



January 16, 2018

FEDERAL COURT EXAMINES THE “PRIMARY PURPOSE” PRONG OF THE DEFINITION OF “DEBT COLLECTOR” UNDER THE FDCPA

A federal court in the Northern District of Illinois held that a debtor did not provide sufficient evidence that a debt buyer of charged-off credit card debt was engaged in “business the principal purpose of which is the collection of any debts” and, therefore, was a “debt collector” under the federal Fair Debt Collection Practices Act (“FDCPA”). *Skinner v. LVNV Funding, LLC*, No. 16-7089, 2018 WL 319320 (N.D. Ill. Jan. 8, 2018). The debt buyer allegedly misreported the amount of the debtor’s charged-off debt to a credit bureau in violation of the FDCPA and the Illinois Collection Agency Act (“ICAA”).

The definition of “debt collector” under the federal FDCPA includes two alternative triggers – (i) the “primary purpose” trigger and (ii) the “regularly collects for another” trigger. The federal court determined that the debt buyer was not a “debt collector” under the “regularly collects for another” prong based on the U.S. Supreme Court’s recent ruling in *Henson v. Santander Consumer USA, Inc.*, in which the court held that a debt buyer who seeks to collect debts for its own account did not regularly collect debts owed or due to another. 137 S.Ct. 1718 (2017). In *Henson*, the Supreme Court expressly declined to address the “primary purpose” prong of the definition of “debt collector”.

Thus, whether the debt buyer in *Skinner* was a “debt collector” depended on whether the debt buyer satisfies the “primary purpose” prong of the definition of “debt collector”. The federal court explained that courts should consider what proportion or percentage of the company’s operations involve debt collection activities to determine the company’s “principal purpose”.

The debtor proffered (i) a list of hundreds of collection lawsuits filed by the debt buyer in Cook County court and (ii) proof that the debt buyer holds a collection agency license in Illinois to demonstrate that the primary purpose of the debt buyer’s business is collecting debts. The court concluded that while this evidence may establish that the debt buyer’s business involved some collections, the evidence provided no basis for establishing the percentage of the debt buyer’s business that involved debt collection as compared to

the debt buyer’s whole operation. Without information on the debt buyer’s whole business, the debtor failed to meet her burden of establishing that the defendant was “debt collector” to sustain a FDCPA claim.

The district court also granted the debt buyer’s motion for summary judgment on the debtor’s state law claim finding that the section of the ICAA that the debt buyer alleged violated does not contain an implied private right of action.

Debt buyers have long grappled with the applicability of the FDCPA and the state collection laws to their business. Along with *Henson*, the *Skinner* case provides additional clarity to debt buyers on how courts might analyze whether the debt buyer is a “debt collector” subject to the FDCPA. □

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