LEGAL UPDATES

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Arizona Court of Appeals Affirms Constitutionality of New "Predatory Debt Collection Act"

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Last summer we wrote about the notable questions of the applicability of Arizona Proposition 209, or the Predatory Debt Collection Act (the Act), due to the Act's savings clause. On April 30, 2024, in a blow to the debt collection industry, the Court of Appeals affirmed a trial court's ruling that the Act was in fact constitutional despite a challenge. A copy of the opinion is available here.

As a brief refresher, the Act was a ballot initiative that was pitched as an overhaul of medical debt-related collection laws, though it actually reformed debt collection laws beyond those that apply to medical debt. The Act did in fact lower the interest rate cap on medical debt, but it otherwise increased various debtor property exemptions, including, notably, wages that are subject to garnishment, in non-medical debt cases. Shortly after the Act became effective, Arizona courts began reaching different conclusions about how the law applied to various factual scenarios due to the somewhat contradictory language of the savings clause. For example, it was unclear what interest rate would apply to a contract for medical services when a debt collector obtained a judgment on that contract before the effective date, but the collector then filed a garnishment action after the effective date of the Act. Similarly, would the old law or the new law apply when a collector sues on a contract entered into before the effective date, but obtains a judgment after the effective date?

This uncertainty creates serious risk for debt collectors. If they guess at how the Act should apply and their guess is incorrect, they may face liability under the Fair Debt Collection Practices Act (FDCPA) for, among other things, attempting to collect a debt in an amount not authorized by law, or for unfair or unconscionable means used to collect debts. Recognizing this problem, a group of debt collectors sought to permanently enjoin the Act, arguing that, by

subjecting them to FDCPA liability based solely on a potentially mistaken guess about the applicability of an unclear law, the Act violates their constitutional rights. In that lawsuit, the collectors had initial success, but the trial court later declared the law to be constitutional, to which the collectors then appealed to the Arizona Court of Appeals.

As mentioned, the Court of Appeals in Arizona upheld the law. At the outset, the Court of Appeals found that because the debt collectors were subject to more stringent requirements under the Act, the debt collectors had standing to argue that the Act was facially invalid—i.e., invalid in all of its applications. But the Court of Appeals found that, because the debt collectors did not challenge an application of the Act to a specific situation, the debt collectors did not have standing to ask the Court of Appeals to provide an "advisory opinion" on how the Act was to be interpreted in specific situations.

Turning to the merits of the claim, the Court of Appeals concluded that the facial challenge to the Act failed, because it did not, as required, address every potential application of the Act. The Court of Appeals explained how the focus of the challenge was on wage garnishments (and only to very specific scenarios within wage garnishments); yet, the Act applies to many other debt collection scenarios, and those situations were not all spelled out by the challengers. Regardless, the Court found that the savings clause used language with a deep history in both federal and Arizona case law, and its interpretation would not be out of accordance with the regular statutory framework for prospective applications of law when new laws are passed. The Court concluded that the savings clause was not unconstitutionally vague or unintelligible.

With the Court of Appeals' decision, the Act remains in effect. The savings clause at issue "applies prospectively only," and does not affect:

1. rights and duties that matured before the effective date;
2. contracts entered into before the effective date;
3. the interest rate on judgments based on a written agreement entered into before the effective date.

The problem with the Court of Appeals' decision is its practical implication for debt collectors who already face substantial exposure even when acting in good faith to comply with applicable law. Like the debt collectors have repeatedly argued, based on that language, it is not clear what interest rate a debt collector may charge on medical debt that is based on a contract entered into and reduced to a judgment before the prospective date, but that it must turn to garnishment to collect on after the effective date. It is also unclear whether the old or the new exemptions would apply when a contract is entered into before the effective date, but a judgment is obtained after the effective date. For its part,

the Court of Appeals declared that it would prefer to let these questions percolate through the court system based on actual litigation of the currently-hypothetical scenarios themselves, instead of trying to address every potential scenario up front, which were not before it.

On the plus side, the Court of Appeals decision does not foreclose future challenges to the Act's application in specific circumstances. But while the debt collectors' concerns about those applications might have struck the Court of Appeals as hypothetical, those fears will soon be far from speculative. The Court of Appeals' ruling fails to account for the often overzealous nature of the FDCPA plaintiffs' bar. Any debt collector knows (hence the reason for the argument) that these issues are soon likely to be back before the court as a part of the likely flood of litigation that will ensue based on many potential scenarios where debt collectors unintentionally violate the Act due to an honest effort to comply with what is a far from clear application of the timing of the law. The debt collection industry in Arizona is likely to endure some pain for several years before the application of the savings clause in a real-life scenario can be fully fleshed out by Arizona appellate courts and the parameters of the application of the savings clause is made clear. One problem the industry faces is having to forego potential rights to charge higher interest rates, or declining to collect on certain judgments, based on the fear of a potential FDCPA claim as a result of what ends up being a mistaken interpretation of an unclear law. The bigger problem that the industry faces is the standardized practice in collections that can make these types of claims especially susceptible to class treatment.

The Court of Appeals decision guarantees that this is not the last time that courts and businesses will have to grapple with the applicability of the Predatory Debt Collection Act.

Contact us

Husch Blackwell has experience representing debt collectors and law firms in individual and class action lawsuits that arise out of debt collection litigation and statutory schemes that pose compliance headaches for those that are regulated by them. If you have any questions or need assistance with claims related to an alleged violation of the Arizona Predatory Debt Collection Act, please reach out to Brandon Stein, Scott Helfand, or your Husch Blackwell attorney.[1]

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[1] Mr. Stein and Mr. Helfand do not represent individual consumers in litigation against debt collectors.