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BANKING ALERT

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District Court Denies Debt Collector's Motion To Dismiss Fair Debt Collection Practices Act Class Action

In Wong v. Phelan, Hallinan & Diamond, P.C., 2015 WL 3938605 (D.N.J. June 25, 2015), the United States District Court for the District of New Jersey declined to dismiss a complaint alleging violations of the Fair Debt Collection Practices Act ("FDCPA"). In Wong, Bank of America held a mortgage on the personal residence of plaintiff Jerry K. Wong ("Plaintiff") to secure a mortgage loan. In November 2012, Plaintiff's loan went into default. In March 2013, Bank of America, via letter, informed Plaintiff that it was transferring servicing rights on the loan to defendant Green Tree Servicing, LLC ("Green Tree"). In November 2013, Plaintiff received a letter from defendant Phelan Hallinan Diamond, PC ("Phelan"), identifying Phelan as a "debt collector attempting to collect a debt," which listed the amount of Plaintiff's debt and indicated that the creditor was Green Tree. According to Plaintiff, contrary to Phelan's assertions, Green Tree is a debt collector, not a creditor, and that "upon information and belief" the creditor of the loan is Federal National Mortgage Association ("FNMA"). Based on the foregoing, Plaintiff brought a putative class action against Phelan and Green Tree ("Defendants") asserting that Defendants violated that FDCPA by: (1) falsely stating in the initial communication letter that Green Tree was a creditor and (2) failing to provide the name of the current creditor who owns Plaintiff's debt.

Phelan moved to dismiss the complaint. Phelan argued that Plaintiff did not have standing because the loan did not constitute a "debt" under the FDCPA. The FDCPA only applies to consumer debt for personal, family or household purposes and not commercial debt. Phelan argued that the property secured by the loan is not Plaintiff's residence. Plaintiff responded that the property was originally his residence, but he had moved out after obtaining the loan. The District Court rejected Phelan's argument and found that a transaction's status as a "debt" under the FDCPA must be determined at the time the obligation first arises. Here, Plaintiff's obligation arose from the purchase of a personal residence. The Court found it of no moment that Plaintiff no longer resides at the residence. Thus, the District Court found Plaintiff has standing under the FDCPA.

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The Court then rejected Phelan's argument that Plaintiff did not adequately allege that Green Tree is not a creditor, but a debt collector. The Court, accepting Plaintiff's allegations as true at the motion to dismiss stage, held that Plaintiff pled sufficient facts that Green Tree is a debt collector. The Court noted that the party cannot be both a creditor and a debt collector and Plaintiff sufficiently alleges that Green Tree "regularly begins to collect or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another after they have gone into default."

Lastly, the Court rejected Phelan's argument that Plaintiff did not state a claim under the FDCPA. The Court found that misrepresentation of the creditor's name may qualify as a "false representation to collect or attempt to collect any debt" in violation of the FDCPA. Further, the Court found that a debt collector's failure to identify the creditor's name in a communication with the consumer can amount to a violation of the FDCPA. Thus, the Court rejected Phelan's motion to dismiss in its entirety.

New Jersey Appellate Division Holds That Valid Lien Exists On Property Despite Forgeries On Mortgage Documents

In Godby v. Wells Fargo Bank, N.A., No. A-3531-13 (App. Div. Aug. 3 2015), the Appellate Division affirmed the trial court's decision that a mortgage lien was valid despite forgeries. In April 2002, plaintiffs Helen C. Godby and Hoy Akersten ("Plaintiffs") and James Docherty (Godby's husband at the time) took out a line of credit from defendant Wells Fargo Bank, N.A. ("Wells Fargo") for $50,000 secured by a mortgage on property jointly-owned by Plaintiffs and Docherty. According to Plaintiffs, in 2003 Docherty increased the line of credit to $70,000 and modified the mortgage documents to reflect this increase by using forgeries of Plaintiffs' signatures. In June 2006, Docherty allegedly refinanced the line of credit with a new line of credit for $250,000, secured by another mortgage on the property (the "2006 Mortgage"). Plaintiffs allege that Docherty again forged their signatures on the 2006 Mortgage. The 2006 Mortgage satisfied and discharged the prior mortgage on the property.

By December 2008, Plaintiffs had discovered the 2006 Mortgage on the property and the forgeries. Concerned that Docherty, an attorney, could be prosecuted or disbarred for his actions, Godby did not report the forgeries to Wells Fargo or the authorities. Godby made periodic payments on the mortgage after Docherty conveyed his interest in the property to Godby by quitclaim dead.

Docherty died in 2011 and, prior to his death, left a sworn statement admitting that he'd forged the signatures of Plaintiffs on the 2006 Mortgage. After Docherty's death, Plaintiffs filed a complaint seeking to quiet title and obtain a declaratory judgment that Well Fargo's lien was null and void due to the forgeries. Wells Fargo did not dispute that the signatures were forged, but argued that the mortgage lien was still valid.

Both parties filed motions for summary judgment. The trial judge found that despite the forgeries, Well's Fargo's lien on the property was valid. The trial court found that Well's Fargo was an innocent party and "had every reason[ ] to believe that the plaintiffs' notarized signatures were properly executed when it advanced the loan money."

Plaintiffs appealed the trial court's decision. The Appellate Division affirmed, finding that the parties gained some benefit from the 2006 Mortgage because it extinguished their obligations under the prior mortgage on the property. Further, Godby made payments on the 2006 Mortgage and also took the quitclaim deed subject to the 2006 Mortgage. The Appellate Division observed that "the issues that have been adjudicated are confined to the validity of the 2006 Mortgage. The trial court did not address, nor did we, what possible setoffs or defenses might be interposed if Wells Fargo pursues a collection action."

Reminder To Financial Institutions Of Guidelines For Garnishment Of Accounts Receiving Federal Benefit Payments

Financial instructions served with a Writ of Garnishment with respect to a customer whose account receives federal benefits, including social security payments, should look to the United States Treasury Department's rule amending 31 CFR Part 212. This federal regulation governs garnishment of designated federal benefit payments that are directly deposited into customer accounts at financial institutions. This final rule, which became effective on June 28, 2013, provides that, within two (2) business days of receiving a garnishment order, a financial institution must conduct an account review to determine whether the affected account holder received a direct deposit of exempt federal benefit payments within the prior sixty (60) days from receipt of the garnishment order. If the customer received direct deposits of exempt payments during the sixty day lookback period, then the financial institution must allow the customer to have access to the lesser of: (a) all such benefit payments directly deposited during the lookback period; or (b) the balance in the account on the date the review is conducted. In such a scenario, a financial institution is also required under the regulation to provide the customer with written notice of the garnishment in a specific form recommended by the Treasury Department. The rule applies to the following types of federal benefit payments: (i) Social Security benefits; (ii) Veterans benefits; (iii) Federal Railroad retirement benefits; and (iv) Civil Service and Federal Employee retirement benefits.

A financial institution that complies with the regulation should be protected from liability from any interested party, including the account holder and the account holder's creditors.

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