When is a Debt Collector not a Debt Collector Under The Fair Debt Collection Practices Act?

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In a unanimous opinion written by newly appointed Justice Neil M. Gorsuch, the U.S. Supreme Court answered the question whether someone who purchases a defaulted debt is not a "debt collector" as defined by the Federal Fair Debt Collection Practices Act, or FDCPA. How the Court arrived at that conclusion is the rest of the story.

The case of Henson v. Santander Consumer USA Inc. began with an auto loan from CitiFinancial Auto to the Hensons. As is sometimes the case the Hensons defaulted on the auto loan and the car was repossessed. Unfortunately there remained a deficiency after the auction which was subsequently sold to Santander which then sought to collect the amount owed in ways and methods that the Hensons considered to be aggressive and in violation of the FDCPA. The Hensons then filed a complaint in the U.S. District Court of Maryland which determined that Santander was not a debt collector as defined by the FDCPA. Thereafter the Hensons appealed to the U.S. Court of Appeals for the Fourth Circuit which upheld the lower court's ruling. In order to resolve a split between the Appeals Courts, the U.S. Supreme Court accepted the case under Certiorari.

The FDCPA only applies to debt collectors, a term under the act specifically defined in 15 U.S.C. §1692 a(6) as anyone who "regularly collects or attempts to collect . . . debts owed or due . . . another." (The "Act") Ostensibly, a company who collects on its own debt, whether it was the originator or purchased it from another would not fall under the controls of the Act.

The Court then set about to determine how to classify entities "who regularly purchase debts originated by someone else and then seek to collect those debts for their own account." Using an analogy, J. Gorsuch framed the question as whether the Act treats "the debt purchaser . . . more like the repo man or the loan originator?" He further stated that "all that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or does so for 'another." That analysis, he said, "would seem" to mean that a debt purchaser does not fall under the statutory definition. The ultimate question for the Court to decide was boiled down to: "…if you purchase[d] a debt and then try to collect it for yourself – does that make you a "debt collector" resulting in the application of the Act? Ultimately, as the Court stated "under the definition at issue before us, you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector".

In their pleadings, memorandums and oral arguments both parties agreed that, under the Act, third party debt collection agents generally qualify as debt collectors "while those who seek only to collect for themselves, loans they originated generally do not". It is the gray area of whether those who purchase debt from the originating creditor can be classified as a debt collector?

In an attempt to clarify their position, the Hensons argued that the term "owed to another" was misleading and did not reflect the Congressional intent when the Act was put into law. The Court

then entered into a complex statutory and grammatical analysis, focusing largely on the word "owed." Citing from various grammar books and the Oxford English Dictionary, the Court put to rest the Hensons' counter interpretation of the term "owed" and further stated "it is never our job to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that, on everyone's account, it never faced". J. Gorsuch stated the "proper role of the judiciary" is to "apply, not amend, the work of the People's representatives." Ultimately, "that [the] legislature says . . . what it means and means . . . what it says.".

The Court held that a "company may collect debts that it purchased for its own account without triggering the statutory definition in dispute. By defining debt collectors to include those who regularly seek to collect debts "owed . . . another," the statute's plain language seems to focus on third party collection agents regularly collecting for a debt owner—not on a debt owner seeking to collect debts for itself."