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Recent Eleventh Circuit Decisions Clarify "Debt Collector" Status Under the FDCPA

Authors: Jade Eleanor Sipes
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Recent decisions within the Eleventh Circuit Court of Appeals have clarified two required elements needed to support a viable claim under the Fair Debt Collection Practices Act (FDCPA). In *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2015), a unanimous panel held that an entity that acquires a debt while it is in default is not a debt collector under the FDCPA so long as it is collecting that debt for itself and its principal business purpose is not debt collection.

In *Davidson*, Capital One had acquired $28 billion worth of credit card accounts from HSBC, more than $1 billion of which were in default – including the account belong to the plaintiff, Keith Davidson. Capital One sued Davidson seeking to collect on that delinquent account. Based on that collection effort, Davidson then sued Capital One, on behalf of himself and similarly-situated individuals, claiming that Capital One's activities violated the FDCPA.

Capital One moved to dismiss Davidson's complaint, arguing that it was not a debt collector. Davidson countered that when Capital One acquired the debt, the debt was in default and therefore Capital One had to be a debt collector under the FDCPA.

The district court dismissed Davidson's complaint, and the Eleventh Circuit affirmed. In determining when a person is a debt collector, the court first looked to the statute, which contains two definitions of a debt collector:

1. Any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts; and
2. Any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

If a person does not fall under either definition, it is not a debt collector and therefore is not subject to FDCPA liability. If a person does fall under either definition, however, that person may still not qualify as a debt collector because the statute exempts certain categories of persons. For example, one statutory exemption provides a person who collects a debt for another is not a debt collector if that person acquired the debt prior to default.

Davidson, relying on that exemption, argued that Capital One was a debt collector because it had acquired the debt while it was in default. In other words, according to Davidson, the FDCPA excludes only entities that acquire debts that are not in default from its definition of debt collector. The Eleventh Circuit rejected that argument. Even if a person acquires debt while it is in default, said the court, that person is not a debt collector unless it falls into one of the two statutory definitions.

Applying the statutory definitions to Capital One, the court held that Davidson had failed to sufficiently allege that Capital One fell under either definition. First, Davidson's complaint failed to allege that Capital One's principal business purpose was debt collection. To be sure, some part of Capital One's business was obviously

debt collection, but without any allegations that its principal purpose was debt collection, Davidson failed to plead that Capital One fell under the first definition.

Similarly, Davidson did not sufficiently allege that Capital One fell under the second definition – that it was regularly collecting debts due another. Because Capital One owned the debt at the time it engaged in the debt collection at issue, it did not fall under the second definition either. Specifically, the court said, "Because Capital One acquired Davidson's credit card account (and the credit card accounts of the purported class members) from HSBC, Capital One's collection efforts in this case relate only to debts owed to it – and not to 'another.'"

Davidson has petitioned the court for rehearing of the case en banc, and the Federal Trade Commission has filed an amicus brief supporting rehearing en banc. The Eleventh Circuit has yet to decide whether to grant rehearing, but as of now the *Davidson* case remains binding precedent, which can – and should – be cited as support that if an entity owns the debt on which it is attempting to collect (regardless of whether the debt was in default when acquired), it is not subject to the FDCPA. Thus, if an entity buys the debt before collecting on it, it will be considered collecting on its own behalf rather than for another and will be exempt from debt-collector status under the FDCPA, so long as the business's principal purpose is not debt collection.

Another recent case from the United States District Court for the Northern District of Alabama explored whether the plaintiff had been the object of collection activity and the defendant's status as a debt collector under the FDCPA. In *Hamilton v. Avectus Health Care Solutions, LLC*, No. 5:13-cv-01967, 2015 WL 5693610 (N.D. Ala. Sept. 29, 2015), the court entered judgment in the defendant's favor, finding that the plaintiff failed to assert a viable claim for relief under the FDCPA.

In *Hamilton*, plaintiff James Hamilton incurred more than $100,000 in medical bills to Huntsville Hospital following injuries he sustained in a motorcycle accident. Hamilton did not have health insurance when the accident occurred. Huntsville Hospital contracts with Avectus Health Care Solutions, LLC (Avectus) to coordinate third-party payers (like insurance companies) that are potentially responsible for unpaid medical bills. In Hamilton's case, Avectus contacted Hamilton about third-party payers that might be liable for his medical debt, and filed hospital liens against two insurers pursuant to Alabama Code Section 35-11-370 *et al.* After his medical debt was satisfied by the insurers and the hospital lien released, Hamilton sued Avectus, alleging that its activities violated the FDCPA.

The district court first addressed whether Hamilton was even the object of debt collection activity by Avectus. Specifically, the court looked to four factors in deciding whether Avectus had attempted to collect a debt from Hamilton: (1) whether Avectus's communication contained a statement identifying it as an attempt to collect a debt; (2) if the communication's purpose was to make another collection attempt more likely to succeed; (3) the relationship between the parties; and (4) the content and context of the communication.

Hamilton contended that he had been the object of a number of alleged collection attempts. First, Hamilton argued that when Avectus obtained information from him while he was in the hospital, it was attempting to collect a debt. The court rejected this argument, holding that there was no evidence that the hospital had issued a bill at that time, much less that the bill was already due when the communication occurred. Second, Hamilton argued that a letter sent by Avectus was a collection attempt. But the court pointed out that the letter expressly stated that it was "NOT a collection notice" and contained no demand for payment, no information about an amount due, and no payment details. Third, the court summarily rejected Hamilton's arguments that the hospital liens filed against third-party payers and Avectus's settlement communications with Hamilton's lawyer subjected Hamilton to debt collection activity.

The court then examined whether Avectus was a "debt collector" as that term is defined by the FDCPA, including whether Avectus fell within the statutory exemption that excludes entities that collect debts for another where the debt was acquired prior to default. The court held Hamilton's debt was not in default when Huntsville Hospital assigned the account to Avectus. The court rejected Hamilton's argument that an outstanding bill (provided to him when he was discharged from Huntsville Hospital) meant that his debt was in default when Avectus acquired it. In doing so, the court held that the time of the default, not when the obligation is incurred, was the "critical period." Thus, because no bill had been issued when Avectus communicated with Hamilton, Avectus had not acquired the debt when it was in default. As a result, Avectus was not a debt collector and not subject to FDCPA liability.