreme Court provided that for an action of Account Stated to be properly plead, “A copy of the account showing items, time of accrual of each, and amount of each must be attached.” See Florida Rules of Civil Procedure 1.933. Plaintiff has failed to attach sufficient documents to Plaintiff’s Complaint which show how each item in the account was accrued.

Further, no burden has been shifted to Defendant to rebut the alleged statement(s) attached by Plaintiff in this case. While some courts have in limited circumstances allowed for a cause of action for Account Stated to proceed without all the underlying statements, those same courts have widely held that “the presumption of correctness which attaches in an account stated stems from the statements themselves.” *Nants v. F.D.I.C.*, 864 F. Supp. 1211, 1221 (S.D. Fla., Aug. 12, 1994). Until Plaintiff properly authenticates the alleged statements provided, they cannot be considered as evidence and no presumption of correctness can attach to them.

Although the failure to object to a creditor’s periodic billing may establish an account stated, there can be no liability if there has been no mutual agreement. See *Recreation Corp of America v. Jack Drury & Associates, Inc.*, 235 So.2d 49 (Fla. 4th DCA 1970). In *Recreation*, the defendant did not dispute that the statements were sent but did dispute that there was any agreement. In the instant case, Plaintiff cannot prevail unless it proves that there was an agreement between Defendants and Student Loan Solutions, LLC. See *F.D.I.C. v. Brodie*, 602 So. 2d 1358 (Fla. 3d DCA 1992). “In the absence of such an agreement, no recovery upon an account stated theory is permitted.” *Dutch Inns of Am., Inc. v. Jenkins*, 301 So. 2d 119, 120 (Fla. 3d DCA 1974). Despite Plaintiff’s allegation that there is a debt owed, Plaintiff has failed to provide any contract or other written document to show that such an agreement existed with Defendants and Plaintiff. And further, Plaintiff has signed and filed an Affidavit in furtherance of litigation after the lawsuit was filed and in violation of California and Florida Rules of Evidence.

THIRD AFFIRMATIVE DEFENSE

Lack of Standing / No Valid Assignment

Plaintiff lacks standing to bring this action. Plaintiff has also failed to attach sufficient documents under the law of the jurisdiction to the complaint to establish the assignment of the debt allegedly owed by Defendant, which is now allegedly owned by Plaintiff.

FORTH AFFIRMATIVE DEFENSE

Statute of Limitations (See Florida Statutes § 95.11)

Due to financial hardship, no payment has been made on the debt since 2008 and the time to file a lawsuit has long since passed and is time barred and should not be resurrected by a new "assignee" with no proof of ownership of the debt from the original creditor. The debt was defaulted by the original creditor prior to Plaintiff seeking ownership of the debt and a notice of acceleration sent out in 2013 and 2014.

FIFTH AFFIRMATIVE DEFENSE

Unclean Hands

Defendant raises the equitable doctrine of "unclean hands" as a total or partial Affirmative Defense as Plaintiff has failed to honor and abide by the terms of the contract or agreement it seeks to uphold against the Defendant as Section L Additional Agreements of the agreement attached to the complaint requires the action be brought in California and under Federal and California laws.

SIXTH AFFIRMATIVE DEFENSE

Laches

Defendant raises the equitable doctrine of "Laches" as a total or partial Affirmative Defense as Plaintiff has failed to bring this lawsuit prior to the contract being found in default by the original creditor, Bank of America and resulting in a time barred claim being brought based upon lack of diligence by Plaintiff and prejudice to Defendant to have to defend against a time barred claim seven years after the balance was accelerated.

WHEREFORE, Defendant respectfully prays that a No-Cause of Action and Dismissal be entered against Plaintiff and for such other and further relief as justice may require.

RESPECTFULLY SUBMITTED,

Date: August 17, 2022

/s/ Brian P. Parker

Brian P. Parker (980668)

Attorney for Defendant Harris

brianparker@collectionstopper.com

EXHIBIT #1

AFFIDAVIT OF

STATE OF FLORIDA)

COUNTY OF PALM BEACH) *

Pursuant to 28 U.S.C § 1746, DENNIS F. HARRIS, having been duly

Sworn and upon oath, verifies, certifies, and declares as follows:

1. STUDENT LOAN SOLUTIONS, LLC (SLS) and BOWDEN BARLOW LAW, P.A., have filed a lawsuit against me in the 15th Judicial Circuit at Case #50-2021- CC011543XXXXMB.
2. I have looked over the paperwork with this lawsuit. I see no evidence that SLS obtained or was assigned my specific debt from the original creditor, Bank of America or that I owe the amount they claim I do.
3. A Process Server served me personally and had full view of the complaint and any of my personal debt information in the lawsuit and also that I am being pursued by a debt collector.
4. I dispute I owe this debt or this specific debt amount to SLS.
5. I was a co-signor of the Bank America debt on, [redacted]. Due to financial hardship, he did not keep up with the payments he owed on his school loans and he consolidated most of them.
6. After Bank of America charged off this debt, we received a letter from a Sunshine Credit Services, Inc. in 2013 who were collecting the debt for and on behalf of Bank of America. The letter identified Bank of America as the creditor and was collecting the Account Balance and Balance due of \$42,367.80.
7. We received a similar letter from Williams & Fudge in 2014 for the \$42,367.80 on behalf of Bank of America. The letter said Williams & Fudge was retained by Bank of America "to collect the total amount from you in connection with a delinquent account."
8. I understand the statute of limitations to sue on cases like this to be five years in the state of Florida and four years in the state of California where Bank of America states the debt is located in its terms and conditions of its loan documents.
9. I have not made a payment on the debt after the date Bank of America requested the full balance of \$42,367.80 through Williams and Fudge and Sunrise seven years ago before the lawsuit against me was filed.

10. This wrongful lawsuit from SLS is causing me emotional distress and fears of damage to my financial reputation because SLS has filed a lawsuit against me years after they were legally allowed to in the state of Florida. Also, my personal debt information has now been exposed by SLS to the process server that served the lawsuit upon me without my consent.

DATED: 8-8-22

Erin J. [Signature]
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