Supreme Court Rules in FDCPA Case

The Supreme Court unanimously reversed the Sixth Circuit in *Sheriff v. Gillie, Docket No. 15-338,* holding that letters sent on the Ohio Attorney General's letterhead by private debt collectors are neither deceptive nor misleading. While we are still digesting the opinion as to its long-term import, here are our initial impressions:

In *Sheriff,* the Ohio Attorney General appointed private law firms as "special counsel" to collect debt on the state's behalf. When communicating with the debtors, the Ohio Attorney General required special counsel to use letterhead with the Attorney General's Office logo and Attorney General's name on it. Concerning each of the letters in question, the signature block identified the private attorney by name and address and included the designation "special" or "outside" counsel to the State Attorney General. Moreover, each letter included a statement that identified the communication as coming from a debt collector for the purpose of collecting a debt. The consumers contended the letters were deceptive and misleading attempts to collect consumer debts and violated the FDCPA.

The District Court granted summary judgment in favor of the debt collectors, holding that special counsel were officers of the state of

Ohio and therefore covered under § 1692a(6)(C)'s exemption. *Gillie v. Law Office of Eric A. Jones, LLC, et al.*, 37 F.Supp.3d 928 (S.D.O.H. 2014). Further, the Court held that even if the defendants were not exempt from the FDCPA, the statements at issue were not false or misleading. The Sixth Circuit vacated the judgment concluding that special counsel were not exempt as officers of the state and remanded to the district court for trial on whether the use of the letterhead was misleading. *Gillie v. Law Office of Eric A. Jones, LLC, et al.*, 785 F.3d 1091 (6th Cir. 2015).

In the Supreme Court

The defendants' petition to the Supreme Court posed two issues. First, whether the defendants were exempt from the FDCPA's coverage as "state officers" and secondly, whether the special counsel's use of the Attorney General's letterhead was false or misleading under §1692e. Assuming for argument's sake that special counsel did not qualify as "state officers" for purposes of the FDCPA, the court held that the use of the Attorney General's letterhead was not false or misleading and did not violate the FDCPA.

By jumping to the second issue, the Court's holding has broader implications that it might not otherwise have had and yet, it does not address the issue we were all hoping to see addressed: the general liability standard for violations of §1692e. Currently, the circuits are split as to the general liability standard for debt communications. The majority of circuits rely on the least sophisticated consumer standard while other circuits have applied an "unsophisticated consumer." While the Court had the opportunity to adopt a singular test applicable across the circuits, it sidestepped

the issue.

Instead, the Court focused on whether the use of the Attorney General's letterhead at the Attorney General's direction was false or misleading and specifically, on whether it violated 15 USC §§1692e (9) and (14). Subsection 9 prohibits debt collectors from falsely representing that a communication is "authorized, issued or approved" by a State. Subsection 14 prohibits debt collectors from using a name other than their true name. The Court concluded that the letters did not violate either provision. Since the Attorney General required the use of his letterhead, "[s]pecial counsel create no false impression in doing just what they had been instructed to do. Instead, their use of the Attorney General's letterhead conveys on whose authority special counsel write to the debtor." Slip Op. 8-9. Likewise, the Court concluded there was no violation of subsection 14. "Far from misrepresenting special counsel's identity, letters sent by special counsel accurately identify the office primarily responsible for collection of the debt…special counsel's affiliation with that office, and the address…to which payment should be sent." Slip Op. at 9.

Takeaways

The biggest takeaway is what *Sheriff* did not do. While it tackled the issue with the broadest ramifications (the §1692e issue), it did not address the liability standard and nowhere is there any mention of the "least sophisticated consumer." Instead, the Court focused solely on the language of subsections 9 and 14 in the context of the underlying facts and whether the letters were, in fact, deceptive or misleading. The Court concluded that not only was the communication accurate but also was dismissive of any contention

that the communication was deceptive, describing the letters as "milquetoast."

The second big takeaway comes from both the opinion and the oral arguments. In both, the Court demonstrates a very practical approach to the FDCPA and does not appear to be inclined to expand liability under the FDCPA to include far-fetched notions of consumer confusion or intimidation. Instead, by keeping its opinion to the narrow issues presented, the Court appears content to focus on the underlying facts and rely upon the four corners of the statute, interpreting the Act in a practical and narrow manner, giving meaning to the Congressional intent of the Act.

