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## Third Circuit Upholds Finding that Purchaser of Debt Is Subject to the Requirements of the Fair Debt Collection Practices Act

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*Barbato v. Greystone Alliance, LLC*, No. 18-1042 (3d Cir. Feb. 22, 2019), Krause, J. – The United States Court of Appeals for the Third Circuit recently held that an entity, which acquired debt for the principal purpose of collecting such debt, qualified as a “debt collector” under the Fair Debt Collection Practices Act (the “Act”) even though the acquiring entity hired a third party to undertake collection efforts. *Barbato* presented an opportunity for the Third Circuit to answer an important question that emerged in the wake of the United States Supreme Court’s decision in *Hanson v. Santander Consumer USA Inc.*: Does a purchaser of debt qualify as a debt collector under the principal purpose theory of the Act? The Third Circuit answered the question in the affirmative.

### Case Background

In *Barbato*, Crown Asset Management purchased consumer credit card debt from a credit card provider, including the debt of Mary Barbato. Crown engaged Turning Point Capital, Inc., to collect the debt. As shown through discovery, Crown and Turning Point were parties to a service contract, in which Turning Point agreed to undertake all collection efforts on Crown’s behalf. Under this agreement, Crown possessed sole discretion as to which accounts it would refer to Turning Point for collection. The agreement further provided that Turning Point’s compensation was contingent on the success of its collection efforts.

Crown directed Turning Point to pursue Barbato’s debt. Turning Point sent a notice and left multiple voicemail messages with Barbato concerning the debt, but it did not identify itself as a debt collector. Barbato subsequently filed suit under the Act. Although Crown did not have direct contact with the debtor or involvement in the collection efforts, the United States District Court found that Crown qualified as a debt collector under the Act.

### Fair Debt Collection Practices Act

The Act provides a private right of action against debt collectors who violate the law. A viable claim requires proof, among other things, that the defendant is a “debt collector.” A plaintiff can satisfy its burden with proof that the defendant’s principal purpose is the collection of debts (the “principal purpose” theory) or by showing that the defendant

regularly collects debts owed or due another (the “regularly conducts” theory). The principal purpose theory occupied center stage in *Barbato*.

### The Third Circuit’s Decision

The Third Circuit relied on the statutory text in interpreting the principal purpose theory. The Act states that a debt collector is “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts.” 15 U.S.C. § 1692a(6). The appellate court rejected Crown’s emphasis on the word “collection.” Instead, the Third Circuit focused its analysis on the principal purpose component of the statute, which shifted the focus “from the act of collection to *what* is collected, namely, the acquired debts.” The Third Circuit reasoned that “[a]s long as a business’s *raison d’être* is obtaining payments on the debts that it acquires, it is a debt collector.” The involvement of a third party does not alter the nature of the debt collector’s business, and thus, the entity is subject to the requirements of the Act.

### Key Takeaways

*Barbato* provides guidance in the wake of the United States’ Supreme Court decision in *Hanson*. A party may not escape the Act by outsourcing its collection efforts to a third party where its principal business is the collection of debts, thereby extending the requirements of the Act under certain circumstances to parties who play no role in collection efforts. Because Crown’s sole source of revenue was debt collection, *Barbato* fails to offer insight on how a court would measure or calculate the principal purpose of a party’s business. Given the rash of federal appellate decisions concerning the Act in recent years, creditors and debt collectors alike can expect that these questions will be answered in the near future.



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