Fair Debt Collection Practices Act Doesn't Apply to Firms Specializing in Non-Judicial Foreclosures

March 21, 2019 - In a unanimous decision, the Supreme Court has issued a ruling that law firms specializing in non-judicial foreclosures are not considered debt collectors. This means that they don't have to comply with all of the rules of the Fair Debt Collection Practices Act (FDCPA); one of which is that firms must be able to show that the foreclosing party actually has the right to foreclose.

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The case (Obduskey v. McCarthy & Holthus LLP) stems from a 2009 attempt by Wells Fargo to foreclose on a Colorado homeowner. Wells Fargo hired a law firm (McCarthy & Holthus LLP) to launch a non-judicial foreclosure. That firm specialized in this type of litigation but didn't do any other form of debt collection such as for unpaid credit card bills.

The homeowner sued, claiming that that law firm had violated the FDCPA. And because various court circuits around the United States had issued conflicting opinions about the applicability of the FDCPA in non-judicial foreclosure cases, the Supreme Court stepped in to resolve the matter.

Without going into the specifics, the decision means that homeowners contesting a non-judicial foreclosure will have a much more difficult time in stopping the process. And since 33 states including Colorado allow non-judicial foreclosures, the decision impacts a majority of the states.

Of course anyone who received a notice of foreclosure should take that notice seriously. But anyone thinking that they can file a lawsuit to stop the process should think twice about that strategy now. Banks prefer non-judicial foreclosures for a variety of reasons, including the fact that they are faster and cost the bank less.

In their ruling the justices did state that they weren't giving firms carte blanche in their collection practices. They specifically said that firms engaged in this type of foreclosure shouldn't assume that they could start placing collection calls to debtors at all hours of the day and night. They also said that Congress should feel free to step into this issue to modify or change the ruling.
byJim Malmberg
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