

# PUBLICATION

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## When Does a Principal Business Purpose Amount to Debt Collection Under the FDCPA?

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**The Fair Debt Collection Practices Act prohibits debt collectors from engaging in abusive debt collection practices. To be liable under the Act, however, the defendant must be a debt collector. And there are two ways that a defendant can qualify as a debt collector under the Act – the defendant's "principal [business] purpose" is debt collection or the defendant regularly attempts to collect debts "owed or due another." 15 U.S.C. § 1692.**

Last summer, the Supreme Court examined what it means to regularly collect a debt "owed or due another," holding that defendants who seek to collect debts that they own (even if the debt is in default when purchased) are not subject to liability under the Act. See *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017). The Court declined to discuss when a defendant's principal business purpose amounts to debt collection making it subject to the Act.

That issue, however, recently confronted the Third Circuit, which had to decide how to apply the "principal purpose" definition of debt collector – the first federal court of appeals to do so since the Supreme Court's ruling last summer in *Henson*.

The Third Circuit addressed the issue in *Tepper v. Amos Fin., LLC*, 898 F.3d 364, 368 (3d Cir. 2018). There, the plaintiffs (the Teppers) received a home equity loan from NOVA Bank. The FDIC closed NOVA Bank, took over as receiver, and sold the Teppers' defaulted loan to Amos Financial. After purchasing the Teppers' loan, Amos attempted to collect the debt and ultimately foreclosed. The Teppers then sued, claiming that Amos violated the Act by attempting to collect more than they owed and making false representations about the foreclosure sale, among other things. Amos, relying on the Supreme Court's decision in *Henson*, argued that it was not a debt collector because it owned the Teppers' loan.

The district court rejected the argument, holding that even though Amos was collecting a debt it owned, Amos was still a debt collector because its "principal [business] purpose" was debt collection. Amos admitted to the district court that it was "[n]ot a financial institution or lender, [and] its sole business [wa]s purchasing debts entered into by third parties and attempting to collect them." *Id.* at 369. After a one-day bench trial, the district court found that Amos had violated the Act and awarded the Teppers statutory damages and attorneys' fees.

Amos appealed, arguing again that, under the Supreme Court's decision in *Henson*, it was not a debt collector subject to the Act because it owned the Teppers' loan. The Third Circuit rejected Amos's argument, reasoning that because Amos's sole business was collecting debts that it had purchased, it was a debt collector. And, said the Third Circuit, "[a]sking if Amos is a debt collector is thus akin to asking if Popeye is a sailor. He's no cowboy." *Id.* at 370-71.

According to the Third Circuit, "an entity whose principal purpose of business is the collection of any debts is a debt collector *regardless whether the entity owns the debts it collects.*" *Id.* (emphasis added). In other words, simply owning the debt will not protect a defendant from liability under the Act if the defendant's principal business purpose is debt collection.

So, if a plaintiff can sufficiently plead in her complaint that a defendant's principal business purpose is debt collection, whether that is actually so is a fact question that will need to be fleshed out in discovery. See, e.g., *Hordge v. First Nat'l Collection Bureau, Inc.*, No. 4:15-CV-1695, 2018 WL 3741979, at \*5 (S.D. Tex. Aug. 7, 2018) (holding that whether the defendant's principal purpose is debt collection is a "disputed fact question" notwithstanding that the defendant argued that its business was "holding debts, not collecting debts"); *Yarid v. Ocwen Loan Serv., LLC*, No. 3:17-CV-484, 2018 WL 3631883, at \*5 (E.D. Va. July 31, 2018) ("[D]eciding whether an entity qualifies as a debt collector involves a fact-intensive process.").

As a result, consumer plaintiffs are likely to seize on the Third Circuit's reasoning in *Tepper* to avoid a summary disposal of their cases when the defendant owns the subject debt. And courts will likely soon be faced with having to decide exactly when some debt collection by a defendant is enough to qualify as a defendant's principal purpose. Indeed, the Third Circuit already has before it a case raising this very issue where the plaintiff argued at oral argument that the defendant's principal business purpose is debt collection because at least 50 percent of its business involves debt collection. See *Barbato v. Greystone Alliance, LLC*, 2017 WL 5496047, No. 3:13-2748 (M.D. Penn. Nov. 16, 2017) (holding that the defendant is a debt collector under the "principal purpose" definition because it purchased charged-off receivables and 90 – 95 percent of its accounts were such receivables).