DISMISSING FDCPA LAWSUIT, SIXTH CIRCUIT CALLS OUT CONGRESS FOR CREATING STATUTORY REMEDIES WHERE NO HARM HAS OCCURRED

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The Sixth Circuit Court of Appeals recently ended a Fair Debt Collection Practices Act ("FDCPA") lawsuit because the plaintiffs could not show that the allegedly offending letter had caused them actual harm. In Hagy v. Demers & Adams, [1] the Sixth Circuit held that the plaintiffs lacked standing to sue a law firm for its technical FDCPA violation, namely failing to identify itself as a debt collector in a letter to the plaintiffs. Debt collectors will likely applaud the practical and sensible approach the Sixth Circuit applied in Hagy. The decision is remarkable, however, for its constitutional rebuke of Congress. Reminding the legislative branch that it lacks general police powers to create statutory remedies where no actual harm exists, the Sixth Circuit's decision suggests — without specifically stating — that the statutory damage provision of the FDCPA may be unconstitutional.

BACKGROUND

After initiating foreclosure proceedings, a mortgage servicer reached a settlement with the plaintiffs. The servicer accepted a deed in lieu of foreclosure in exchange for waiving any deficiency balance. [2] Later, the servicer's counsel sent two letters to the plaintiffs. The first letter enclosed the deed for plaintiffs' signature. The second letter confirmed the receipt of the executed deed and stated that the mortgage servicer would "not attempt to collect any deficiency balance which may be due and owing after the sale of the collateral." [3]

The plaintiffs filed suit under the FDCPA alleging that the letters did not disclose that they were from a debt collector, in purported violation of Section 1692e(11) of the FDCPA. [4] In ruling on summary judgment, the District Court observed that "[n]o reasonable person, not even the least sophisticated consumer" would conclude that the law firm had engaged in the kind of unfair, deceptive, or harassing conduct prohibited by the FDCPA. [5] Yet, the District Court granted summary judgment for plaintiffs based on the letters' failure to include the "mini-Miranda" disclosure that they were from a debt collector. The District Court reasoned that the FDCPA is a "strict liability" statute and that "a consumer may recover damages under the statute even if he or she suffered no actual damages." [6] The District Court awarded plaintiffs $1,000 in statutory penalties and $74,195.62 for attorneys' fees. [7]

Following the Supreme Court's opinion in Spokeo, Inc. v. Robins, [8] the defendant in Hagy moved to reconsider the District Court's summary judgment ruling and dismiss the lawsuit, arguing that the plaintiffs lacked standing because they never alleged, let alone introduced evidence of, an actual injury. [9] The District Court denied that

motion and ruled that the plaintiffs' injury was (1) "particularized" because the defendant sent the letters at issue directly to them and their attorney, and (2) "concrete" because the FDCPA creates an "informational right" to receive certain disclosures, and deprivation of that right was sufficient to confer Article III standing. [10]

ANALYSIS

In a concise decision, the three-judge panel of the Sixth Circuit reversed the District Court. [11] Specifically, the Sixth Circuit vacated the order granting summary judgment for the plaintiffs and dismissed the case for lack of jurisdiction. [12]

Eschewing the "easy" conclusion that plaintiffs have standing to sue for a technical violation of the statute, the Sixth Circuit ruled that plaintiffs "have not shown…that th[e] failure to disclose [the mini-Miranda] caused them any actual harm beyond that 'bare procedural violation.'" [13] Indeed, the Court observed, far from harming them, the letters gave the plaintiffs peace of mind. [14]

The Sixth Circuit then construed Spokeo's holding as a limitation on congressional authority to create statutory injuries that satisfy the Article III standing requirement in cases where there is no actual injury. The Court reasoned that the Commerce Clause (which provides the constitutional basis for the FDCPA) does not endow Congress with "a general police power." [15] Thus, the Court concluded that the Constitution restricts Congress's broad power to define injuries and articulate legal chains of causation. Applying this restriction to the FDCPA, the Sixth Circuit held that Congress cannot "simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." [16]

CONCLUSION

Financial services companies who have had to defend abusive FDCPA lawsuits will likely see the Sixth Circuit's decision in Hagy as a sensible result that provides a potential defense against them. Whether other courts agree with the Sixth Circuit's broader conclusion — that the Constitution's separation of powers prohibit Congress from creating causes of action without actual harm — remains to be seen.

Notes

[1] --- F.3d ----, 2018 WL 914953 (6th Cir. Feb. 16, 2018) (the "Sixth Circuit Decision").
[2] See Hagy v. Demers & Adams, LLC, No. 11-530, 2013 WL 434053, at *1 (S.D. Ohio Feb. 5, 2013) (the "District Court Opinion").
[3] See Sixth Circuit Decision, 2018 WL 914953, at *1.
[4] See id. at *1–2. Plaintiffs contended that these FDCPA violations were unfair, deceptive, and unconscionable acts under the Ohio Consumer Sales Practices Act. See id.
[5] See District Court Opinion, 2013 WL 434053, at *5.
[6] See id. at *9. Despite the defendant's arguments to the contrary, the District Court found that it was a "debt collector" under the FDCPA and that its letters to the plaintiffs were made in connection with an attempt to collect a debt. See id. at *8–9 (explaining that the "animating purpose" of the second letter was to induce the plaintiffs to pay their servicer by executing the warranty deed and that the letter was "part of a strategy to make payment more likely").

[7] See Hagy v. Demers & Adams, LLC, No. 11-530, 2013 WL 5728345, at *5 and *15 (S.D. Ohio Oct. 22, 2013).
[8] 136 S. Ct. 1540 (2016).
[9] See Hagy v. Demers & Adams, LLC, No. 11-530, 2017 WL 1134408, at *1 (S.D. Ohio Mar. 27, 2017).
[10] See id. at *3–4.
[11] See Sixth Circuit Decision, 2018 WL 914953, at *5.
[12] See id.
[13] See id.
[14] See id. at *3.
[15] See id. at *4–5.
[16] See id. The Sixth Circuit found it noteworthy that neither the FDCPA nor its legislative history explained why the failure to provide a disclosure "always creates an Article III injury." See id. at *4–5 (emphasis in original).

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