Taylor v. First Resolution Investment Corporation, et al 2016 Ohio 3444

Syllabus of Court:

This case began with a default on credit-card debt by an Ohio consumer. It reaches this court because that consumer alleged violations of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 et seq., and the Ohio Consumer Sales Practices Act ("OCSPA"), R.C. 1345.01 et seq., by the entities that purchased her debt and were involved in suing her to collect on it. Today, we determine several issues relevant to the application of the FDCPA and the OCSPA to the collection of purchased credit-card debt in Ohio. We hold that the underlying cause of action for default on the credit card in this case accrued in Delaware, the home state of the bank that issued the credit card and where the consumer's payments were made, and that Delaware's statute of limitations— through operation of Ohio's borrowing statute—determines whether the collection action was timely filed. We further hold that the filing of a time-barred collection action may form the basis of a violation under both the FDCPA and the OCSPA. We also hold that that a consumer can bring actionable claims under the FDCPA and the OCSPA based upon debt collectors' representations made to courts in legal filings, specifically on a debt collector's claim for interest that is unavailable to the debt collector by law. Finally, we hold that debt buyers collecting on credit-card debt and their attorneys are subject to the OCSPA.

WHAT STATUTE OF LIMITATIONS APPLY: - ONLY ADOPTED BY 3 MEMBERS OF THE COURT

Ohio's borrowing statute (ORC 2305.03(B)) directs a forum court to "borrow" the limitation period of another state if the cause of action accrued in that foreign state and that state's limitation period is shorter than the forum state's limitation period. *Taylor* at paragraph 37

citing *Dudek v. Thomas & Thomas Attorneys & Counselors at Law LLC,* 702 F. Supp.2d 826 (ND OH 2010).

In this case, the Court states the Delaware statute of limitations (three years) not ORC 2305.07's six year statute of limitations apply because the Court focuses on *where the debt was to be paid and where the Plaintiff suffered the economic loss. Taylor* at Paragraph 42. In coming to this proposition the Court relies on *Portfolio Recovery Assoc. LLC v. King*, 14 N.Y.3d 410 (2010), *Hamid v. Stock & Grimes LLP*, 2011 US Dist. LEXIS 96245 (ED PA 2011), and *Conway v. Portfolio Recovery Associates LLC,* 13 F.Supp.3d 71 (EDKY 2014).

ACCURAL – ONLY ADOPTED BY 3 MEMBERS OF THE COURT

The Court agrees the cause of action on a debt case accrues when the borrower/debtor fails to make the first full minimum contractual payment due on the contract, not the last date of a payment received. *Taylor* at Paragraph 49 citing *Dudek*, 702 F.Supp.2d at 839; *Citibank, N.A. v. Hyslop*, 10th Dist. Franklin No. 12AP-885, 2014-Ohio-844, ¶ 16-17; *Discover Bank v. Heinz*, 10th Dist. Franklin No. 08AP-1001, 2009-Ohio-2850, ¶ 17; *Discover Bank v. Poling*, 10th Dist. Franklin No. 04AP-1117, 2005-Ohio-1543, ¶ 18.

FDCPA LIABILITY BY A DEBT COLLECTION FIRM FOR THE ALLEGED FACTS ON A COMPLAINT THAT ARE ILLEGAL AS A MATTER OF LAW

A recent decision of the Sixth Circuit Court of Appeals involved a scenario akin to the present case—the consumer's FDCPA cause of action was based on a debt collector's improper claim for interest on a credit-card debt. In *Stratton v. Portfolio Recovery Assocs.*, 770 F.3d at 445, the court held that a debt collector's improper claim for statutory interest made in a complaint filed in a state trial court could form the basis for a claim by the consumer under the

FDCPA. In *Stratton*, the credit-card user, Stratton, had stopped making payments on her credit card; her contract with GE Money Bank ("GE") established an interest rate of 21.99 percent. *Id.* at 446. Once GE determined that the debt was uncollectible, it stopped charging Stratton interest on the debt, for reasons that, according to the federal circuit court, were "neither irrational or altruistic: By charging off the debt and ceasing to charge interest on it, GE could take a bad-debt tax deduction * * * and could avoid the cost of sending Stratton periodic statements on her account." *Id.* At 445. GE then sold the debt to Portfolio Recovery Associates, L.L.C. ("PRA"). *Id.* **{¶ 67}** Two years after buying the debt, PRA filed suit against Stratton, alleging that she " 'owes [PRA] $2,630.95 with interest thereon at the rate of 8% per annum from December 19, 2008[,] until the date of judgment with 12% per annum thereafter until paid, plus court costs.' " *Id.* at 446, quoting PRA's complaint. Kentucky's usury statute sets the legal rate of interest for all loans made in that state at 8 percent unless the parties agree in writing to a higher rate. Ky.Rev.Stat.Ann. 360.010(1). *Stratton* at 445. The *Stratton* court held that "[a]s the drafter of the complaint, PRA 'is responsible for its content and for what the least sophisticated [consumer] would have understood from it.' " *Id.* at 451, quoting *McLaughlin v. Phelan Hallinan & Schmieg, L.L.P.*, 756 F.3d 240, 246 (3d Cir.2014).

OCSPA Liability extends to the actions of a law firm in collection a debt – A lawsuit as a debt collection actity is a consumer transaction

Law Firm and Debt Collector argued that under *Regans v. Mountainhigh Coachworks, Inc.*, 117 Ohio St.3d 22., the exemption of a consumer transaction excluding transactions between financial institutions and their customers can extend to "bank assignees". The Court distinguishes *Reagans* from the case at hand as that case involved a different type of collection activity. Additionally a debt buyer/debt collector and its counsel cannot use the OCSPA

exemption just because the originating debt originated between a financial institution and a consumer. *Taylor* at Paragraph 102.