Eleventh Circuit Addresses Potential Conflict Between FDCPA and TILA, Holds That Debt Collector Must Comply With Both

July 18, 2022

On July 1, 2022, the Eleventh Circuit Court of Appeals issued a published decision in *Lamirand v. Fay Servicing LLC* that addressed an asserted conflict between the Fair Debt Collection Practices Act (FDCPA) and the Truth in Lending Act (TILA). The Eleventh Circuit found no clear conflict between the two statutes. A debt collector's periodic statements — pursuant to TILA's requirements — can be "related to debt collection" and thus fall within the FDCPA's scope. That means that mortgage loan servicers, like the defendant in *Fay Servicing*, must comply with both statutes. **Background on the Asserted Conflict Between the Statutes** The FDCPA is the main federal law governing debt collection practices, and it includes provisions that prohibit misleading representations in connection with a debt and unfair means of debt collection. TILA requires that mortgage loan servicers send homeowners "periodic statements" each billing cycle with information about their loans, including the amount due, the due date, and any details about the loans' delinquency. So, when interacting with a party that owes a debt, if a mortgage loan servicer must provide periodic statements, under what circumstances must those statements also satisfy the provisions of the FDCPA? That was the question facing the court in *Fay Servicing*. Mortgage loan servicers argue that the answer is no; since the two statutes conflict, one must displace the other. Because these servicers are merely fulfilling the requirements of the TILA, the argument goes, they do not need to comply with the FDCPA's limitations on debt collection for periodic statements. **The Eleventh Circuit's Decision in *Fay Servicing*** The question left for the court in *Fay Servicing* was whether the communications, which came in periodic statements required under the TILA, were "in connection with" or a "means" of debt collection. A communication is subject to the debt collection requirements of the FDCPA if, based on the totality of the circumstances, it “conveys information about a debt and its aim is at least in part to induce the debtor to pay.” Here, the court found both traits present in the loan servicer’s periodic statements to the plaintiffs. The periodic statements conveyed details about the debt, including the amount owed, deadlines, and the delinquency on the account. The statements advised the plaintiffs to pay, warned them of the consequences of failing to do so, and instructed them on alternative methods of payment. Furthermore, the statements included a detachable payment coupon, which the court interpreted as proof that the loan servicer expected its warnings to induce payment. Based on the characteristics of the periodic statements, the court ruled that they “easily” show that the loan servicer’s communications were “aim[ed] ... at least in part” to induce the plaintiffs to pay. Thus, the statements satisfied the FDCPA’s two debt collection requirements — inform about the debt and induce its collection — and must satisfy each statute. **Best Practices for Companies Going Forward** So what does this mean for mortgage loan servicers that must provide periodic statements to parties that owe them a debt? If the information in the statements includes language that can be considered as inducing the debt, then the indebted party may bring suit against you under both the TILA and the FDCPA. You should consider whether your interactions include more than only general information about the debt, such as advice on or consequences related to the payment. Of course, the “best practice” is to always be mindful of whether your debt-related interactions satisfy the relevant provisions of both the TILA and the FDCPA.

Authored By

Naomi M. Berry

Aaron S. Weiss

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