

Does the FDCPA Apply to Debt Buyers? U.S. Supreme Court Will Soon Decide

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On April 18, 2017, the Supreme Court of the United States heard oral argument on the issue of whether the Fair Debt Collection Practices Act (“FDCPA”) extends beyond traditional “debt collectors” to those entities that purchase debts from the original lender after a consumer account is in default, commonly known as “debt buyers.” The case, *Henson v. Santander Consumer USA, Inc.*, No. 16-349, on appeal from the United States Court of Appeals for the Fourth Circuit, touches upon the original purpose of the FDCPA in eliminating abusive debt collection practices by debt collectors. The key inquiry for the Court then was to determine whether the Congressional intent behind the Act was indeed to regulate all groups of entities in the debt collection marketplace or, in fact, more limited in scope to just those companies that collect directly or indirectly on behalf of another entity.

With respect to debt purchasers, the precise phrasing of the FDCPA seems to suggest that these types of entities should not fall within the purview of the statute. As argued by Santander Consumer USA, Inc. (“Santander”) during argument, the statutory definition of “debt collector” applies only to persons collecting “debts owed or due or asserted to be owed or due another.” The logic is quite simple: if a company purchases a defaulted account for collection then that company is no longer operating on behalf of “another” but rather for itself. However, the petitioner-borrower claimed that the debt is still “owed” to the originator, even though the account was later purchased by the debt buyer through assignment. The Fourth Circuit, agreeing with Santander’s reasoning, rejected the notion that Congress intended the FDCPA to apply to all debts originally due to another entity, delineating between an entity that engages in collection activity on behalf of another and an entity that collects its own debts as a creditor.

Chief Justice Roberts, traditionally one of the more conservative justices on the Court, hinted at the underlying policy concerns during argument:

“I take it, that this particular context, with this particular type of entity, is not what Congress had before it when it passed the law. . . . The industry has evolved in a way that has - - has raised these sorts of questions. . . . This is not something that Congress was addressing.”

Interestingly, newly appointed Justice Gorsuch, along with Justices Thomas and Kennedy, did not speak during the argument.

It is important for all consumer finance companies—lenders, loan servicers, and collection agencies alike—to monitor this appeal and the Supreme Court’s ultimate decision in the case. Assuming the Court was to adopt the petitioner-borrower’s interpretation, a windfall of litigation may ensue. Regardless of how a company operates in the industry (on behalf of itself or others), this case has the potential to subject that company to the FDCPA for all of its collection activities. The concern on the other side is that Congress may not have had this new sect of debt purchasers in mind when drafting the statute and an opportunity is now presented to avoid regulation simply by buying the defaulted loans. Yet, given the uphill fight for the petitioner-borrower as referenced by Justice Alito and the hesitation from the other justices, it is unlikely the Court will be convinced to expand the FDCPA. Courts have routinely considered debt buyers subject to the FDCPA without significant challenge, but the Court’s review of the FDCPA’s plain language may result in a decision that allows for an immediate challenge on the statute alone.

For more information regarding this case, including links to a full transcript and audio of the oral argument, please click [here](#).

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Topics

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