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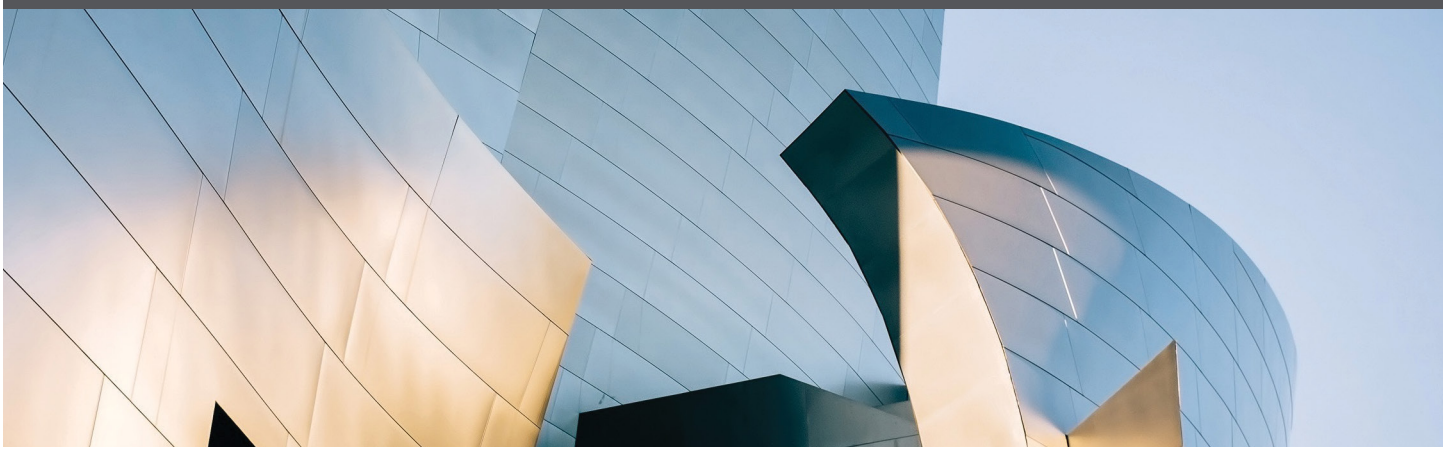
Consumer Finance Litigation



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Third Circuit Broadens Definition of "Debt Collector" under FDCPA to Include Entities That Acquire Debt but Outsource Collection of That Debt

Entities that acquire debt for the "purpose of…collection" but outsource the actual collection qualify as "debt collectors" under the FDCPA's "principal purpose" definition.

In Barbato v. Greystone Alliance, LLC et al., a recent precedential decision, the Third Circuit Court of Appeals held an entity whose business is the purchasing of defaulted debts for the purpose of collecting on them falls squarely within the "principal purpose" definition of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692(a), even where the entity does not collect the debt and a third party is retained to do so. No. 18-1042, __ F.3d __ (3d Cir. 2019).

Specifically, *Barbato* expanded the Supreme Court's holding in *Henson v. Santander Consumer USA,* 137 S. Ct. 1718 (2017) and rejected the defendant's argument that Henson renders it a creditor rather than a debt collector because "its principal purpose is the acquisition—not the collection" of debt. Thus, the *Barbato* court held that where an entity meets the "principal purpose" definition, it cannot avoid the FDCPA's requirements by retaining a third party to collect the debt.

BACKGROUND

Mary Barbato obtained a consumer credit card in 2007 and stopped making payments on the outstanding debt after November 2010. The bank charged off the debt, and it was assigned several times before Crown Asset Management purchased it. Pursuant to a standing service agreement, Turning Point Capital, Inc. received a referral from Crown to collect the debt. Turning Point sent a collection letter to Barbato in February 2013, in which it identified itself as a "National Debt Collection Agency" and Crown as its client. Turning Point also left Barbato two voicemail messages. Crown had no communication with Barbato and was not involved in drafting or sending the letter to her. Greystone Alliance subsequently absorbed Turning Point.

Barbato filed a state court complaint against Greystone, alleging violations of the FDCPA. Greystone removed the case to federal court, and Barbato filed an amended complaint, naming Crown and Turning Point as additional defendants. Plaintiff alleged that both entities qualify as "debt collectors" under the FDCPA. After dismissing Turning Point and Greystone, Barbato and Crown both moved for summary judgment on several issues, including whether Crown was a "debt collector."

The United States District Court for the Middle District of Pennsylvania agreed with Barbato that Crown is a "debt collector" because (i) Crown purchased the debt when it was in default; and (ii) Crown's principal purpose

was the "collection of 'any debts.'" The district court, however, denied Barbato's summary judgment motion because she did not establish that Crown was vicariously liable for Turning Point's actions, but it gave leave to file renewed motions.

Based on the United States Supreme Court's intervening decision in *Henson v. Santander, Consumer USA Inc.,* 137 S. Ct. 1718 (2017), Crown moved for reconsideration, arguing that it could not be a debt collector under any definition because it was collecting its own debts. The *Henson* court concluded that the key consideration is whether the defendant "regularly seeks to collect debts for its own account or does so for 'another,'" and expressly left open the question of whether debt buyers could also qualify as debt collectors. The district court again sided with Barbato on the renewed motions, but certified the question of whether Crown was a debt collector for interlocutory appeal.

THE THIRD CIRCUIT'S DECISION

In affirming the district court's opinion, the Third Circuit rejected all three of Crown's arguments and affirmed the district court's ruling. First, although *Henson* abrogated the test for determining who is a debt collector under a separate definition called the "regularly collects" definition, because it did not address the "principal purpose" definition, based on Third Circuit precedent, an entity is a debt collector where its principal purpose is to collect on defaulted debts. The fact that a third party performed the collection does not alter the purchasing entity's status as a debt collector. Thus, Crown qualified as a debt collector.

Second, the court took an expansive interpretation of the FDCPA's express language. Specifically, the court concluded that using "collection" as a noun without specifying who was performing the collection, or to whom the debt is owed, is broader than using the verb "to collect" in the separate "regularly collects" definition. Because the record reflected, and Crown admitted, that its ***only*** business is to purchase debts for the purpose of assigning them for collection, Crown's activities fall directly within the "principal purpose" definition.

Third, the court rejected Crown's argument on the purpose and legislative history of the statute. Initially, even if the statute was designed to apply only to entities that hound their customers for payment (the "repo man" referenced in *Henson*), Crown functions more like a repo man than a traditional creditor. As such, the court held Crown is not seeking to establish a loyal customer base but rather to collect debts from debtors. Regardless, the statute's express language "sweeps more broadly to include 'any business the principal purpose of which is the collection of **any** debts,' 15 U.S.C. § 1692a(6), without regard to whether that entity delegates its collecting activities." Finally, because the statute is clear, the court does not need to review the legislative history to determine intent.

Although the Third Circuit held Crown was a debt collector, it avoided addressing the ultimate question of liability, because there are still issues of fact regarding whether Crown is vicariously liable for Turning Point's actions, and provided guidance for the district court to determine vicarious liability on remand.

CONCLUSION

The Third Circuit's holding greatly broadens the definition of a "debt collector" to include entities that do not actually collect debts and have no contact with the consumer but solely acquire debt. As a result, a debt collector can no longer argue that it is merely a passive buyer, where its principal business is to acquire accounts in default for the purpose of collection. While this decision is limited to the Third Circuit, it will inevitably be used by plaintiff's attorneys nationwide until the Supreme Court or Congress resolves the issue.

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