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No. 35559

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON

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INA HAYNES,

Appellee,

v.

CACV OF COLORADO, LLC,

Appellant,

FILED
JUN 23 2010
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Appeal from the Circuit Court of
Kanawha, West Virginia
Case No. 00-C-3022

APPELLEE'S BRIEF

Ina M. Haynes
976 Elliot Street
St. Albans, WV 25177

Martin & Seibert, L.C. who represents CACV of Colorado, LLC the Appellant on Civil Action # 's 00-C-3022 and 01-C-2085 in which judgments were filed on each case. The Appellants recap of the nature of the court proceeding and previous ruling is basically accurate. A settlement agreement was agreed on making monthly payment.

However they maybe unaware of the following facts: Martin and Seibert, L.C. also represented Portfolio Recovery Associate, LLC on Civil Action # 02-C-2435. **See Exhibit (A)**. On December 2, 2008 I received a Writ of Suggestion from Booth and McCarthy Law Firm to garnish my wages for debt owed to Portfolio Recovery Associates, LLC on Civil Action # 02-C-2435. **See Exhibit (B).** I called Booth and McCarthy LC office and told the lady who answered that I just received the Writ of Suggestion they filed to garnish my wages, and that this account was part of a settlement agreement which I was making monthly payments to Martin and Seibert, LC. She then said Booth and McCarthy LC was now representing Portfolio Recovery Associates, LLC. Confused as to what was going on and how Booth and McCarthy got this account. I immediately called Martin and Seibert, LC. I asked to speak with Christopher Moore, the Attorney, but was transferred to Carolyn a collection agent. I told her that I had just received a Writ of Suggestion from Booth and McCarthy LC regarding the account from Portfolio Recovery Associates, LC Civil Action #02-C- 2435, and that this account was one of the three accounts under the settlement agreement which I was making monthly payments. Carolyn paused and then said that Martin and Seibert, L.C. no longer represented this client. She wouldn't give me any details, but said Martin and Seibert, L.C. had also filed a Writ of Suggestion on Civil Action # 00-C-3022 and that I should receive the notice in the next day or two, which I did. **See Exhibit (C)**

Now, this was the second time in the last six months that Martin and Seibert, LC had filed an unnecessary Writ of Suggestion against me, **See Exhibit (D)** and to add to this they released a related account that was part of a settlement agreement. Some thing about this picture just doesn't add up. Prior to this I was never notified by Martin and Seibert, LC that the Portfolio Recovery Associates, LC account was transferred to Booth and McCarthy, LC nor did Booth and McCarthy, LC notify me that they represented Portfolio Recovery Associates, LC.

On December 4, 2008 I filed a Motion to Stay the Writ of Suggestion on both Civil Action #'s 00-C-3022 and 02-C-2435 with the Kanawha Circuit Court. I then took a copy of the filed Motion to Stay the Writ of Suggestion to Judge Charles King's office. Judge King's secretary Kim Gregory asked me the reason I had for filing the Motion to Stay the Writ of Suggestions. As I explained to her that I was under a settlement agreement with Martin and Seibert, L. C. making monthly payments but they continue to file Writ of Suggestion against me even though they were receiving my payments on time. Also that they had released a related account from Portfolio Recovery Associates, LC Civil Action # 02-C-2434 to Booth and McCarthy, LC that was one of the three accounts included in the settlement agreement. Ms Gregory called Mr. Christopher Moore while I was there and questioned him about the Writ and Suggestion. I could only hear her part of the conversation but the call ended with that all three parties would have to meet and resolved the matter before Judge King.

On December 9, 2008 Martin and Seibert, LC issue an order to release the Writ and Suggestion on Civil Action # 00-C-3022, and told me that a filing error was made by their agent who didn't read

the notes. However, they still said nothing about their involvement with the account from Portfolio Recovery Associates, LC Civil Action # 00-C-2435.

