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Consumer Finance Litigation

U.S. Supreme Court Excludes Banks Collecting Purchased Delinquent Debt from Definition of "Debt Collector" under the FDCPA

Action Item: Banks and other consumer finance firms that purchase delinquent debt and then collect on their own behalf are not "debt collectors" under the Fair Debt Collection Practices Act. However, this limitation still does not apply to those institutions that collect on behalf of another.

In a unanimous decision in *Henson et al. v. Santander Consumer USA Inc.,* the United States Supreme Court held that the Fair Debt Collection Practices Act ("FDCPA") does not apply to banks and other consumer finance firms that purchase and then collect on defaulted debt that they own. No. 16-349, ____ U.S. ____ (2017).

The Court held that it does not matter whether the debt owner originated the debt or owned it through a later purchase. Rather, the plain language of the FDCPA focuses on third-party collection agents that regularly collect for another, not a creditor (debt owner) seeking to collect debts on its own behalf.

Background

Petitioners alleged that debt collection practices of Santander Consumer USA Inc. ("Santander"), which purchased the Petitioners' defaulted auto loans from CitiFinancial Auto, had violated the FDCPA.

The FDCPA, which provides consumers with a private right of action against debt collectors and imposes heavy fines for violations, applies to anyone who "regularly collects or attempts to collect…debts or amounts due…another." 15 U.S.C. § 1692a(6).

Santander moved to dismiss the case on the basis that it did not qualify as a debt collector under the FDCPA because it had purchased the debt being collected. The United States District Court for the District of Maryland and United States Court of Appeals for the Fourth Circuit both sided with Santander, holding that Santander did not qualify as a "debt collector" under the FDCPA because it does not regularly seek to collect debts "owed…another," but rather seeks to collect debts that it purchased and owns.

The Supreme Court Decision

In affirming the Fourth Circuit's decision, Justice Gorsuch, writing for the Supreme Court, queried whether Santander is more like the "repo man," who is hired to collect the debt of a third party—clearly a "debt collector" collecting debts "owed …another," or a loan originator collecting debt it originated itself, which would not be considered a "debt collector" under the statute. The Supreme Court noted that the plain meaning of "owed…another" is intended to reference a third-party debt collector working on behalf of a debt owner and that whether the party collecting the debt originated the debt or subsequently purchased it is immaterial, so long as the debt collector is collecting the debt on its own behalf and not for "another." Based on this principle, the Supreme Court concluded that Santander may collect debts on its own behalf without being considered a "debt collector" under the FDCPA.

The Supreme Court rejected Petitioners' arguments that (i) the use of the past tense "owed" suggests that the statute's definition of "debt collector" captures anyone who regularly seeks to collect debts *previously* "owed…another" and (ii) debt purchasers qualify as debt collectors when they regularly purchase and seek to collect defaulted debts. In rejecting these arguments, the Supreme Court examined other neighboring provisions of the FDCPA and pointed to specific instances where Congress expressly differentiated between the originator of a debt and the present debt owner. Further, the Supreme Court determined that while the definition of a creditor excludes those who "receive an assignment or transfer of a debt in default," it does so ***only*** when the debt is assigned or transferred "***solely*** for the purpose of facilitating collection of such debt ***for another***" (emphasis added).

Because the buying and selling of defaulted debt was not common at the time the FDCPA was enacted in 1977, the Supreme Court concluded that legislators did not contemplate purchasers of defaulted debt collecting debt on their own behalf as "debt collectors" within the meaning of the statute. Petitioners speculated that had such a practice been commonplace at the time, legislators would have likely included the purchasers of defaulted debt within the meaning of the statute in keeping with the goal of the FDCPA to deter problematic debt collection practices. While the Supreme Court noted that it is not uncommon for regulators to revise past regulations to address changes in industries, it is not the Supreme Court's role to unilaterally rewrite the statute "under the banner of speculation."

Importantly, the Supreme Court declined to decide two other related questions: (i) whether Santander can qualify as a "debt collector" under the FDCPA because it also acts as a third-party collection agent for debts owed to others, which was not raised by the Plaintiffs; and (ii) whether another statutory definition of the term "debt collector" in the FDCPA that encompasses those engaged in "in any business the principal purpose of which is the collection of any debts" was applicable. *See* 15 U.S.C. § 1692a(6). As a result, the Henson ruling is limited.

Conclusion

The Supreme Court's holding that the FDCPA does not apply to companies collecting on their own purchased defaulted debt is a significant albeit limited victory for purchasers of defaulted debt, as it makes clear that such companies cannot be held liable as "debt collectors" under the FDCPA. While this decision resolves a circuit split in which several courts had sided with consumers by extending the definition of "debt collector" to include purchasers of defaulted debt, it leaves open the possibility for Congressional reform.

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