LOAN ORIGINATOR IS NOT DEBT COLLECTOR

The Eleventh Circuit Court of Appeals recently affirmed the district court's dismissal of a complaint seeking relief against JP Morgan Chase Bank ("Chase") and its attorney under the Federal Debt Collection Practices Act ("FDCPA" or "the Act") for alleged violations of § 1692 of the Act. Anderman v. JP Morgan Chase Bank, Nat'l Ass'n, (11th Cir. Feb. 11, 2020). The plaintiffs in Anderman were prior defendants in Chase's foreclosure action against their deceased brother, Clinton Arbuckle. Arbuckle defaulted on his Chase mortgage, so Chase hired its law firm, Phelan Hallinan Diamond & Jones PLLC ("Phelan"), to initiate foreclosure proceedings against Arbuckle and his "possible heir[s]."

Chase served the heirs with the complaint which identified their potential interest in the property. Within the complaint, Chase requested the court enter a foreclosure judgment and retain jurisdiction to enter a deficiency judgment. The summons served with the complaint provided the standard language regarding the risks of failing to timely respond to the complaint, including "los[ing] the case, …your wages, money and property…without further warning from the court." The heirs filed a complaint against Chase and Phalen alleging the foreclosure complaint and summons violated § 1692 of the FDCPA. Specifically, the Heirs argued Chase and Phelan were debt collectors who used "false, deceptive, or misleading representations" and/or "unfair or unconscionable means" to collect a debt. Chase and Phelan moved to dismiss the Heirs' complaint arguing the pleading failed to establish Chase or Phelan were debt collectors or that they engaged in conduct which constituted debt collection against the heirs. The lower court granted the motion to dismiss and the heirs appealed.

The Eleventh Circuit agreed with the lower court's dismissal finding Chase was not a debt collector as defined by the Act nor was the complained of behavior "attempts to collect debt" from the Heirs. The court explained the FDCPA defined a debt collector as a person who "regularly collect[ed] or attempt[ed] to collect debts for others." Since Chase originated Arbuckle's mortgage it could not be a debt collector **because it was collecting its own debt not collecting a debt "for others."** The Court also found the heirs' complaint deficient as to Phelan because it lacked "sufficient factual content showing that either Phelan's 'principal purpose' is debt collection or that Phelan 'regularly collects' debt that is 'owed or due another.'"

The court also disagreed with the Heirs' position that the summons and complaint was an attempt to collect a debt against the heirs. The court explained the language

in the complaint seeking a deficiency pertained only to Arbuckle and pointed out the complaint allegations pertaining to the Heirs was limited to their interest as heirs. Lastly, the court found language in the summons to be the form language suggested in rule 1.902 of the Florida Rules of Civil Procedure. It surmised the summons did "not constitute an implicit or explicit demand for the [Heirs] to pay any debt." The court concluded the Heirs were only joined because of their potential interest in the property "not because they owed any payment." This decision affirming dismissal of the heirs' complaint is an accurate statutory interpretation in the context of FDCPA claims and will prove to be useful precedent for disposing of similar claims early in the case without protracted litigation.