

A Tort Claim Is Not a Debt Within the Meaning of the Colorado's Fair Debt Collection Practices Act

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11.7.18

In *Ybarra v. Greenberg & Sada, P.C.*, 2018 CO 81, 2018 Colo. LEXIS 828 (Oct. 15, 2018), Francis Ybarra (Ybarra) filed a complaint against the law firm retained by State Farm Auto Insurance Company (State Farm) to pursue subrogation against Ybarra. In his suit, Ybarra alleged that the law firm violated Colorado's Fair Debt Collection Practices Act (FDCPA) when it secured a default judgment against Ybarra. The Supreme Court of Colorado, agreeing that State Farm's subrogation claim was not a transaction giving rise to a debt within the meaning of the FDCPA, held that the trial court properly dismissed Ybarra's complaint for failure to state a claim.

As noted by the court, the FDCPA "protects individuals with at least certain types of debt from various practices used to collect that debt by regulating those in the business of collecting such debts in [Colorado]." As defined in § 5-16-103(8)(a) of the FDCPA, the term "Debt" means "any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not the obligation has been reduced to judgment." In addition, the term "consumer" is defined in § 5-16-103(5) of the FDCPA to mean "any natural person obligated or allegedly obligated to pay any debt." The term "transaction," however, is not statutorily defined.

Applying the foregoing definitions, the court found that committing a tort cannot be a transaction capable of giving rise to an obligation to pay money and that a "a subrogated tort claim is . . . not a transaction giving rise to an obligation of the *tortfeasor* to pay money." It is the judgment that obligates a tortfeasor to pay damages, not committing the tort itself. Although an insurer's subrogation contract with its insured may be a transaction, it is not, by itself, a transaction obligating a debtor to pay his creditor. Thus, the court held that the subrogation contract at issue did not convert the insured's original tort claim to a debt and the law firm seeking to have the tort claim reduced to judgment did not take on the role of debt collector within the contemplation of the FDCPA. Based on the ruling in *Ybarra*, subrogation law firms in Colorado should be able to pursue claims against a tortfeasor in court without fear of violating the FDCPA.

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