



## BANK'S FAILURE TO REGISTER DOES NOT VIOLATE IOWA COLLECTION LAW

The Court of Appeals of Iowa recently held that a national bank did not violate Iowa law by seeking to collect a debt without first registering as a debt collector and that Iowa law does not provide a private right of action for a debt collector's failure to file notification. *Capital One v. Taylor*, 2015 WL 7567398 (Iowa Ct. App. Nov. 25, 2015).

Capital One filed a civil action against a cardholder to collect on a credit card debt. The cardholder counterclaimed alleging violation Section 537.7103 of the Iowa Debt Collection Practices Act ("Act"). Specifically, the cardholder alleged that the bank failed to register as a debt collector with the Iowa Attorney General pursuant to Section 537.6202 of the Iowa Consumer Credit Code ("ICCC"). The district court initially ruled in the cardholder's favor but after additional motions ultimately granted the bank's motion for summary judgment and denied the cardholder's. The district court determined that under Section 537.6201, which addresses the applicability of Section 537.6202, national banks are exempt from the notification and registration provisions of Section 537.6202 because the bank is authorized to do business under Chapter 524 (regarding banks). After further motions the district court reiterated in December 2013 its earlier July 2013 conclusion regarding Sections 537.6201 and 537.6202. The court found further that even if the bank were not exempt from Section 537.6202, a violation of that section is not included in the list of violations in Section 537.5201 and therefore would not give rise to the cardholder's cause of action. The Court of Appeals affirmed.

Section 537.7103(1)(f) of the Act provides that a debt collector may not collect or attempt to collect a debt by means of an illegal threat, coercion or attempt to coerce, which includes an action or threat to take an action prohibited by the Act or any other law. The cardholder alleged that the bank violated this provision by failing to comply with Section 537.6202 and that Section 537.5201 provided a private right of action. Section 537.5201(1)(a)(25) provides in relevant part that a consumer has a cause of action to recover actual damages and plus a penalty if a collector violates the provisions of the ICCC relating to prohibitions against unfair debt collection practices under Section 537.7103.

In rejecting the cardholder's arguments, the Court of Appeals

followed the reasoning of a prior federal court ruling from the United States District Court for the Northern District of Iowa. In that case, the court ruled that a failure to file a notification under Section 537.6202 of the ICCC did not violate Iowa collection law. The court found that Section 537.6202 required only notification, not a license to operate and, if violated, did not render all subsequent actions of the debt collector unlawful. The court concluded that if the Iowa legislature had intended to require compliance with Section 537.6202 before a debt collector could operate in Iowa, the legislature would have expressed that requirement. Further, the court found that Iowa law provides only that the Iowa Attorney General may bring a civil action and that failure to file is punishable as a misdemeanor – there is no private right of action. Finally, the court found that the practices prohibited by Section 537.7103 expressly apply only to a debt collector's efforts to "collect or attempt to collect a debt" from a debtor. If, the Court of Appeals reasoned, the legislature had intended to include a debt collector's failure to file a notification under Section 537.6202 as a violation under Section 537.7103, giving rise to a private cause of action under Section 537.5201, the legislature could have done so expressly.

The Court of Appeals did not reach the issues of exemption or federal preemption because the court found that a failure to file a notification under Section 537.6202 is not a violation of the ICCC that allows a defendant in a debt collection action to pursue a counterclaim for unfair debt collection practices under the Act. □

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