

INSIGHTS

United States Supreme Court Limits Definition of Debt Collector Under the Fair Debt Collection Practices Act

June 12, 2017

On June 12, 2017, the United States Supreme Court issued an opinion resolving a circuit court split as to whether a company that collects debts that it purchased for its own account would fall within the statutory definition of "debt collector" under the Fair Debt Collection Practices Act (the "Act"). [*Henson v. Santander Consumer USA Inc.*, 582 U.S. ____ \(2017\)](#). The Court unanimously held that such a company would **not** fall within the statutory definition of "debt collector" under the Act.

Case Background

According to the complaint, CitiFinancial Auto loaned money to petitioners seeking to buy cars; that petitioners defaulted on those loans; that respondent Santander Consumer USA Inc. ("Santander") then purchased the defaulted loans from CitiFinancial; and Santander sought to collect in ways petitioners believe troublesome under the Act. The district court and the Fourth Circuit Court of Appeals held that Santander did not qualify as a debt collector under the Act.

The Court's Analysis

The question before the Court was whether the purchaser of a debt, who later attempts to collect the debt for itself falls within the definition of "debt collector" under the Act. The Act defines the term "debt collector" to "embrace anyone who 'regularly collects or attempts to collect ... debts owed or due ... another.'" (citing 15 U.S.C. §1692a(6)). Both parties agreed that, generally, third-party collection agents qualify as "debt collectors," while, those who originate the loans themselves do not. Therefore, the issue for the Court was "how to classify individuals and entities who regularly purchase debts originated by someone else and then seek to collect those debts for their own account." Petitioners argued that the word "owed" under the statutory definition of "debt collector" is a past participle of the verb "to owe," and this suggests that the statute's definition of debt collector captures anyone who regularly seeks to collect debts previously "owed ... another." The Court rejected this argument, walking through the term's ordinary meaning, the statutory phrase which the word "owed" appears, and the larger statutory landscape of the term "owed" (referring to a present (not past) debt relationship). The Court further rejected petitioner's argument regarding the statutory language to "obtain" a debt within the Act, as the term "obtain" can refer to taking possession of a piece of property without also taking ownership. Similarly, petitioner's assertion that certain of the Act's exclusions implied Santander was a debt collector was also rejected by the Court because Santander is not barred from qualifying as a creditor under the Act's plain terms. Petitioner's final argument was premised on policy. Specifically, petitioner argued that Congress never had the chance at the time of the Act's passage to consider what should be

done about those in the business of purchasing defaulted debt and, if Congress had known this new industry would blossom, Congress would have judged defaulted debt purchasers more like independent debt collectors. Based upon the speculation required in such an argument and because the Court's job was "to apply, not amend, the work of the People's representatives," the Court rejected this argument as well.

Holding and Takeaway

The *Santander* opinion, which resolves a circuit court split, holds that a company may collect debts that it *purchased for its own account* without triggering the statutory definition of a "debt collector" under the Fair Debt Collection Practices Act.