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Chapman Client Alert

June 13, 2017 Current Issues Relevant to Our Clients

Supreme Court Unanimously Holds That Debt Purchasers Are Not Debt Collectors in Justice Gorsuch's Landmark First Opinion

In a unanimous decision on June 12, 2017, in *Henson v. Santander Consumer, USA, Inc.*, the United States Supreme Court held that a purchaser of defaulted debt who pursues repayment is not a "debt collector" under the Fair Debt Collection Practices Act (*"FDCPA"*).

In *Santander*, financial services provider Santander purchased the plaintiffs' defaulted auto loans from their originating lender, after previously acting as the loans' servicer. After Santander commenced collection efforts, Henson and the accompanying class of plaintiffs brought suit, claiming that Santander's debt collection practices violated the FDCPA. Santander took the position that as the current holder of the debt, it was merely seeking repayment of its own debt (the same as any originating creditor would) and was therefore not subject to the purview of the FDCPA.

Relying heavily on the plain language of the FDCPA, the Court confirmed its application extended only to those collecting on third party debts, noting:

> …"the Act defines debt collectors to include those who regularly seek to collect debts 'owed…another.' **And by its plain terms this language seems to focus our attention on third party collection agents working for a debt owner – not a debt owner seeking to collect debts for itself.…All that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or does so for 'another'"** (emphasis added).

Yesterday's opinion was the first for Justice Gorsuch since taking the bench in April, and serves as an important victory for financial services companies, who many now rely on *Santander* for the proposition that buying a distressed portfolio and then engaging in collection activity does not automatically subject a loan purchaser to the FDCPA.

For More Information

If you would like further information concerning the matters discussed in this article, please contact any of the following attorneys or the Chapman attorney with whom you regularly work:

James P. Sullivan
Chicago
312.845.3445
jsulliva@chapman.com

Mia D. D'Andrea
Chicago
312.845.3766
dandrea@chapman.com

Sara Ghadiri
Chicago
312.845.3735
ghadiri@chapman.com

Chapman and Cutler LLP

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