

[Banking and Finance Law Daily Wrap Up, TOP STORY—4th Cir.: Bad-debt buyers are not debt collectors, \(Mar. 24, 2016\)](#)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#)

A consumer finance company that was attempting to collect debts it had bought from the lender was not a debt collector under the Fair Debt Collection Practices Act, according to the U.S. Court of Appeals for the Fourth Circuit. Whether the company was a debt collector depended on who owned the debts at the time of the company's collection efforts, and whether the debts were in default when they were purchased was irrelevant (*Henson v. Santander Consumer USA, Inc.*, March 23, 2016, Niemeyer, P.).

The attempted class action was filed by four consumers who had defaulted on automobile loans made by one of three related lenders. According to the consumers, after the loans went into default, they were assigned to Santander Consumer USA for collection, and then later sold to Santander. Santander is a consumer finance company, and there was no claim that debt collection is its principal business.

Claiming that Santander engaged in conduct that violated the FDCPA after it bought the loans, the consumers sued. They based their claim that Santander was a debt collector covered by the act on the fact that the loans were in default when they were purchased. The federal district court, however, rejected that interpretation of the act and decided that Santander was not a debt collector, meaning the FDCPA did not apply.

Creditor v. debt collector. The appellate court began by noting that the FDCPA applies to debt collectors, not creditors. The two categories are mutually exclusive—with respect to any debt, a company can be one or the other, but not both. The issue was how to decide which category applied to Santander.

The FDCPA uses a two-step process to decide whether a company is a debt collector, the court then said. As laid out by 15 U.S.C. §1692a(6), the first step is to determine whether the company fits under the general definition of “debt collector.” If it does, the second step is to determine whether the company is covered by an exemption. The definition of “creditor” given by 15 U.S.C. §1692a(4) does not matter.

What's a debt collector? A debt collector meets one of three criteria:

1. The company's principal purpose is collecting debts.
2. The company regularly collects debts owed to another person.
3. The company uses a different name when collecting debts owed to itself.

The consumers did not claim that Santander met the first or third criteria, the court said, so only the second mattered. Since the consumers' complaint alleged that the improper collection tactics happened after Santander bought the debts, the company would not have been collecting debts owed to another person and could not have been a debt collector.

Debt in default. The consumers' argument that Santander was a debt collector because it bought debts that were in default was rejected. One of the exclusions from the definition of “debt collector” applies to a person collecting a debt owed to someone else if the debt was not in default at the time it was obtained for collection. According to the court, the consumers based their argument on a “negative pregnant”—if a person collecting a debt not in default was not a debt collector, then a person collecting a debt that was in default must be a debt collector.

The problem with that argument, the court said, was that the exclusion was simply that—an exclusion. It did not include anyone within the general definition.

The consumers' other efforts to assert that the default status of their debts made Santander a debt collector were rejected with similar reasoning. The court characterized them as "the same kind of upside-down logic that relies on an inaccurate premise and a negative pregnant that does not follow."

The explicit definition of "debt collector" was what mattered, the court said, not any implied definition based on what a creditor was. Since Santander was collecting debts that it owned when it engaged in the tactics that angered the consumers, it was not a debt collector. The FDCPA did not apply.

The case is [No. 15-1187](#).

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Companies: Commercial Recovery Systems, Inc.; NCB Management Services, Incorporated; Santander Consumer USA, Inc.

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