

Client Alert

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Supreme Court Hears Oral Argument in *Henson v. Santander*

On April 8, 2017, the United States Supreme Court heard oral arguments in *Henson v. Santander Consumer USA, Inc.*, a case addressing whether a debt purchaser is a “debt collector” under the Fair Debt Collection Practices Act (FDCPA); the Court’s decision will resolve a circuit split on the question.

Background and Lower Court Decisions

In the case, a lender originated auto loans to the plaintiffs. The loans fell into default and the lender engaged Santander Consumer USA Inc. (Santander) to service the loans, including engaging in debt collection activity. Santander subsequently purchased the loans and engaged in activities to collect on the subject loans.

Plaintiffs sued Santander, alleging it violated the FDCPA by misrepresenting the amount of debt owed and its authority to collect such debts. Santander moved to dismiss plaintiffs’ complaint and argued that it was not subject to the FDCPA because it purchased the loans in question and thus, no longer qualified as a “debt collector” under the act. Specifically, Santander argued that since the FDCPA’s definition of “debt collector,” in relevant part, turned on whether Santander was collecting debts “owed or due ... another,” Santander’s purchase of the loans meant that it was collecting on its own behalf, not for “another.”

The FDCPA defines “debt collector,” generally, as a person or entity engaged in “any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). Among other exceptions, the FDCPA excepts from the definition of “debt collector” (i) entities that “obtained” servicing rights to a debt before the debt was in default and (ii) entities that “obtained” a debt as a secured party in a commercial credit transaction involving a creditor. *Id.*

The United States District Court for the District of Maryland agreed with Santander, finding that Santander, having purchased the loans, was acting as a creditor in collecting debts on its own behalf and, therefore, was not subject to the FDCPA. *Henson v. Santander Consumer USA, Inc.*, No. CIV.A. RDB-12-3519, 2014 WL 1806915 (D. Md. May 6, 2014). Plaintiffs appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the district court decision, stating “we conclude that [the FDCPA] generally does not regulate creditors when they collect debt on their own account and that, on the facts alleged by the plaintiffs, Santander became a creditor when it purchased the loans before engaging in the challenged practices.” *Henson v. Santander Consumer USA, Inc.*, 817 F.3d 131, 134 (4th Cir. 2016), cert. granted, 137 S. Ct. 810, 196 L. Ed. 2d 595 (2017). In reaching its decision, the Fourth Circuit held that Santander was not a debt collector, in part because its principal business is not merely to collect debts on behalf of others, but rather it is a “consumer finance company.” *Henson v. Santander Consumer USA, Inc.*, 817 F.3d at 137. Plaintiffs petitioned to the Supreme Court to review the decision, which petition was granted.

Court Split

The Fourth Circuit's decision placed it in the midst of a circuit split on the question of whether a debt purchaser qualified as a "debt collector" under the FDCPA. The Fourth Circuit's decision joined those of the Ninth and Eleventh Circuits in finding that an entity that purchases a loan is outside the scope of the FDCPA's definition of "debt collector" unless the purchaser fits into one of the three categories provided for in the act: (i) its principal purpose is the collection of debts; (ii) it regularly collects debts owed or due another; or (iii) it collects debts using a name other than its own. 15 U.S.C. § 1692a. The Third, Sixth and Seventh Circuits have held that the FDCPA applies to debt purchasers if they purchased the debt in question after the debt was in default even though the purchaser is collecting on its own behalf.

Proceedings Before the Supreme Court

At oral argument, the Supreme Court and parties focused on how Santander would fit within the rest of the FDCPA's definition of "debt collector." Of particular focus was whether Santander's position rendered superfluous two exceptions in the FDCPA to the definition of "debt collector." The first exception applies to entities servicing debts "owed or due" to another if the debt was not in default when it was obtained by such person. The second exception applies to entities that "obtain" a debt as a secured party in a commercial credit transaction involving the creditor. 15 U.S.C § 1692a(6).

Plaintiffs argued that under Santander's position, the use of the word "obtain" in the exceptions would mean something less than the full purchase of a debt. Therefore, under Santander's argument, the exceptions would be rendered a nullity as to entities that purchase debts, even if the debts are in default at the time the debt is purchased. Plaintiffs asserted that such a reading is overly restrictive and does not allow the word "obtain" to achieve the full protective breadth Congress envisioned for consumers from debt collectors. Rather, the plaintiffs asserted, the appropriate interpretation of the word "obtain" is to read it to include debt purchasers, even though they are collecting debts due to themselves, not to "another" as is stated in the language of the exception.

Santander countered by asserting that its interpretation was the most natural one and harmonized all of the words in the exceptions. Santander asserted that in reading the statute so that "obtain" meant something less than full ownership, the court could give full meaning to the word "obtain" while also giving meaning to the statutory language requiring a debt collector to be collecting a debt due "another."

The Supreme Court tested the potential implications of the parties' arguments outside of the factual basis presented by the case. For example, Justice Alito's questioning focused on the potentially confusing results the plaintiffs' position would have on the various entities that service and purchase debts while Justice Sotomayor sought reassurance from Santander's counsel that not all debt purchasers would be able to escape the definition of "debt collector" if the court adopted Santander's position.

Potential Implications

While, the court's decision could have significant implications for entities like Santander that purchase debt portfolios in addition to having other significant business operations, the ultimate impact of the decision on the debt purchasing industry as a whole may be more muted. In particular, the decision's impact may be limited by two important considerations. First, if an entity's principal purpose is the collection of debt or if it regularly collects debts owed or due another, then, as Santander conceded at oral argument, it would be a "debt collector" under the FDCPA regardless of whether it purchases the debt it is collecting. Second, entities that purchase debts and have other significant business operations would likely still be subject to state debt collection laws that apply to entities collecting their own debts and, generally, impose many of the FDCPA's prohibitions.

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