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## MICHIGAN SUPREME COURT HOLDS THAT FORWARDING COMPANIES ARE "COLLECTION AGENCIES"

The Michigan Supreme Court has held that forwarding companies are "collection agencies" for purposes of Article 9 of the Michigan Occupational Code ("OC"). *Badeen v. Par, Inc.*, No. 147150, 2014 WL 2686068 (Mich. June 13, 2014). The plaintiff in *Badeen* is a licensed collection agency manager of a collection agency licensed in Michigan. The plaintiff filed a class action complaint against lenders and forwarding companies doing business in Michigan, claiming that the forwarding companies violated Michigan law by doing business without a collection agency license and the lenders violated Michigan law by hiring unlicensed forwarding companies. Forwarding companies operate as intermediaries between creditors and local collection agents by obtaining assignments of unpaid accounts from creditors and then allocating the collection of those accounts to local collection agents. The forwarding companies do not, however, contact debtors themselves.

Article 9 of the OC requires "collection agencies" to be licensed and defines "collection agency" as a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another arising out of an expressed or implied agreement. Mich. Comp. Laws Ann. § 339.901(b). The OC defines "claim" or "debt" as an obligation or alleged obligation for the payment of money or thing of value arising out of an expressed or implied agreement or contract for a purchase made primarily for personal, family or household purposes. *Id.* § 339.901(a).

The court concluded that "soliciting a claim for collection" as provided above encompasses asking a creditor for any unpaid debts to pursue based on the dictionary's definitions of "solicit," "for" and "collection" and Article 9 of the OC's definition of "claim." The court also concluded that it is appropriate to interpret "soliciting a claim for collection" to include such activity because: (i) the interpretation avoids rendering superfluous the phrase "collecting or attempting to collect a claim owed or due" within the definition of "collection agency"; (ii) other provisions of the OC regulate collection agency

conduct that occurs before any contact is made with a debtor and (iii) the interpretation is consistent with the common understanding of what it means to solicit a claim for collection as evidenced by precedent from Michigan and other states. For these reasons, the court held that forwarding companies come within the definition of a "collection agency" when they contact creditors asking for debts to allocate to local collection agents.

Falling within the definition of "collection agency" does not necessarily mean that a forwarding company must obtain a license or otherwise comply with Article 9 of the OC as one or more exemptions from regulation may be available depending upon the nature of the forwarding company and its operations. Please do not hesitate to contact us for more information on the scope Article 9 of the OC. ▣

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