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What are the True Lessons from the US Supreme Court's Henson Decision on the Scope of FDCPA?

New U.S. Supreme Court Justice Gorsuch wrote the recent decision in Henson v. Santander Consumer USA, Inc., 582 U.S. __ (June 12, 2017) on Monday that addresses the scope of the Fair Debt Collection Practices Act (FDCPA). In only the sixth decision issued by the U.S. Supreme Court addressing the FDCPA, the U.S. Supreme Court held that the FDCPA applies to parties who are collecting debts owed to others, excluding parties who have bought a debt and are attempting to collect the debt which they now own. The consumer argued that because the statute stated "owed to another," this past tense clearly indicates that debt buyers were entities that were collecting debts initially owed to someone else, and thus were covered by the FDCPA. The consumer argued that if the Legislature wanted to exclude debt purchasers from the definition, the Legislature would have used "owing to another." Justice Gorsuch points out that common language usage typically uses past tense "as adjectives to describe the present state" of something.

Justice Gorsuch also addressed the exception in the definition of a debt collector for a debt that was acquired when it was not yet in default. (See 15 U.S.C. § 1692a(6)(F)(iii). As Justice Gorsuch points out, this exception should not be read to mean that if an entity is collecting defaulted debt, the entity is a debt collector. The entity must first be collecting a debt owed to another to ever fall within the ambit of the FDCPA.

Finally, the Supreme Court refused to engage in a policy debate to determine the meaning of "debt collector.' "Legislation is, after all, the art of compromise, the limitations expressed in statutory terms often the price of passage, and no statute yet known 'pursues its [stated] purpose[] at all costs.'" (Citations omitted.) Thus, the Supreme Court deferred to the actual language of the statute because the "legislature says ... what it means and means ... what it says." (Citations omitted.) Thus, as Justice Gorsuch explains, given that the parties and amici have presented many colorable arguments as to why their respective statutory interpretations support their own view of policy, the Court is certain on one thing: "[T]hese are matters for Congress, not this Court, to resolve."

It is notable that the U.S. Supreme Court specifically refuses to address the issue of whether debt buyers who collect their own debt, as well as debts owed to another, are governed by the FDCPA. In other words, this decision does not address whether the FDCPA governs collection activity on a debt owed to the debt buyer if the debt buyer also collects debts owed to another.

Perhaps the most important part of this decision is that the Supreme Court also noted that it was not addressing the alternative definition of debt collection found in 15 U.S.C. § 1692a(6), that being those businesses whose principal purpose is the collection of any debt. The principal purpose of purchasers of debt may be characterized as collecting debt. It is for this reason that I believe the Receivables Management Association cautions its members that the Henson decision may not be the deliverance from oversight that some might suggest.

The Henson decision certainly does not address regulatory oversight by the FTC or CFPB or state attorney generals. And it does not address state laws that govern collection activity. For instance, California's Rosenthal Fair Debt Collection Practices Act governs collection activities by both creditor and debt collector, and thus purchases of debt to the extent they engage in collection efforts. The Henson decision does narrow at least a little the scope of the FDCPA and give us insight into how Justice Gorsuch will impact the U.S. Supreme Court's jurisprudence.

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Questions?

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