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Supreme Court Holds that the FDCPA Does Not Necessarily Apply to a Company Collecting Debts in Default that It Purchased for Its Own Account

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In a unanimous decision, *Henson v. Santander Consumer USA Inc.*, No. 16-cv-0349, 2017 WL 2507342 (June 12, 2017), the Supreme Court of the United States resolved a circuit split and affirmed the Fourth Circuit's holding that the Fair Debt Collection Practices Act's ("FDCPA") definition of the term "debt collector" does not necessarily apply to a company collecting debts in default that it purchased for its own account.

In *Henson*, the petitioners brought a class action lawsuit against Santander, alleging that CitiFinancial Auto loaned money to petitioners seeking to buy cars; that petitioners defaulted on those loans; that Santander then purchased the defaulted loans from CitiFinancial; and that Santander's collection efforts violated the FDCPA. The District Court granted Santander's motion to dismiss, which argued that Santander is not a debt collector under the FDCPA. The Fourth Circuit affirmed the decision, holding that Santander was not susceptible to the FDCPA because the debt was not "owed . . . another," but was owed directly to Santander. This holding followed precedents of the Ninth and Eleventh Circuits in *Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204 (9th Cir. 2013), and *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2015).

The Third, Sixth, and Seventh Circuits in *FTC v. Check Investors, Inc.*, 502 F.3d 159 (3d Cir. 2007), *Bridge v. Ocwen Fed. Bank, FSB*, 681 F.3d 355 (6th Cir. 2012), and *Ruth v. Triumph P'ships*, 577 F.3d 790 (7th Cir. 2009) held that the purchaser of a defaulted loan is a "debt collector" under the FDCPA. As such, the Supreme Court decided to hear *Henson* and resolve this split within the courts of appeals.

The issue before the Supreme Court focused on the narrow issue of how to classify individuals and entities, like in this case, Santander, who regularly purchase debts originated by a third party and then seek to collect those debts for their own account. The Court, in affirming the Fourth Circuit's decision, rejected the petitioners' position, and in doing so pointed out the inherent problem of finding that Santander was a "debt collector," when the statutory definition of "debt collector" requires the debt to be owed to "another." The Court further rejected the petitioners' grammatical argument that a company becomes a "debt collector" when it obtains a debt that was originally "owed" – in the past tense – to the original lender, and its argument that by regularly purchasing debts that are in default when acquired a company becomes a "debt collector."

In addition, the Court refused to consider the petitioners' alternative arguments that Santander was a debt collector because it allegedly regularly attempts to collect debts for other companies as a servicer, and because it is allegedly engaged in a business "the principal purpose of which is the collection of any debts." The Court held that companies

which buy defaulted debts are not “debt collectors” under the FDCPA because they are not, by definition, “collect[ing] or attempt[ing] to collect . . . debts owed or due . . . another,” under 15 U.S.C. § 1692a(6).

Based on this, *Henson* now provides a strong basis for defending both FDCPA and Federal Trade Commission claims that might have otherwise resulted in liability under the FDCPA. Notably, however, *Henson* was a narrow decision and may not apply to servicers of debts in default. Indeed, mere servicers may still qualify as debt collectors because they seek to collect debts owed to another. Accordingly, while *Henson* establishes a strong defense for certain FDCPA claims, the best defense for companies that purchase defaulted debts for their own account and companies engaged in debt collection activity continues to be full compliance with the FDCPA’s requirements.

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