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U.S. Supreme Court Grants Cert to Decide Whether Debt Buyers are "Debt Collectors" under the FDCPA

February 28, 2017 | Anastasia V. Caton

On January 13, 2017, the U.S. Supreme Court decided to hear the appeal of a debtor from a decision by the U.S. Court of Appeals for the Fourth Circuit. The question presented to the Supreme Court will be: "Whether a company that regularly attempts to collect debts it purchased after the debts had fallen into default is a 'debt collector' subject to the Fair Debt Collection Practices Act?"

The case began when Ricky Henson defaulted on a retail installment sale contract secured by a vehicle. After the original creditor repossessed and sold Henson's car and applied the net proceeds to the balance, a deficiency remained. Eventually, the creditor sold Henson's outstanding deficiency to Santander Consumer, USA, Inc., and Santander began collecting Henson's deficiency. Henson sued Santander for various violations of the FDCPA. Santander moved to dismiss on the grounds that it was not a debt collector under the FDCPA because it was collecting the debt on its own behalf, and not on behalf of a third party. Santander argued that because it owned the debt that it was collecting, it was a "creditor" rather than a "debt collector." The U.S. District Court for the District of Maryland agreed, and granted Santander's motion. Henson appealed.

The U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision. The court first considered the definitions of "creditor" and "debt collector." The court broke down "debt collectors" into three categories: (1) an entity with the principal purpose of collecting debts; (2) an entity that regularly collects or attempts to collect debts owed or due or asserted to be owed or due to another; and (3) a creditor that, in the process of collecting its own debts, uses any name other than its own. Henson never alleged that Santander's principal purpose was debt collection. In fact, the court pointed out, Henson claimed in his complaint that Santander originated credit and was a consumer finance company. And, Santander used its own name to collect, and therefore was not a creditor collecting under a different name. As a result, the only way Santander could be a "debt collector," the court said, was if it "regularly collect[ed] debts owed to another."

The court, relying on the plain language of the FDCPA, rejected Henson's argument that the exclusion from the definition of "creditor" for an entity that takes assignment prior to default applies whether or not the entity is collecting on its own behalf of on behalf of a third party. The court also rejected Henson's argument that the exclusion from the definition of "debt collector" for an entity that begins collecting on behalf of a third party

prior to default negatively implies that an entity that owns and collects on a debt that it acquired after default is a debt collector.

In a break from the majority of courts-which hold that the key factor for determining whether an entity is a debt collector is whether the debt was in default at the time the entity began collecting or took assignment of the account, and which typically hold that the FDCPA applies on a debt-by-debt, rather than entity-by-entity, basis-the court emphasized that the material distinction between a "debt collector" and a "creditor" is whether the entity "regularly collects" on behalf of a third party. Based upon this reasoning, the court found that Santander was not a debt collector, but was instead a creditor, because it was collecting debts on its own behalf, and because its regular business included a variety of origination and non-default servicing activities, not just debt collection. In so holding, the Fourth Circuit joined the Ninth and Eleventh Circuits. The Third, Fifth, Sixth, and Seventh Circuits, and the District of Columbia Court of Appeals all hold the opposite-in those circuits, purchasers of defaulted debt are "debt collectors" under the FDCPA with respect to those defaulted debts. These circuits take a broader view, and consider the purpose and legislative history of the FDCPA, and the fact that the original creditor has different motivations in collection than a debt buyer-including the motivation to maintain a positive relationship with the consumer. The Consumer Financial Protection Bureau and Federal Trade Commission, unsurprisingly, agree with the majority of circuits that a debt buyer is a "debt collector."

Henson appealed, and the U.S. Supreme Court granted certiorari. The Supreme Court will have to decide, on this fundamental issue of when the FDCPA applies, whether to adopt the plain language analysis of the Fourth, Ninth, and Eleventh Circuits, or whether to adopt the consumer-protective analysis from the majority of circuits and the federal regulators that interpret and enforce the FDCPA.

Henson v. Santander Consumer USA, Inc.

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