



News

David Schultz Analyzes in ARM Compliance Digest: Judge Rules Debt Buyer Vicariously Liable for Actions of Collection Law Firm in FDCPA, RFDCPA Case

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In the September 9, 2024, issue of the *ARM Compliance Digest*, Hinshaw partner David Schultz provided an analysis of a recent California District Court decision regarding claims made under the Fair Debt Collection Practices Act (FDCPA) and the Rosenthal Fair Debt Collection Practices Act (RFDCPA).

The court denied a summary judgment motion filed by a defendant, who is a debt buyer. The court found that the defendant had enough control over a collection law firm that was also a defendant to potentially be held responsible under the RFDCPA. Additionally, the court partially granted the plaintiff's motion for summary judgment, affirming that the collection law firm qualifies as a debt collector under the Rosenthal Act.

Schultz writes:

This case presents a fairly common scenario and at least one important issue. Here, the debt buyer referred an account to a law firm, who filed a collection lawsuit. The firm mistakenly communicated with the plaintiff while she was represented by counsel. In the subsequent consumer lawsuit, there were cross motions for summary judgment and the court made many rulings, concluding that there were issues of fact to be decided at trial.

One issue for trial is whether the debt buyer can be held vicariously liable for the collection law firm's alleged FDCPA violation: "The Court finds that a reasonable jury could find that Velocity had the right to control MLG's conduct in this case, and thus, can be held vicariously liable under the Rosenthal Act."

Many of us have litigated vicarious liability. It seems the trend is to recognize the concept in an FDCPA (or Rosenthal Act) claim. This seems unreasonable. The FDCPA is a strict liability statutory law. It provides that the debt collector can be liable regardless of intent, negligence, etc (with few exceptions). The debt buyer was not the debt collector, and it took no action in violation of the Act, yet it still faces exposure.

Vicarious liability comes out of tort and agency law – not strict liability statutory law. It should have no place in the FDCPA. The defense bar needs to continue to push this issue and preserve it for appeal. The "ship may have sailed" in some jurisdictions but there still are opportunities to

Attorneys

David M. Schultz

Service Areas

Consumer Financial Services



prevail on the theory.

Read the full September 9, 2024 edition of the *AccountsRecovery.net Compliance Digest*.

- “Judge Rules Debt Buyer Vicariously Liable for Actions of Collection Law Firm in FDCPA, RFDCPA Case” was published by *ARM Compliance Digest* on September 9, 2024.