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Interpreting the Supreme Court's Decision in *Henson v. Santander*, the Third Circuit Rules a Debt Buyer is a "Debt Collector" Under the FDCPA's "Principal Purpose" Definition

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On February 22, 2019, the Third Circuit Court of Appeals issued a precedential ruling affirming a district court's finding that Crown Asset Management LLC is a debt collector under the Fair Debt Collection Practices Act. In doing so, the Third Circuit interpreted the Supreme Court's recent ruling in *Henson v. Santander, Consumer USA Inc.*, 137 S. Ct. 1718 (2018), and held an entity is a debt collector if its "important aim" and the reason for its existence is obtaining payment on the debts that it acquires.

In *Mary Barbato v. Crown Asset Management LLC, et al.*, No. 18-1042 (3d Cir. Feb. 22, 2019), the lawsuit arose out a credit card debt Barbato incurred and defaulted on prior to 2010. Following various other assignments and sales, Crown purchased Barbato's account, then referred it to Greystone for collection. After receiving collection letters and telephone calls from Greystone attempting to collect on the debt, Barbato filed a complaint alleging violations of the FDCPA. Crown and Barbato filed cross-motions for summary judgment on the issue of whether Crown and Greystone were debt collectors under the FDCPA.

Crown argued it was not a debt collector under the FDCPA because the principal purpose of its business is the "acquisition" of debts, rather than the "collection" of debts that it outsources to other companies. Further, Crown was not collecting the debt on behalf of another because it owned the debt. As such, Crown argued it does not fall under the definition of a debt collector in the FDCPA. Indeed, Crown had no contact with Barbato during the time period Greystone was attempting to collect the debt at issue.

In 2017, the district court issued an opinion denying Crown's motion for summary judgment, concluding that because Crown acquired Barbato's debt after default and its "principal purpose" was debt collection, it was a debt collector under the FDCPA. However, the court also denied Barbato's motion for summary judgment because there was insufficient evidence to find that Greystone was likewise a debt collector under the FDCPA. The court granted both parties leave to file renewed motions for summary judgment on the issue of Greystone's status as a debt collector.

Shortly thereafter, the Supreme Court issued its opinion in *Henson v. Santander*, in which it found that an entity that seeks to collect a debt that it owns is not a debt collector under the FDCPA's "regularly collects" definition. That provision of the FDCPA defines a debt collector as "any person . . . who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." Crown filed a motion for reconsideration with the district court based on the decision in *Henson*, arguing that because it owned Barbato's

debt, it was a creditor, not a debt collector, per *Henson*. Further, since the Supreme Court's decision in *Henson* rejected Third Circuit precedent that took into consideration the default-status of the debt when determining if an entity is a debt collector under the FDCPA, Crown argued the district court should reverse its decision because of its reliance on faulty legal grounds. The district court rejected Crown's argument and found that Crown was still a debt collector under the FDCPA's "principal purpose" definition. Crown filed for interlocutory appeal and the district court certified its decision on the issue of "whether *Henson* requires a finding that Crown is not a debt collector in this case when it was a third-party buyer of the debt, and the debt was in default at the time it purchased it."

The Third Circuit agreed with the district court and found that Crown was a debt collector under the FDCPA's "principal purpose" definition. In doing so, the Court focused on the meaning of the phrase "principal purpose" in the FDCPA, holding that "an entity that has the 'collection of any debts' as its 'important' 'aim' is a debt collector under [the principal purpose] definition [a]s long as a business's *raison d'être* is obtaining payment on the debts that it acquires, it is a debt collector."

The Third Circuit expressly rejected Crown's interpretation that the definition of debt collector was limited to those entities that are actually engaged in the "collection" of debts. Specifically, the Court determined that:

[i]n contrast to the 'regularly collects' definition, where Congress explicitly used the verb 'to collect' in describing the actions of those it intended the definition to cover, in the 'principal purpose' definition, Congress used the noun 'collection' and did not specify who must do the collecting or to whom the debt must be owed.

Thus, in the Third Circuit's view, the fact that Crown used Greystone to collect on the debt was of no-consequence because the noun "[c]ollection" by its very definition may be indirect." Turning back to the "principal purpose" part of the definition of debt collector, the Court opined that a company purchasing debts specifically for the purpose of forgiving the debts or even re-selling the debt to other entities for a profit would not fall under the "principal purpose" definition. However, since the record reflected Crown's only business was the purchase of debts for the purpose of collecting on them, it fell well within the "principal purpose" definition.

This decision is significant because it limits the Supreme Court's decision in *Henson* to the interpretation of the "regularly collects" definition of a "debt collector" in the FDCPA. Entities whose principal purpose is the purchase and collection of consumer debts may still be subject to the requirements of the FDCPA regardless of who is actually engaged in collection activity with a consumer. In other words, while the Third Circuit's opinion was decided in the context of traditional debt buying, *i.e.*, third-party debt collectors, it does raise important considerations for any entity whose business model relies on the purchase and collection of consumer receivables. Finally, this decision did not speak to the "creditor as a debt collector under a different name" definition that is the third way in which an entity can fall under the purview of the FDCPA as a "debt collector."

Troutman Sanders will continue to monitor this area of law and report accordingly.

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