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The Eleventh Circuit rules that Capital One is not a debt collector under the FDCPA with respect to defaulted credit card debt it acquired from HSBC

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In the case of Davidson v. Capital One Bank (USA), N.A., No. 14-14200 (August 21, 2015), the Eleventh Circuit had occasion to decide whether a bank that collects on defaulted debt it acquired from another bank is a "debt collector" under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p.

In 2007, HSBC filed suit against plaintiff Keith Davidson in state court to collect on a delinquent credit card account. Davidson and HSBC entered a settlement agreement in which Davidson agreed to pay $500. When Davidson failed to pay the $500, the state court entered judgment against him and in favor of HSBC in that amount. In May 2012, Capital One acquired roughly $28 billion of HSBC's credit card accounts, including Davidson's. Over $1 billion of the accounts acquired by Capital One, including Davidson's, were delinquent or in default at the time of acquisition. In August 2012, Capital One filed suit against Davidson in state court to collect on the same credit card account that was the subject of HSBC's prior lawsuit. Capital One's state court lawsuit, which included an affidavit asserting that Capital One acquired the account as of May 2012, alleged Davidson owed $1,149.96 – not the $500 judgment amount from the prior suit.

Davidson filed a putative class action claiming that Capital One's state court collection suit violated the FDCPA because it falsely stated the amount of Davidson's debt and because the affidavit was "mass produced," "robo-signed," not based on the affiant's personal knowledge and because it contained false statements regarding the amount of debt owed. Capital One moved to dismiss Davidson's (amended) complaint, arguing it was not plausibly a "debt collector" because while it regularly collected its own debts, it did not regularly collect debts owed to others. Davidson countered that its complaint did in fact state a claim because it sufficiently alleged that Capital One met the statutory definition of a debt collector by alleging that Capital One "regularly acquired delinquent and defaulted consumer debts originally owed to others" and "attempted to collect such…debts in the regular course of its business." The district court agreed with Capital One, holding, inter alia, that Capital One had to "regularly" collect debuts "owed or due another" or the principal purpose of Capital One's business had to be "the collection of any debts" and Capital One did not satisfy either requirement. Accordingly, the district court dismissed Davidson's complaint for failure to state a claim. Davidson appealed.

On appeal, the Eleventh Circuit explained that in order to survive Capital One's motion to dismiss, Davidson must plead "factual content that allows the court to draw the reasonable inference that" Capital One is a debt collector within the meaning of the FDCPA. The crux of the argument on appeal therefore was the meaning of the term "debt collector." According to Davidson, the dividing line between creditors, which are generally not subject to the FDCPA, and debt collectors is the default status of the debt. Davidson argued that if the debt was not in default when it was acquired, Capital One is a creditor, not a debt collector under the creditor exclusion contained in § 1692a(6)(F)(iii). However, since the debt was in default at the time it was acquired by Capital One, Davidson argued that Capital One is legally deemed a debt collector.

The Eleventh Circuit disagreed, holding that simply because a party does not fall within the creditor exclusion in § 1692a(6)(F)(iii), it is not transformed into a debt collector as a matter of law. Rather, to be a debt collector under the FDCPA, the Act's substantive provisions defining a debt collector in § 1692(a)(6) must be met – regardless of the debt's default status. Turning to the allegations in Davidson's complaint, the Eleventh Circuit noted that it did not expressly allege that the "principal purpose" of Capital One's business is debt collection, as is required by the first

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definition of “debt collector” under § 1692(a)(6). The court held that the most it could plausibly infer from Davidson’s complaint was that *some part* of Capital One’s business is debt collection, but it could not plausibly infer that its “principal purpose” was debt collection.

Turning to the second definition of “debt collector,” the Eleventh Circuit framed its inquiry as whether Capital One regularly collects on debts owed or due another at the time of collection. The court found that Davidson’s complaint makes no factual allegations from which it could plausibly infer that to be the case. In the present case – because Capital One now owned the debt it acquired from HSBC at the time of collection – it was not collecting debt owed to another. It was collecting debt owed to it. Accordingly, the Eleventh Circuit affirmed the district court’s dismissal of Davidson’s complaint for failure to state a claim.