

Collection Practices Plaintiffs Try End Run Around Florida Punitive Damages Laws

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In Florida, debtor-side attorneys are asserting a novel legal argument to bring punitive damages claims at an earlier stage, pursuant to the civil remedies section of Florida's Consumer Collection Practices Act, Section 559.77, Florida Statutes (the Act). These debtor-side attorneys claim that a reference to the availability of punitive damages in the Act allows plaintiffs to seek these damages in their initial complaint. However, Florida has a statute that prevents plaintiffs from claiming punitive damages prior to a judicial determination that there is a basis for them. The statute creates a substantive right to litigants to be protected from baseless punitive damages, which, without the statute, could be asserted in any case. The plain language of Florida's Punitive Damages Statute, Section 768.72, Florida Statutes, indicates that a litigant in "any civil action" has the right to adjudication prior to the presentation of a claim for punitive damages to the trier of fact. The Punitive Damages Statute applies to both statutory and common law claims. Indeed, as a matter of policy the right to be free from baseless claims for punitive damages is so essential that a court's failure to follow Florida's Punitive Damages Statute is subject to immediate *certiorari* review. Though novel, **the debtor-side argument ultimately fails because the simple reference to a plaintiff's potential recovery of punitive damages in the Act does not obviate the broad substantive and procedural protections available under Florida's Punitive Damages Statute.** However, this argument is likely to reappear until tested at the appellate level. Florida courts have a long tradition of enforcing the State's Punitive Damages Statute, so it will take more than a reference to a plaintiff's potential to recover punitive damages at the end of a collection practices act case to cause the courts to bypass the punitive damages protections afforded all litigants.

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