



ALERT

For Clients and Friends of DREHER LANGER & TOMKIES L.L.P.
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DISTRICT COURT HOLDS THAT A CREDITOR MAY BE HELD LIABLE FOR NEGLIGENTLY SELECTING AND SUPERVISING DEBT COLLECTORS

The United States District Court for the Eastern District of New York held that a creditor may be held liable for its negligence in selecting and supervising the debt collectors it hired to collect a consumer's debt in *Colorado Capital v. Owens*, 2005 WL 736539 (E.D.N.Y. Mar. 16, 2005). A consumer had brought a claim against his creditor on the theory that the creditor (i) had a duty under state common law to exercise care in selecting, instructing and selecting the debt collectors it hired, (ii) was negligent and failed in that duty of care and (iii) violated the consumer's rights as a result of its negligence and failure in its duty of care. The creditor moved to dismiss the consumer's claim arguing that as a creditor, it did not have a common law duty of care to its debtors and it was not the proximate cause of the consumer's alleged damages. In addition, the creditor argued that the consumer failed to establish that he incurred sufficient damages to sustain his cause of action.

In ruling on this issue, the district court indicated that in order to sustain a negligence claim against the creditor under applicable state law, the consumer must establish the following four elements: (i) the creditor owed the consumer a duty of care; (ii) that duty of care was breached; (iii) the consumer suffered an injury; and (iv) the creditor's breach was the proximate cause of the injury. According to the district court, the consumer satisfied the first element because the creditor as a creditor-bank owed the consumer as a customer and debtor a duty of reasonable care in handling his account, including the collection of his debt. The district court also indicated that the consumer satisfied the third element because the consumer alleged that the creditor's negligence caused him to suffer emotional distress, which is a sufficient injury to sustain a negligence claim. Finally, the district court indicated that the consumer satisfied the fourth element because the actions of the creditor's debt collectors were not intervening causes as the creditor should have reasonably foreseen that its debtors could suffer emotional distress if its debt collectors resorted to harmful conduct. For these reasons, the district court concluded that the creditor could be held directly liable

under state common law for its negligence in the selection and supervision of its debt collectors, and thus denied the creditor's motion to dismiss.

In addition to bringing a negligence claim against the creditor, the consumer also brought negligence claims against two alleged debt collectors. Like the creditor, the debt collectors moved to dismiss the consumer's claims on the theory that the consumer failed to state a negligence claim under applicable state common law. The district court indicated, however, that the debt collectors, like the creditor, owed the consumer a duty of reasonable care in collecting the consumer's debt. Furthermore, the district court indicated that the consumer pled sufficient facts to suggest that (i) this duty was breached, (ii) the consumer suffered emotional distress as a result of this negligence and (iii) there was a sufficient basis on which to conclude that the debt collectors' negligence was the proximate cause of the consumer's injury. For these reasons, the district court denied the debt collectors' motions to dismiss the consumer's negligence claims. □

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