



## INDIANA COURT FINDS NO LICENSE NEEDED FOR OUT-OF-STATE BUSINESS

The Court of Appeals of Indiana recently held that licensing requirements of the Indiana Consumer Credit Code (ICCC) apply to a business having its principal place of business in another state only if the business has a physical location in Indiana. *Wertz v. Asset Acceptance, LLC*, 5 N.E.3d 1175 (Ind. Ct. App. Mar. 21, 2014).

*Wertz* involved Asset Acceptance, LLC, a Delaware limited liability company with its principal place of business in Michigan, and Nathan Wertz, a defaulted credit card account holder. Asset had purchased the account on which Wertz had defaulted and attempted to collect the debt by filing suit against Wertz. Wertz counterclaimed against Asset alleging that Asset violated the Indiana Deceptive Consumer Sales Act and the federal Fair Debt Collection Practices Act by failing to be appropriately licensed under the ICCC. The parties filed cross motions to dismiss and the trial court granted Asset's motion. Wertz appealed and the court affirmed.

Wertz raised numerous issues for review, but the court limited its review to the issue of whether, under the ICCC, an out-of-state business was required to obtain an Indiana license to collect on a debt that the business had purchased from the original lender. The question was one of first impression in Indiana.

Section 24-4.5-3-502(3)(b)-(c) requires that certain persons acquire and retain a license under the ICCC in order to regularly engage in Indiana in (i) taking assignments of consumer loans or (ii) undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans. The parties agreed that the phrase "regularly engage in Indiana" is ambiguous and is not defined in the ICCC.

To help in interpreting that phrase, the court looked to the underlying policies of the ICCC and the relevant administrative agency's interpretation of the ICCC. Among other things, the court found that the ICCC demonstrates the legislature's intent to reach all potential creditors that demonstrate sufficient minimum contacts with Indiana. However, for certain entities such as Asset, the ICCC expressly requires licensure only if those entities "regularly engage in Indiana" in certain activities as discussed above. Further, the court noted, the ICCC expressly incorporates the "guidance" of the Indiana Department of Financial Institutions (DFI) as consistent with the

ICCC's underlying policies. The DFI, the court found, has interpreted Section 24-4.5-3-502(3) to apply to the assignees of a nonmortgage consumer loan only when that entity has a physical situs within Indiana.

The court rejected Wertz's argument that the DFI guidance is contrary to the legislative intent and policies underlying the ICCC. Specifically, Wertz argued that the DFI mistakenly relied on comments to the 1968 uniform act instead of the plain language of the ICCC. However, the court noted that the Indiana Supreme Court has squarely rejected Wertz's assertion and held that comments to a uniform act are indicative of the legislature's intent in enacting a statute based on the uniform act. The court also rejected Wertz's argument that the DFI guidance is invalid because it was not properly promulgated through a formal rulemaking process. The court relied on prior case law, which discussed the fact that the very act of providing individual guidance is incompatible with a formal rulemaking process and which predicted that the Indiana Supreme Court would give great deference to the DFI's interpretation that the ICCC is not intended to require a license for an out-of-state company with no physical location in Indiana. □

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## DISTRICT COURT FINDS FAILURE TO OBTAIN STATE LICENSE MAY VIOLATE FDCPA

The United States District Court for the District of New Jersey recently held that a debtor's allegations that defendants attempted to collect his debt in contravention of state law was sufficient to support a claim under the federal Fair Debt Collection Practices Act. *Veras v. LVNV Funding*, 2014 WL 1050512 (D.N.J. Mar. 17, 2014).

The case involved, among other things, a claim for violation of Section 1692e(10) of the FDCPA, which prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. Defendant LVNV purchased a debt from the original creditor and defendant MRS sent the debtor a letter regarding the debt on behalf of LVNV. Both defendants were determined to be "debt collectors" subject to liability under the FDCPA.

The plaintiff alleged that MRS' letter violated the FDCPA

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because it represented that MRS had the right to collect payment on the debt, on LVNV's behalf, when in fact it did not. The plaintiff based his claim on the defendants' alleged violation of the New Jersey Consumer Finance Licensing Act (NJCFLA), which requires that persons engaged in business as "consumer lenders" obtain certain licenses. "Consumer lenders" under the NJCFLA include any persons "directly or indirectly engaging, . . . in the business of buying, discounting or endorsing notes, . . . for compensation in amounts of \$50,000 or less. . . ." The defendants argued that because MRS' letter (i) made no demands, imposed no deadlines, nor made any threats and (ii) did not assert that LVNV or MRS were licensed under the NJCFLA to collect debts, the letter could not be considered to violate Section 1692e.

In examining the defendants' motion to dismiss, the court was persuaded by other federal district court decisions that considered similar circumstances (*i.e.*, whether a debt collector's failure to obtain a license or register as a debt collector pursuant to a state statute can be a violation of Section 1692e) and found a violation of the FDCPA. The legislative intent of the FDCPA, the court noted, is to reign in the illegal activities that Congress found were pervasive in the debt collection industry. The holdings of these other decisions, the court said, best support this intent.

The court concluded that MRS' attempt to collect the debt on behalf of LVNV, who was not licensed as a consumer lender under the NJCFLA, constituted prohibited conduct under that statute. While the court acknowledged that the FDCPA was not designed to turn every state law debt collection violation into a federal violation, the court found that the plaintiff's allegations were sufficient to support a claim under Section 1692e(10) of the FDCPA. Accordingly, the court denied the defendants' motion as to the Section 1692e claim. □

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