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News

David Schultz Analyzes in ARM Compliance Digest: Judge Holds Debt Buyer Liable for Actions of Collector in Partially Granting Plaintiff's MSJ in FDCPA Case

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In the June 21, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discusses a case on remand from the Ninth Circuit Court of Appeals, in which a District Court judge in Oregon partially granted a plaintiff's motion for summary judgment, ruling that a debt buyer who places accounts with a debt collector can be held vicariously liable for the actions of the debt collector, because the debt buyer "bear[s] the burden" of monitoring the activities of the debt collector when collecting debts on the debt buyer's behalf:

> For 15 years or so there has been an ongoing dispute in FDCPA litigation on whether debt buyers are vicariously liable for the conduct of collection agencies handling their accounts. The issue typically turns on whether there is a principal-agent relationship between them. There are different types of relationships in connection with purchased debt. Some owners are completely passive, some have intermediaries between them and the agencies collecting the debt, and some are quite active in the debt collection process. The results of this analysis have varied, not surprisingly.
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> *McAdory v. M.N.S. & Associates and DNF Associates* is a recent Oregon District Court analysis of the issue. Plaintiff and the debt buyer defendant both moved for summary judgment. The court did a fairly thorough review of the relevant legal concepts and status of the law, including law outside of its jurisdiction. As is typical, it then turned to the contract between the parties, the relevant facts on how they conduct business, and the knowledge or involvement in the conduct that forms the basis of the claim.
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> The contract said that M.N.S. was an independent contractor of D.N.F. The Court, however, held that DNF retained the right to control MNS to the degree necessary to establish a principal-agent relationship. It then reviewed the agency concepts of "implied actual authority," "apparent authority," and "ratification." The facts were sufficient to hold D.N.F. vicariously liable for its debt collector's conduct.
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> The case is a pretty easy read and provides a good overview of the law. It also can help debt buyers and agencies understand what will impact a vicarious liability analysis and, perhaps, guide how they conduct business.

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Service Areas

Consumer and Class Action Defense

Consumer Financial Services

Read the full June 21, 2021 edition of the AccountsRecovery.net Compliance Digest.