

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

IN THE MATTER OF:

NAME: CORPENING, HESTER FRANCES CHAPTER 13 NO. 04-41350

ADDRESS: 3985 FRANK WHISNANT ROAD
MORGANTON, NC 28655

SSN: XXX-XX-1503

DEBTOR

HESTER FRANCES CORPENING, and
NANNIE CORPENING

Adversary Proc. No. 06-4053

PLAINTIFFS,

Versus

SEARS, ROEBUCK & CO.;
CITICORP CREDIT SERVICES, INC. (USA)
D/B/A CITIBANK, USA, NA AND NORTHLAND
GROUP, INC.

DEFENDANTS

**ANSWER AND DEFENSES OF CITIBANK (SOUTH DAKOTA), N.A.
INCORRECTLY IDENTIFIED AS CITICORP SERVICES, INC. (USA) D/B/A
CITIBANK, USA, NA TO COMPLAINT SEEKING
DAMAGES IN CORE ADVERSARY PROCEEDING**

NOW COMES, Citibank (South Dakota), N.A., incorrectly identified as Citicorp Credit Services, Inc. (USA) d/b/a Citibank, USA, NA (hereinafter "Defendant" or "Citibank"), and files this Answer and Defenses to Complaint Seeking Damages in Core Adversary Proceeding ("Complaint"), and shows unto the Court as follows:

FIRST DEFENSE

The Complaint fails to assert a claim against Defendant upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to bankruptcy adversary proceedings by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

SECOND DEFENSE

Defendant responds to these specific allegations set forth in the Complaint as follows:

1. The allegations set forth in Paragraph 1 of the Complaint are legal conclusions to which no response is required; however, to the extent any response is required, the allegations of Paragraph 1 of the Complaint are hereby denied. Citibank, however, affirmatively states that it is not subject to the Fair Debt Collection Practices Act (the “FDCPA”) and, under the facts as alleged in the Complaint, the North Carolina Act, because it is not a “debt collector” as defined by those statutes.
2. The allegations set forth in Paragraph 2 of the Complaint are legal conclusions to which no response is required; however, to the extent any response is required, the allegations of Paragraph 2 of the Complaint are hereby denied.
3. The allegations set forth in Paragraph 3 of the Complaint are legal conclusions to which no response is required; however, to the extent any response is required, the allegations of Paragraph 3 of the Complaint are hereby denied.
4. The allegations set forth in Paragraph 4 of the Complaint are legal conclusions to which no response is required; however, to the extent any response is required, the allegations of Paragraph 4 of the Complaint are hereby denied.

5. The allegations set forth in Paragraph 5 of the Complaint are legal conclusions to which no response is required; however, to the extent any response is required, the allegations of Paragraph 5 of the Complaint are hereby denied.

6. The allegations set forth in Paragraph 6 of the Complaint are legal conclusions to which no response is required; however, to the extent any response is required, the allegations of Paragraph 6 of the Complaint are hereby denied.

7. Defendant denies the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. Defendant admits that Plaintiff, Hester Corpening, is a Debtor under Chapter 13 of Title 11 of the United States Code in Case No. 04-41350, which case is presently pending before this Court. Defendant denies the remaining allegations contained in Paragraph 9 of Plaintiffs' Complaint. By way of further answer and response, Defendant's records reflect that Nannie Corpening is the sole obligor of the account at issue in this case (the "Account") and that the Account was not a joint account with Debtor Hester Corpening.

10. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 10 of Plaintiffs' Complaint and the allegations are therefore denied.

11. Defendant admits it is the owner of the Account at issue and is solely located in Sioux Falls, South Dakota and that Citicorp Credit Services, Inc. (USA) services the Account. Defendant further admits that it obtained the Account from Sears National Bank in November

2003 by way of a merger under the National Bank Act. The remaining allegations contained in Paragraph 11 are denied.

12. Defendant admits the allegations contained in Paragraph 12 of Plaintiffs' Complaint that Northland Group, Inc. ("Northland") is a collection agency that was retained to collect the Account in May 2005, but denies that the Account was "sold, transferred or assigned" to Northland. Defendant is without sufficient information to admit or deny the remaining allegations contained in Paragraph 12 of Plaintiffs' Complaint and those allegations are therefore denied.

13. Defendant admits the allegations contained in Paragraph 13 of Plaintiffs' Complaint.

14. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 14 of Plaintiffs' Complaint and the allegations are therefore denied.

15. Defendant admits the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 16 of Plaintiffs' Complaint and the allegations are therefore denied. By way of further answer and response, Citibank states that its records reflect that the Account was held solely in the name of Nannie Corpening.

17. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 17 of Plaintiffs' Complaint and the allegations are therefore denied.

18. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 18 of Plaintiffs' Complaint and the allegations are therefore denied.

19. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 19 of Plaintiffs' Complaint and the allegations are therefore denied.

20. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 20 of Plaintiffs' Complaint and the allegations are therefore denied.

21. Defendant admits that the claim of Sears is identified on the records of the Trustee as Claim No. 0024; however, by way of further answer and response, Defendant shows that this claim was filed by Debtor's counsel, not Sears, Citibank, or Northland or anyone associated with Sears, Citibank, or Northland. Furthermore, Defendant denies any allegation that Claim No. 0024 is representative of the Account.

22. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 22 of Plaintiffs' Complaint and the allegations are therefore denied.

23. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 23 of Plaintiffs' Complaint and the allegations are therefore denied.

24. The allegations contained in Paragraph 24 of Plaintiffs' Complaint are denied. By way of further answer and response, Defendant states that its records reflect that non-debtor

Nannie Corpening was the only person liable on the Account and do not reflect a joint account; hence, there is no co-debtor stay under these facts.

25. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 25 of Plaintiffs' Complaint and the allegations are therefore denied.

26. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 26 of Plaintiffs' Complaint and the allegations are therefore denied.

27. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 27 of Plaintiffs' Complaint and the allegations are therefore denied.

28. Defendant denies the allegations contained in Paragraph 28 of Plaintiffs' Complaint.

First Claim For Relief
Violation of the Automatic Stay & Co-Debtor Stay

29. Defendant hereby incorporates its responses to Paragraphs 1 through 28 as if set forth fully herein.

30. Defendant denies the allegations set forth in Paragraph 30 of Plaintiffs' Complaint and by way of further answer and response shows that the Chapter 13 co-debtor stay is not applicable under the facts in this case, as Defendant's records reflect that the only person liable for the Account is the non-debtor Nannie Corpening.

31. Defendant denies the allegations contained in Paragraph 31 of Plaintiffs' Complaint.

Second Claim for Relief
(North Carolina Unfair and Deceptive Acts and Practices)

32. Defendant hereby incorporates its responses to Paragraphs 1 through 31 as if set forth fully herein.

33. The allegations contained in Paragraph 33 of Plaintiffs' Complaint are legal conclusions and no response is required; however, to the extent a response is required, the allegations contained in Paragraph 33 of Plaintiffs' Complaint are denied.

34. Defendant denies the allegations contained in Paragraph 34 of Plaintiffs' Complaint that are directed to this Defendant. Defendant is without sufficient information or knowledge to admit or deny the allegations directed to the other defendants and those allegations are therefore denied.

35. Defendant denies the allegations contained in Paragraph 35 of Plaintiffs' Complaint that are directed to this Defendant. Defendant is without sufficient information or knowledge to admit or deny the allegations directed to the other defendants and those allegations are therefore denied.

36. N.C. Gen. Stat. § 75-52 speaks for itself and to the extent the allegations contained in Paragraph 36 of Plaintiffs' Complaint are inconsistent therewith, those allegations are denied.

37. The allegations contained in Paragraph 37 of Plaintiffs' Complaint are denied.

38. The allegations contained in Paragraph 38 of Plaintiffs' Complaint are denied.

Third Claim for Relief
(Fair Debt Collection Practices Act)

39. Defendant hereby incorporates its responses to Paragraphs 1 through 38 as if set forth fully herein.

40. Defendant denies the allegations contained in Paragraph 40 of Plaintiffs' Complaint that are directed to this Defendant. Defendant is without sufficient information or knowledge to admit or deny the allegations directed to the other defendants and those allegations are therefore denied.

41. Defendant denies the allegations contained in Paragraph 41 of Plaintiffs' Complaint that are directed to this Defendant. Defendant is without sufficient information or knowledge to admit or deny the allegations directed to the other defendants and those allegations are therefore denied.

42. All other allegations contained in Plaintiffs' Complaint not otherwise specifically admitted or denied herein are hereby denied.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages, if any, and none being admitted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, and none being admitted, were not caused by Citibank, but by other persons or entities, including Plaintiffs, for whom Citibank is not responsible and over which Citibank exercises no control.

FIFTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims may be subject to an arbitration agreement.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, in whole or in part, are barred by the statutes of limitations, statutes of repose, and/or laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, in whole or in part, are barred by the doctrines of payment, waiver, ratification, novation, and/or estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have suffered no damage as a result of the alleged acts or omissions of Citibank. Citibank denies any liability for the acts of other persons or entities under a theory of respondeat superior, vicarious liability, agency, or otherwise.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims under the FDCPA and North Carolina Act fail because Citibank is not subject to these statutes.

TENTH AFFIRMATIVE DEFENSE

The claim for punitive damages and/or attorney's fees is barred or otherwise limited by applicable law.

ELEVENTH AFFIRMATIVE DEFENSE

Since the Account in question was not joint, there was no violation of any bankruptcy stay.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are based primarily upon alleged violations of the automatic stay and the provisions and protections of the United States Bankruptcy Code. Thus, North Carolina state law is preempted by the Bankruptcy Code and Plaintiffs cannot recover any relief pursuant to N.C.G.S. § 75-50 *et seq.*

THIRTEENTH AFFIRMATIVE DEFENSE

Citibank has not had the opportunity to investigate or engage in discovery regarding the allegations and, therefore, Citibank reserves the right to amend, supplement or modify its

affirmative defenses as they become known through further investigation, research and discovery.

WHEREFORE, Defendant respectfully requests that Plaintiffs' Complaint be dismissed with prejudice, that Plaintiffs have and recover nothing of Defendant, that Defendant receive an award of attorneys fees and costs as provided for under applicable law including, without limitation, 15 U.S.C. § 1692(k), and for such other and further relief as this Court deems just and proper.

Respectfully submitted this 13th day of December 2006.

MAUPIN TAYLOR, P.A.

BY: /s/ Robert K. Imperial
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N.C. State Bar No. 34469

BY: /s/ Camden R. Webb
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CERTIFICATE OF SERVICE

I, Robert K. Imperial, do hereby certify that the foregoing Answer and Defenses of Citibank (South Dakota), N.A. Incorrectly Identified as Citicorp Services, Inc. (USA) d/b/a Citibank, USA, NA to Complaint Seeking Damages in Core Adversary Proceeding was served upon the parties in this action by mailing a copy thereof to the address indicated below with the proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postal Service in Raleigh, North Carolina.

This the 13th day of December 2006.

MAUPIN TAYLOR, P.A.

BY: /s/ Camden R. Webb
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N.C. State Bar No. 22374
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