



Northern District of Illinois Reaffirms That State Court Procedural Missteps Alone Are Insufficient to Sustain a Claim Under the FDCPA

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On February 15, 2018, Judge Harry D. Leinenweber of the United States District Court for the Northern District of Illinois reaffirmed that the Fair Debt Collection Practices Act (FDCPA) does not provide borrowers with a vehicle to recover for mere procedural violations by a debt collector in a state court foreclosure action.

In *Skibbe v. U.S. Bank Trust, N.A., as Trustee*, No. 16 C 192, 2018 WL 905522 (N.D. Ill. Feb. 15, 2018), the plaintiffs asserted, *inter alia*, FDCPA claims against U.S. Bank Trust, N.A., in its capacity as trustee for a securitized trust, and the Law Offices of Ira T. Nevel. Specifically, the plaintiffs contended that U.S. Bank Trust and its foreclosure counsel Nevel violated the FDCPA by impermissibly refiling a foreclosure action a second time in contravention of the “single refiling rule” set forth in 735 ILCS 5/13-217. There was no live dispute that U.S. Bank Trust and Nevel had violated section 13-217; the Illinois state court had already dismissed the foreclosure on that basis and the Illinois appellate court had affirmed. The question presented to Judge Leinenweber was thus limited to whether the section 13-217 violation also constituted a violation of the FDCPA.

Judge Leinenweber entered summary judgment in favor of U.S. Bank Trust because U.S. Bank Trust was not a “debt collector” under the FDCPA. Nevel, on the other hand, admitted it was a debt collector, but argued that a violation of the Illinois Rules of Civil Procedure—which is all that the plaintiffs were able to prove—does not, on its own, give rise to FDCPA liability. Judge Leinenweber agreed, stating that the FDCPA is neither “a mechanism to remedy violations of state pleading requirements” nor “a vehicle to litigate claims arising under the Illinois rules of civil procedure or state-court procedural and evidentiary missteps.” Rather, disputes over the application of state procedural rules should be resolved in state court. Because Nevel’s filings in the state court were factually accurate despite violating Illinois’s single refiling rule, Judge Leinenweber entered summary judgment in favor of Nevel.

The *Skibbe* decision does not mean that a debt collector can never be liable under the FDCPA for conduct in state court litigation. Indeed, a debt collector can face liability when its filings in state court contain false statements or misrepresentations independent of the alleged procedural violation. But *Skibbe* does reaffirm the limits on the FDCPA’s reach, and thus provides a measure of protection to debt collectors litigating state court foreclosure and debt collection actions.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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