

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR

[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation



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 a broad range of law firms, and collection agencies regarding an array of consumer finance issues. 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. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

## Eleventh Circuit Continues to Explore Definition of Debt Collector

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An unpublished opinion from the Eleventh Circuit continues its analysis of the definition of a debt collector and continues to narrow the applicability of the FDCPA. As many may recall, the Eleventh Circuit's opinion in *Davidson v. Capital One Bank*, 797 F.3d 1309 (11<sup>th</sup> Cir. 2015) was one of the first opinions to parse the definition of a debt collector under 15 U.S.C. §1692a(6). That decision, of course, was followed up by the Supreme Court's decision in *Henson v. Santander Consumer USA*, \_\_ U.S. \_\_, 137 S. Ct. 1718, 171-22 (2017) in which the Supreme Court held that a debt buyer may collect its own accounts under certain circumstances without triggering the FDCPA.

In *Kurtzman v. Nationstar Mortgage, LLC*, 2017 U.S. App. LEXIS 19750 (11<sup>th</sup> Cir. Oct. 10, 2017), the consumer filed an action against its mortgage servicer, Nationstar, seeking to stay foreclosure proceedings and recover damages under the FDCPA. Nationstar filed a motion to dismiss, in part, because it contended the consumer failed to adequately allege Nationstar was a debt collector. The district court agreed and dismissed the FDCPA claims.

On appeal, the Eleventh Circuit noted that in order to state a claim under the FDCPA, the consumer must plausibly allege sufficient facts to allow the court to draw a reasonable inference that the defendant is a debt collector under the FDCPA's definition. The Court concluded, however, that the consumer had failed to plead sufficient allegations. "Kurtzman's complaint totally omits factual content that would enable us to infer that Nationstar qualifies as a debt collector. The complaint is silent regarding whether the principal purpose of Nationstar's business is collecting debts, and it only generally asserts that Nationstar 'regularly attempted to collect debts not owed to [it]" *Kurtzman* at \*5-6. The Court went on to observe that the only factual allegation in Kurtzman's complaint that *might* have supported Nationstar's status as a debt collector is that the debt collected was in default when Nationstar acquired it. "But it is the law of this Court that a "non-originating debt holder [does not qualify] as a 'debt collector' for purposes of the FDCPA solely because the debt was in default at the time it was acquired." *Id.* at \*6.

The opinion, while unpublished, is useful in that it continues to judicially narrow the scope of the FDCPA and should serve as a reminder to the consumer bar of the

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

importance of meeting its minimum pleading requirements.

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#### CONTACT US

919.250.2000  
mail@smithdebnamlaw.com

#### RALEIGH OFFICE

The Landmark Center  
4601 Six Forks Road, Suite 400  
Raleigh, NC 27609

Phone: 919.250.2000  
Fax: 919.250.2100

#### CHARLESTON OFFICE

171 Church Street  
Suite 120C  
Charleston, SC 29401

Phone: 843.714.2530  
Fax: 843.714.2541