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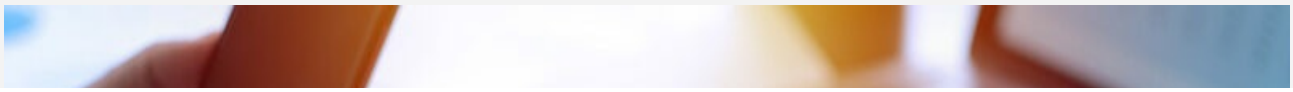

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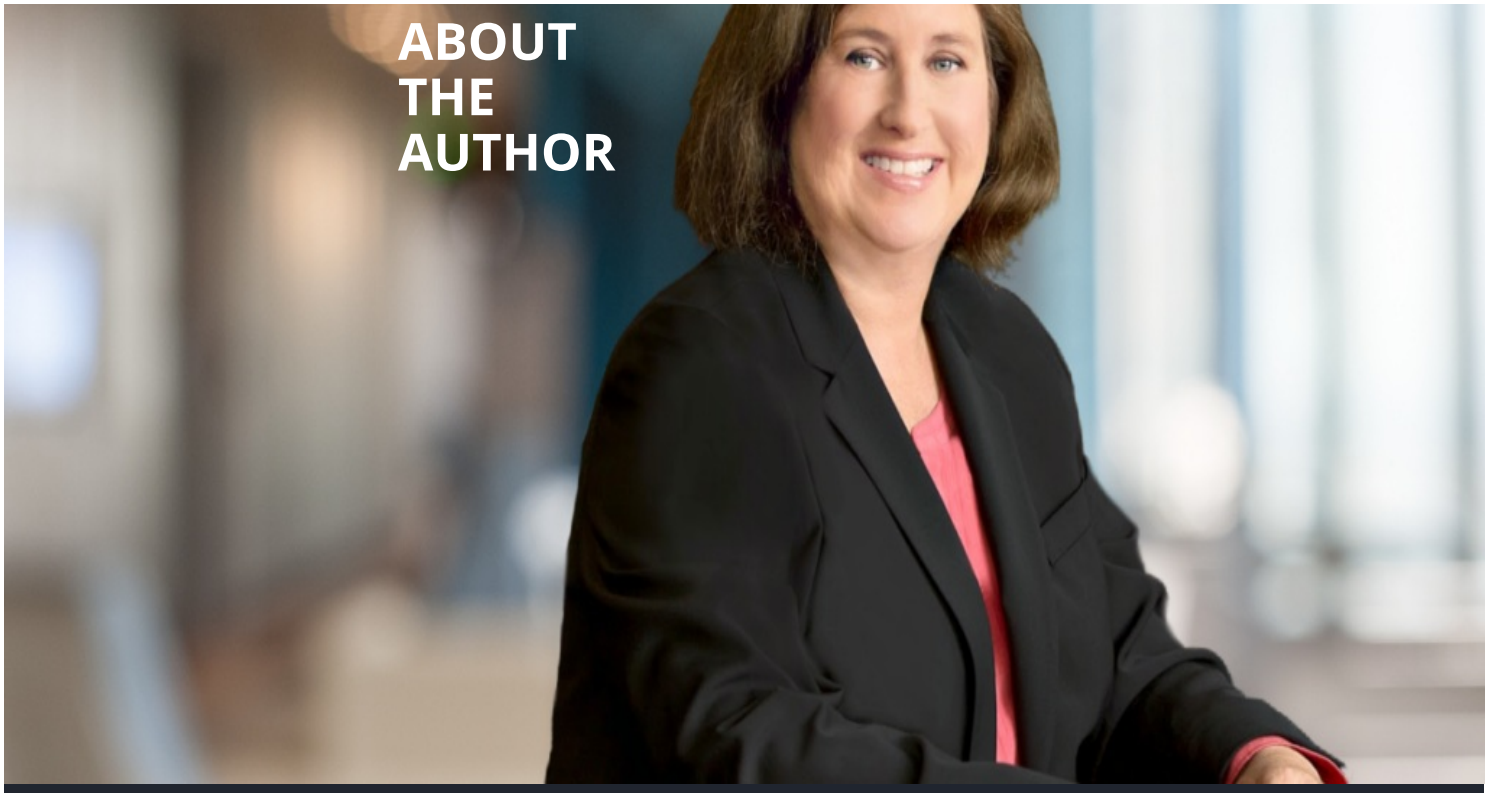

Caren D. Enloe

PARTNER

cenloe@smithdebnamlaw.com

919.250.2125

Caren Enloe leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor* in 2018. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee.

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CONTACT US

919.250.2000

mail@smithdebnamlaw.com

SMITH DEBNAM RALEIGH

4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000

Fax: 919.250.2100

SMITH DEBNAM CHARLESTON

171 Church Street, Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
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