Client Alert: The Supreme Court Finds that Purchasers of Debts in Default are not "Debt Collectors" Under the FDCPA

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Today, in a unanimous decision delivered by Justice Gorsuch, the U.S. Supreme Court ruled that companies that purchase and collect defaulted debts for their own accounts are not "debt collectors" subject to the Fair Debt Collection Practices Act (FDCPA or the act).

The petitioners were consumers who obtained auto loans from CitiFinancial Auto. When they defaulted on the loans, CitiFinancial repossessed the vehicles and sold the defaulted loans to Santander Consumer, USA (Santander). The petitioners received notices they owed a balance to cover the difference between the agreed purchase price and the amount of money for which CitiFinancial sold their debts. In November 2012, the petitioners filed a putative class action lawsuit that alleged that Santander violated the FDCPA in its communications with them. Santander moved to dismiss the action and claimed that it was not a "debt collector" under the FDCPA, because it bought the debts from another institution and attempted to collect them for its own account. The district court agreed with Santander and dismissed the case. The U.S. Court of Appeals for the Fourth Circuit affirmed and declined to rehear the case en banc.

Because the Fourth Circuit's position was in conflict with those taken by the Eleventh, Seventh, and Third Circuits on the issue whether debt purchasers qualify as debt collectors, the Supreme Court granted certiorari. In reaching its conclusion the Court emphasized the "plain terms" of the statute that, in the Court's view, narrowly targets independent third party debt collectors "who regularly seek to collect debts 'owed . . . another' . . . not . . . a debt owner seeking to collect the debt for itself." The Court noted that to read the FDCPA as excluding only debt originators from its coverage would be too narrow because the language of the statute does not "suggest that we should care how a debt owner came to be a debt owner–whether the owner originated the debt or came by it only through a later purchase. All that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or for 'another.'"

Notably, the Court declined to consider the petitioner's suggestion that Santander would qualify as a debt collector because in addition to buying debts outright, it also regularly acts as a third party debt collector–a suggestion that was not raised in the petition for certiorari. The Court also declined to address an argument that one of the act's definitions of a "debt collector" encompasses entities whose "principal purpose . . . is the collection of any debts."

The Court found linguistically and contextually unpersuasive the petitioners' argument that the past participle nature of the term "owed" in the debt collector definition must mean ***previously*** "owed . . . another." The Court noted that participles like "owed" are frequently used as adjectives to describe the present state of things and pointed out other provisions of the act where Congress used "owed" precisely in that manner. Further, the Court noted that elsewhere in the act, unrelated to the "debt collector" definition, Congress distinguished between "original" and "current" creditors, which the Court interpreted as indicative of the legislature's intentionality in not making that distinction with respect to the "debt collector" definition. Finally, the Court rejected the petitioners' argument that exemption from the "debt collector" definition of parties who "obtain" certain debts under certain circumstances (debts not in default or debts connected to secured commercial transactions) necessarily indicates that "owed . . . another" must refer only to debts ***previously*** owed by someone else.

The Court was also unimpressed with the argument that exclusion from FDCPA coverage of parties that purchase non-defaulted debts should mean that the statute was addressed to collection of debts purchased post-default. The key to the "debt collector" definition in the Court's view is not the current or defaulted nature of the debt at the time of acquisition, but whether it is "owed to *another*" at the time of collection.

The petitioners did not fare any better on their policy arguments. The Court refused to entertain as "speculation" the suggestion that the act should be viewed as aimed at instilling good behavior in all financial institutions collecting debts who are not debt originators, not just independent debt collectors. The petitioners argued that at time Congress passed the Act in 1977, the default debt purchasing business did not exist. Their argument went that if only Congress could have anticipated the advent of this business, it would have certainly judged debt purchasers to be on par with third party debt collectors who certainly were the act's target. Absent a clear indication of congressional intent in either direction, but being able to imagine a scenario where the Congress would view debt purchasers as more like loan originators than collection agencies, the Court refused to substitute its judgment on the matter for what it found to be clear statutory language.

This holding is likely to have a significant impact on financial institutions who purchase loans. Some courts had held that such purchasers were "debt collectors" under the FDCPA if the loans were in default at the time of purchase, regardless of the fact that the purchaser was attempting to collect a debt now owed to itself. The ruling will permit financial institutions or other purchasers of debt on the secondary market more freedom in entering into such transactions.