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Supreme Court Limits Fair Debt Collections Practice Act

By James S. Sifers, Esq.

Yesterday the United States Supreme Court issued its opinion in *Henson, et al. v. Santander Consumer USA Inc.* (2017) 16-349. In *Henson*, the Court resolved an issue as to the applicability of the Fair Debt Collection Practices Act, 15 USCS § 1692, et seq. Specifically, the Court took up the issue of “who exactly qualifies as a ‘debt collect’ subject to the Act’s rigors.” (*Henson* Pg. 1.)

In this case, Santander had purchased defaulted debt from CitiFinancial Auto and thereafter attempted to collect on that debt. (*Id.*) The consumers whose debt had been purchased by Santander alleged that Santander violated the Act in attempting to collect that debt. (*Id.*) On appeal before the 4th Circuit, Santander succeeded in obtaining a ruling that it was not a “debt collector” under the Act, and thus the consumers could not maintain their claims against Santander under the Act.

(*Id.* at Pg. 2.)

In upholding the 4th Circuit’s interpretation of who the Act applies to, and resolving a conflict on this issue among the various Circuits, the Court concluded that “by its plain terms [the Act’s] language seems to focus our attention on third party collection agents working for a debt owner – not on a debt owner seeking to collect debts for itself.” (*Id.* at Pg. 3.) The Court made a distinction between the owner of the debt, and say a “repo man – someone hired by a creditor to collect an outstanding debt.” (*Id.* at Pg. 1.) Under that scenario, the repo man would be subject to the Act whereas the owner of the debt would

not. The Court's opinion was silent as to any vicarious liability that may arise for the repo man's violation of the Act to his principal, the creditor.

The opinion left open the possibility of Congress expanding the breadth of the Act to include those individuals or companies collecting on debts owed directly to them, but noted that the Court was not permitted to speculate as to Congress' intent in drafting the Act.

The full text of the opinion can be found [here](#).



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