When Is a Repossession Company a "Debt Collector" under the FDCPA?

October 28th, 2016 | and Anastasia V. Caton

Anastasia V. Caton

The federal Fair Debt Collection Practices Act generally does not apply to repossession companies – they are exempt from the definition of "debt collector." This makes sense. A repossession company usually will not call, send mail to, or otherwise interact with debtors or attempt to collect money from debtors. The repossession company's limited role is to find and retrieve the debtor's car and store the car on its lot for a limited period of time.

But, in two recent cases, federal courts in California highlighted an often overlooked provision of the FDCPA that does apply to repossession companies. In *Lee v. Toyota Motor Sales USA Inc.*, Alik Lee sued a repossession company, alleging that it violated the FDCPA by repossessing his car when he was not yet in default. The court relied on the FDCPA's definition of "debt collector," which generally excludes repossession companies but provides that repossession companies are "debt collectors" for purposes of Section 1692f(6) of the FDCPA. That section prohibits a "debt collector" from taking or threatening to take any non-judicial action to repossess or disable property if

- there is no present right to possession of the property claimed as collateral through an enforceable security interest;
- there is no present intention to take possession of the property; or
- the property is exempt by law from such repossession or disablement.

Because the repossession company was a "debt collector" for purposes of Section 1692f(6), and because it took action to repossess Lee's car without the present right to do so, the court found that Lee had stated a sufficient claim that the repossession company violated the FDCPA and refused to dismiss the complaint.

In *Brooks v. Leon's Quality Adjusters, Inc.*, Jimmy Brooks sued a repossession company for violating the FDCPA when it repossessed his truck. The court found that although the repossession company was a "debt collector" for purposes of Section 1692f(6), it did not violate the FDCPA. The key difference between Brooks's claim and Lee's claim was that Brooks was in default at the time the repossession company took his truck. For that reason, the court found that the repossession company had a present right to the car at the time of the repossession, and, therefore, Brooks failed to state a claim that the repossession company violated the FDCPA.

What are the key takeaways from these two cases?

First, although repossession companies generally are not subject to the FDCPA, a repossession company can still face liability under the FDCPA for wrongful repossession.

Second, creditors that use repossession companies need to be aware of this risk and take steps to limit their exposure. Although creditors are generally not liable under the FDCPA for the unlawful conduct of their debt collectors, the CFPB has made clear that it expects creditors to adequately supervise their vendors and have controls in place to limit the risk that a vendor will violate the law in a way that harms a consumer.

Lee v. Toyota Motor Sales USA Inc., 2016 U.S. Dist. LEXIS 120102 (N.D. Cal. September 6, 2016).

Brooks v. Leon's Quality Adjusters, Inc., 2016 U.S. Dist. LEXIS 116803 (E.D. Cal. August 30, 2016).

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.