State Court Adopts Tighter Rules for Debt Collection

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Body

New York state court administrators said Tuesday they have finalized rules designed to ban the collection of debts that consumers did not incur, have already paid off or which have been extinguished by the passage of the six-year statute of limitations.

Chief Judge Jonathan Lippman said *the new rules* will reduce instances where abusive and aggressive collectors-often holding debts that have changed hands several times over several years-seek default judgments against consumers in court based on incomplete or erroneous documents.

"If you are entitled to a judgment, you should get it," Lippman said in an interview Tuesday. "But don't come into court without the requisite gravitas. You have to have the particulars of the debt you are trying to collect on. The courts are all about fairness and having a level playing field. These new rules are to ensure that level playing field."

The debts largely concern unpaid charges run up on credit cards. Holders of the debts may go to court to seek payment through default judgments, including the garnishment of debtors' paychecks or bank accounts.

Lippman announced the rules affecting more than 100,000 consumer debt filings made annually in New York during his Law Day speech this spring (*NYLJ, May 1*).

But the scheduled June 15 effective date was put off when the Office of Court Administration needed more time to review the hundreds of pages of comment about the proposal from the debt sales industry, banks, consumer advocates and law firms (*NYLJ, June 13*).

Among the changes to the final rules prompted by the comments was giving holders of old debts an extra nine months, until July 1, 2015, to file for defaults by following the current rules, with limited exceptions.

The courts also agreed to alter the requirement that a copy of the initial debt agreement be included in the default filing-documentation that banks and the debt-collection industry said is sometimes not available electronically. Instead, the courts said a copy of the last statement on the account that was sent to the debtor/consumer by the original creditor would suffice to show the existence of the account.

Responding to complains by consumer advocates, the state also said the final rules would apply to default filings in Supreme Court. Groups including MFY Legal Services, the Legal Aid Society of New York City and the Empire Justice Center had worried that the rules' previous exclusion of Supreme Court would lead to "forum shopping" by debt collectors looking to skirt the new documentation requirements by filing them in Supreme Court instead of Civil Court or other forums where the rules applied.

The new rules will:

· Require creditors to submit affidavits containing detailed proof in support of default judgment applications;

· Require that default applications contain information about the debtor's original credit agreement, a detailed accounting of each stop in the debt's chain of ownership and documentation that identifies the target of the default judgment as the correct debtor;

· Require the creditor's attorney to file an affirmation that the statute of limitations has not expired;

· Require a new form of verification that notification was of the efforts made to notify the debtor of the impending default action.

The final rules were adopted by the administrative board of the courts, comprised of Lippman and the four Appellate Division presiding justices.

Some of the new provisions are similar to those that have been used to tighten up filing and documentation requirements in mortgage foreclosure proceedings, Lippman said.

Lawrence Marks, first deputy chief administrative judge, said that taking effect on Oct. 1 are requirements about creditors filing an affidavit in support of default judgment applications and the affirmation that the statute of limitations has not expired.

The requirements that each step in a debt's chain of ownership be documented becomes effective on Oct. 1 for all debts purchased on or after that date.

Marks said applying the documentation rules prospectively and providing for the July 1, 2015, effective date for default filings on already-purchased debt was in response to the collection industry's concerns that the state could be rendering some debts they bought in good faith uncollectible by the imposition of unreasonable documentation requirements.

But once July 1, 2015, arrives, Marks said, "it is a new world" where all the heightened documentation requirements apply to all default filings for consumer debt.

"The public comment process was invaluable in ensuring that we ended up with a system in place that is fully consistent with what the law requires, but at the same time is practical and fair to both plaintiffs and defendants," Marks said in an interview Tuesday.

Lippman said he was happy by the feedback the rules generated this spring and believes the final version is stronger for it. Lippman said the rules would lessen the problem of "zombie debt" collections-debts that remain before the courts even though, upon closer inspection, many are based on faulty documentation known as "robo-signings" or other flaws.

The firm of Mel S. Harris and Associates had warned in comments that the debt industry, already under enormous pressure to pursue collections only against verified debtors, could face heavy job losses if faced with unfair documentation rules. Partner Scott Wortman said Tuesday he was "generally pleased" with what he called Lippman's "impartial approach" in the final rules.

"Even though these requirements significantly increase the standards of proof outlined under *CPLR §3215*, since the rules are prospective rather than retroactive, it provides at least some time for the credit and accounts receivable industry to modify their existing policies and procedures to comply with these rules," Wortman said.

He added that the rules will also create "harmony and equivalence" between the state's default rules and those promulgated by New York City Civil Courts in 2009.

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