CARLTON FIELDS

Eleventh Circuit: Enforcement of a Security Interest Is Not Debt Collection

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The Eleventh Circuit Court of Appeals recently reaffirmed that enforcement of a security interest alone is not debt collection regulated by the Fair Debt Collection Practices Act (FDCPA). In *Dunavant v. Sirote & Permutt, P.C.,* decided on February 9, 2015, the Eleventh Circuit found no error in a trial court's refusal to reconsider its ruling that the publishing of foreclosure sale notices by the defendant law firm did not amount to debt collection under the FDCPA. The trial court relied, in part, on *Warren v. Countrywide Home Loans, Inc.* for the proposition that "an enforcer of a security interest such as a [mortgage company] falls outside the ambit of the FDCPA except for the provisions of section 1692(f)(6)." On appeal, the consumers argued that the 2009 decision in *Warren* was overruled by the 2012 decision in *Birster v. American Home Mortgage Servicing, Inc.* which held a defendant that "both attempt[s] to enforce a security interest *and* collect a debt" may be liable under the FDCPA beyond § 1692f(6). The Eleventh Circuit rejected that argument, finding no conflict between the opinions because the *Dunavant* trial court ruled that the publication of the foreclosure sale notices was part of the enforcement of a security interest and not part of the collection on a debt. In affirming, the Eleventh Circuit focused on the facts that the notices at issue **"were published in a newspaper to inform the public about the status of the foreclosure sale, were not addressed to the debtors, and included no information relating to the collection of payments from them."** Thus, *Dunavant* confirms the distinction between an *in rem* foreclosure and attempts to collect a debt in the Eleventh Circuit.

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