The Court then scheduled a status hearing on February 5, 2009. Daniel T Booth appeared for the plaintiff Portfolio Recovery Associate, LC and I as the defended was presented. No one from Martin and Seibert, L.C. showed up to represent CACV of Colorado, LLC interest. The Court stated that this was a mess involving three separate Civil Action cases which at some time a settlement agreement was offered, and payment were being made to Martin and Seibert, L.C. Mr. Booth stated that sometime in April of 2006 Portfolio Recovery Associates, LC hired his Law Firm to collect the amount owed on Civil Action No 02-C-2434. Mr. Booth said at that time it was not clear to him what payments I had made to Martin and Seibert, L.C. or how they were apportioned. The Court then ordered that all collection action should cease until they could get a better accounting of the payments on all three cases. The Court said that Mr. Booth should get with Martin and Seibert, L.C. to figure this out. The Court asked that I provide copy of all payments made to Martins and Seibert. Mr. Booth asked that I fax him my payment records and account for the portion that was credit to Portfolio Recovery Associates, LC case before the next scheduled hearing on May 3, 2009.

I then called Martin and Seibert, LC and requested copies of notepad entries and financial statement of all payments I paid on the two cases from CACV of Colorado, LLC Civil Action #'s 00-C-3022 and 01-C-2085 and on the Portfolio Recovery Associate, LC Civil Action # 02-C-2434. The collection agent was instructed by Christopher Moore to send only a copy of the financial statement from the two CACV of Colorado, LLC and said Portfolio Recovery Associates, LC was

not one of their clients. On February 10, 2009 I receive a financial statement on the two CACV of Colorado, LLC only **See Exhibit (E)** but nothing on Portfolio Recovery Associate, LC account even through I was entitled to these records. From this information I prepared a spreadsheet in detail that showed all payments I made to Martin and Seibert, LLC on the three accounts under the settlement agreement. The dates and amounts paid matched my Bank Statements, Portfolio Recovery Associates, LLC records **See Exhibit (F)** and CACV of Colorado, LLC records all totaling $9,547.98. **See Exhibit (G).**

During the hearing on March 3, 2009 Mr. Booth agreed that the spreadsheet I prepared and faxed to him matched his records of payments that I made to Portfolio Recovery Associates, LC through Martin and Seibert, LC. Mr. Booth said he advised his client to settle and that the judgment lien should be released. Mr. Booth said they agreed, he signed lien release and gave the sign copy to me. Mr. Booth said to The Court that Civil Action No. 02-C-2435 cases was dismissed. The Court then they me credit for the payments made to CACV of Colorado, LC and then released the two Civil Action No. 00-C-3022 and 01-C-2085 and sent an order to Martin and Seibert, L.C. for release of the two judgment liens on Civil Action #'s 00-C-3022 and 01-C-2085. **See Exhibit (H), Exhibit (I), Exhibit (J).**

On February 19, 2010 I received another settlement agreement letter from Martin and Seibert, L.C. stating that they would accept full settlement of $4,814.35 on Civil Action # 00-C-3022 and 7,595.04 on Civil Action # 01-C-2085 if my payment is received by March 31, 2010. Otherwise, the Law Firm nor its client was under no obligation to renew the offer. I was not sure why they sent this letter, so I didn't respond. **See Exhibit (K)**

On October 2009 Martins and Seibert, L.C filed a Motion to Set Aside the Release of Judgment. At the Motion to Set Aside the Release of Judgment hearing on November 2009, Ryan S. Marsteller from Bailes, Craig & Yon, PLLC who set in for Martin and Seibert, LC stated that Mr. Booth had previously worked for the Law Firm. At that point it was clearer to me that this related account from Portfolio Recovery Associate, LC got in the middle of some type of agreement that existed between Martin & Seibert, LC and Booth and McCarthy. The Court denied the Motion to Set Aside the Release of Judgment.

In Conclusion: My hopes are that the documentation that I have include will show the payment I made totaling $9,547.98 has satisfied the settlement agreement and the Courts decision to release the two judgment from CACV of Colorado, LLC on Civil Action #'s 00-C-3022 and 01-C-2085 will stay and the two lien releases will be fore coming.

EXHIBITS

ON

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