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Has the FDCPA's Scope Been Expanded?

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What debts are subject to the protections of the FDCPA, the Fair Debt Collection Practices Act (15 U.S.C. §1692)? One would think that funds received through a government program providing hurricane relief would not be, but the U.S. Fifth Circuit Court of Appeals recently held that they are, focusing on the word "transaction" instead of the word "debt" (both of which are used in the FDCPA). This case is of interest because **it expands a creditor's potential liability in the collection of any "transaction" even if the "transaction" does not meet the ordinary interpretation of a "debt."**

After a flood damaged her Louisiana home, Iris Calogero received more than $30k for home rebuilding and repair. She got the money from a federal grant program run through the Louisiana Road Home Program. She did not have to repay the grant as long as she promised to live in the property for at least three years and agreed to other terms and conditions. When it was later asserted that Calogero had been overpaid grant funds, a law firm wrote a letter on behalf of the Road Home Program demanding repayment of the excess monies.

Calogero instituted an FDCPA class action suit. The law firm's defense was that the Road Home monies were more in the nature of a grant than a debt and thus were not subject to the FDCPA. The trial court ruled for the law firm, but the U.S. Fifth Circuit reversed.

The Fifth Circuit analyzed the three things needed to impose liability under the FDCPA: whether the debt arose from a "transaction"; what items are the subject of the "transaction"; and whether the items of the transaction were primarily for "personal, family or household purposes." The Court held that the collection efforts were covered by the FDCPA and adopted a broad definition of "transaction"—a definition more expansive than "contract."

The takeaway from the case is that the Court applied the FDCPA to matters other than the collection of a traditional "debt" arising from a "contract." Under the Fifth Circuit's rationale, a collection in connection with a "transaction" can trigger FDCPA coverage.

Lenders and attorneys who seek to collect money that might arise from a "transaction" may want to be cautious in Texas, Louisiana, and Mississippi, the states covered by the Fifth Circuit, and can anticipate that lawyers representing others outside of the Fifth Circuit may seek to bring similar actions alleging that a broad definition of "transaction" covers their client's case.

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