DREHER TOMKIES LLP ALERT

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U.S. SUPREME COURT TO DECIDE WHETHER THE FDCPA APPLIES TO DEBT BUYERS

The U.S. Supreme Court will hear a case from the U.S. Court of Appeals for the Fourth Circuit on whether a company that regularly attempts to collect debts it purchased after the debts were in default is a "debt collector" subject to the federal Fair Debt Collection Practices Act ("FDCPA").

Henson v. Santander Consumer USA, Inc. involves deficiencies on automobile loans purchased by a consumer finance company from the originating creditor after the loans were in default. 817 F.3d 131 (4th Cir. 2016). The finance company allegedly serviced the defaulted debts for the originating creditor prior to the debt sale. After purchasing the debts, the finance company engaged in collection activities that allegedly violated the FDCPA and resulted in four consumers filing suit.

The district court dismissed the case concluding that the class action complaint did not allege facts showing that the finance company qualified as a "debt collector" under the FDCPA.

On appeal, the plaintiffs argued that the default status of a debt at the time of purchase determines whether a debt purchaser is a "debt collector" or "creditor" under the FDCPA. The plaintiffs cited the following exclusion from the definition of "creditor" to support their position: any person that receives an assignment of a debt in default solely for the purpose of facilitating collection of such debt for another. The plaintiffs reasoned that because the finance company fits into this exclusion, the finance company was not a "creditor." Thus, the finance company must be a "debt collector" because the terms "debt collector" and "creditor" are mutually exclusive under the FDCPA.

The Fourth Circuit disagreed. The court stated that the default status of a debt has no bearing on whether a person qualifies as a "debt collector" under the threshold definition. Whether a person is a "debt collector" is ordinarily based on whether a person collects debts on behalf of others or for its own account, the main exception being when the principal purpose of the person's business is to collect debts.

When the alleged prohibitive conduct occurred, the complaint indicated that the finance company owned the debts and was collecting the debts for its own account using its own name. The complaint also alleged that the company was a consumer finance company not a company whose principal business was to collect debts. Thus, the Fourth Circuit found that the finance company did not meet the threshold definition of "debt collector."

The finance company also did not fit into the exclusion from the definition of "creditor" for persons that receive assignments of defaulted debts because the company received assignments for the purpose of collecting debts for its own account not for the account of another. The Fourth Circuit unpinned the plaintiffs' argument that the finance company is a "debt collector" because the "creditor" exclusion applies and confirmed the district court's dismissal of the case.

The Supreme Court's ruling in *Henson* could have implications on the Consumer Financial Protection Bureau's potential debt collection regulations. See our ALERT of July 29, 2016 for details on the CFPB's proposal on debt collection regulations. We will monitor developments in this case. ❑

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