

Am I subject to the Fair Debt Collection Practices Act?

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Civil Liability for Criminal Act

Buddenberg v. Weisdack, Slip Opinion No. 2020-Ohio-3832

In this case, the Ohio Supreme Court held that a criminal conviction is not a condition precedent to filing a claim under R.C. 2307.60 for a civil cause of action based on injuries sustained due to a criminal act.

The Bullet Point: Pursuant to R.C. 2307.60(A)(1), “anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law * * *.” Previously, there was a split amongst courts as to whether a person had to have been convicted of a criminal act before civil liability was possible under this statute. In analyzing R.C. 2307.60, the Court noted that the fact a person commits criminal actions that may subject the person to prosecution in no way establishes that they will be prosecuted. Moreover, being subjected to prosecution does not mean that the person will in fact be convicted. As succinctly summarized by the Court, the word “conviction” is noticeably absent from R.C. 2307.06(A)(1). Therefore, the Court construed the statute as written according to its plain language, and held that R.C. 2307.60 does not require a criminal conviction as a prerequisite for civil liability.

“Debt” under the FDCPA

Necak v. Select Portfolio Servicing, Inc., S.D.Ohio No. 2:19-cv-3997, 2020 U.S. Dist. LEXIS 133510 (July 27, 2020)

In this case, the District Court for the Southern District of Ohio granted a loan servicer’s motion to dismiss, finding that its failed attempt to have its fees taxed as costs did not constitute an attempt to collect a debt in violation of the Fair Debt Collection Practices Act (FDCPA).

The Bullet Point: Under the FDCPA, a “debt collector” means “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. [...]” 15 U.S.C. § 1692(a)(6). Fundamentally, a debt collector under the FDCPA is a person attempting to collect debts owed or due to another. As such, a person attempting to collect its own fees or debts it is owed is not a debt collector. Further, under the FDCPA, a “debt” is defined as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes...” 15 U.S.C. § 1692(a)(5). In other words, the FDCPA covers debts that arise out of consensual

consumer transactions where parties negotiate or contract for consumer-related goods or services. Conversely, civil litigation is not considered a consumer transaction for purposes of the FDCPA. The court explained that while documents filed in a proceeding to collect on a consumer debt are subject to the FDCPA, an obligation to pay money that arises out of a civil liability is not. Simply put, the issue turns on whether or not the subject proceeding is to collect on a debt. If not, a prevailing party's motion to the court to collect its own associated costs incurred from litigation is not acting as a "debt collector" and civil litigation costs are not a "debt" under the FDCPA.

Foreign Subpoena

Byrd v. Lindsay Corp., 9th Dist. Summit No. 29491, 2020-Ohio-3870

In this appeal, the Ninth Appellate District affirmed the trial court's decision, agreeing that the documents requested under the foreign subpoena duces tecum were not relevant to the underlying litigation.

The Bullet Point: R.C. 2319.09 codifies the Uniform Interstate Depositions and Discovery Act (UIDDA) and describes the procedures for an Ohio court to issue a subpoena for discovery originating in a foreign jurisdiction. Pursuant to the UIDDA, a party seeking discovery in Ohio must submit a foreign subpoena to an Ohio clerk of court, who then issues a subpoena for service upon the person to which the foreign subpoena is directed. R.C. 2319.09(C)(2). Although originating in a non-Ohio jurisdiction, the Ohio Rules of Civil Procedure apply to subpoenas issued under the UIDDA. And under the UIDDA, a party from whom discovery is sought may file an application to the court for a protective order or to enforce, quash, or modify a subpoena. R.C. 2319.09(E)/(F).

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