

Banking and Finance Law Daily Wrap Up, TOP STORY—Ohio Sup. Ct.: Debt buyer, law firm subject to federal, state liability for collection action, (Jun. 17, 2016)

By [Thomas G. Wolfe, J.D.](#)

Reviewing a consumer's claims against a debt buyer and law firm for alleged violations of the federal Fair Debt Collection Practices Act and the Ohio Consumer Sales Practices Act (OCSPA) in connection with collection efforts on her defaulted credit card account, the Supreme Court of Ohio addressed the proper statute of limitations to be applied and determined that a debt buyer's "unsubstantiated claims can constitute violations of the FDCPA and the OCSPA." While concurring and dissenting opinions were issued in the case, the court's majority held that: (i) since the underlying cause of action for default on the credit card accrued in Delaware, the home state of the bank that issued the credit card and the state where the consumer made her payments, "Delaware's statute of limitations—through operation of Ohio's borrowing statute—determines whether the collection action was timely filed"; (ii) the filing of a time-barred collection action "may form the basis of a violation under both the FDCPA and the OCSPA"; (iii) 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"; and (iv) debt buyers collecting on credit-card debt and their attorneys are subject to the OCSPA ([Taylor v. First Resolution Invest. Corp.](#), June 16, 2016, Pfeifer, P.).

According to the court's opinion, after the consumer's credit card account with Chase Bank USA, N.A., was declared delinquent and charged off, the debt was eventually purchased and owned by First Resolution Investment Corporation (FRIC). In 2010, on behalf of FRIC, the Cheek Law Offices, L.L.C., filed a lawsuit in Ohio state court to collect the consumer's debt, seeking \$8,765 of principal, accrued interest of \$7,739, and future interest of 24 percent on the debt.

Consumer's counterclaims. Although the Cheek firm obtained a default judgment, the consumer successfully vacated it and raised counterclaims against FRIC and the law firm. As described by the court, the consumer's statutory counterclaims were centered on "two theories—first, that FRIC's claim against [the consumer] was time-barred by the statute of limitations and second, that FRIC sought interest on [the consumer's] debt that was unavailable to FRIC by law."

More particularly, the consumer alleged that threatening to file a time-barred claim and actually filing a time-barred claim against her "constituted misleading and deceptive collection practices" as well as "unfair and unconscionable collection practices" under both the FDCPA and the OCSPA.

The consumer also counterclaimed that FRIC's claims against her accrued in Delaware and were governed by Delaware's three-year statute of limitations—for actions to collect debts—through operation of Ohio's "borrowing statute." Consequently, the consumer contended that "FRIC and Cheek knowingly brought an action that was barred by the statute of limitations," thereby violating the FDCPA and the OCSPA.

As part of her counterclaims, the consumer further alleged that FRIC and the Cheek firm "improperly sought 24 percent interest on her debt . . . purportedly under the terms of the cardholder agreement." The consumer maintained that since FRIC could not produce the cardholder agreement or any "written contract that set forth a rate of interest higher than the statutory rate," FRIC was limited to the Ohio statutory interest rate—"4 percent at the time of the filing of the complaint." Moreover, the consumer alleged that FRIC's and the Cheek law firm's actions to collect more interest than was legally recoverable constituted violations of the FDCPA and the OCSPA.

Statute-of-limitations claims. The Ohio Supreme Court's majority determined that Delaware's three-year statute of limitations (Delaware Code, Title 10, §8106(a))—via Ohio's borrowing statute (Ohio Rev. Code §2305.03(B))—applied to FRIC's debt-collection action in state court against the consumer, not Ohio's six-year statute of limitations (Ohio Rev. Code §2305.07).

The court's ruling that Delaware's three-year statute of limitations was controlling in the case was significant because FRIC's complaint against the consumer was filed "well outside" the three-year period, the court determined. As a result, the court concluded that FRIC and the Cheek firm were potentially liable under the FDCPA and the OCSPA for "threatening to file suit and for filing suit on a time-barred debt." The court remanded the case to the trial court for "further determinations" in that regard.

Interest claim. Next, Ohio's high court determined that FRIC's claim for 24 percent interest in its complaint was "unavailable by law" and constituted a "demand" made upon the consumer "rather than an aspirational request" made to the state trial court. As such, FRIC's claim for interest "formed the basis of an actionable claim [by the consumer] under the FDCPA and the OCSPA."

In reaching its decision, the court noted, "A prayer for 24 percent interest is an intimidating statement to a debtor." Moreover, the court emphasized that FRIC filed its complaint "without including a copy of the credit-card agreement." FRIC "quickly sought a default judgment" even though "it never had the necessary documentation to back up its claim," the court asserted. Consequently, since the consumer established a "prima facie case" against FRIC and the law firm under the FDCPA and OCSPA, the court remanded the matter to the trial court and for a determination of "whether the FDCPA's bona fide error defense is applicable."

No OCSPA exemption. FRIC and the Cheek firm contended that section 1345.01 of the OCSPA provided them with an exemption from its coverage. The provision "does not apply to bank assignees and their collection attorneys because there is no 'consumer transaction' or 'supplier,'" they argued. Rejecting the argument, the court ruled that debt buyers collecting on credit-card debt and their attorneys *are* subject to the OCSPA. Among other things, the court noted the

similarities between the respective provisions of the FDCPA and the OCSPA and that both are "remedial statutes intended to reach a broad range of conduct."