Conflicting Comments Delay Court's Debt Default Plan

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Body

Evaluating the high volume of public comments both for and against Chief Judge Jonathan Lippman's proposal to create tougher standards for court-ordered consumer debt defaults will delay the plan, a court spokesman said Thursday.

See Comments.

The courts need additional time to digest more than 300 pages of analysis and criticism of the rules submitted by government officials, bar groups, the consumer finance industry and law firms specializing in debt collection, said office of Court Administration spokesman David Bookstaver.

"Because of the volume of the comments raising some legitimate issues ... the June 15 date is off the table," he said.

Bookstaver, who had no estimate for how long the review would take, said any changes would be incorporated in the final rules and that it would be unnecessary to have another 30-day formal comment period.

Lippman announced the rules on April 30 during his Law Day address, in response to what he said were an unacceptable number of cases in which defaults were sought on consumer debts based on untimely petitions or insufficient documents (*NYLJ, May 1*).

The proposed remedies for collecting what Lippman called the "zombie debts" include requiring creditors to submit an affidavit that makes out a prima facie case in support of default judgments, affirming that the six-year statute of limitations on the debt has not expired and proving that the consumers' address used to serve notice of the default proceeding was correct.

The rules mirror those used successfully by the New York City Civil Court since the late 2000s.

Lippman said there are well over 100,000 consumer debt suits filed in New York each year. While the majority are for only a few thousand dollars, they typically increase substantially due to interest and penalties and cause significant upheaval to consumers if they result in liens against their wages or bank accounts, according to Lippman.

Comments from government officials and consumer advocates praised Lippman for proposing the new rules. But those from the collection industry and law firms that collect debts were more critical, predicting negative consequences for consumers and unfair treatment for those trying to collect on legitimate debts.

Several of the pro-Lippman commenters nevertheless said the proposal contained a loophole that debt collectors could use to avoid verification requirements. They said that while the rules would require the stricter guidelines in city courts outside New York City and in district courts, it would not apply to default filings in state Supreme Court.

MFY Legal Services said its experts on debt litigation "believe strongly" that the rules must be extended to Supreme Court.

"Strengthening the requirements solely in the courts of lesser jurisdiction will result in creditors seeking to file cases in Supreme Court, even with low amounts in controversy, simply to evade the requirement delineated by the rules," the agency wrote. "It will also mean two tiers of justice for consumers and will deny certain New Yorkers sued in Supreme Court the benefits of these important protections."

The Legal Aid Society of New York City said it also favored extending the requirements to the Supreme Court. The clinical legal education office at Syracuse University's College of Law said omitting the trial-level court could lead to "forum shopping" by debt buyers.

The Rochester-based Empire Justice Center said when stricter default judgment rules were instituted recently in Rochester City Court, more debt buyers sought to file default petitions in Monroe County Supreme Court.

"As a result, a disparity of judicial fairness based on the debt buyer's choice of forum remains," the center wrote. "The proposed debt collection court rules will help, but not completely level the playing field for all New Yorkers regardless of where they live."

Julie Menin, commissioner New York City's Department of Consumer Affairs, said the proposal would effectively combat some of the practices that she said have made debt collection the most complained-about activity among the consumers contacting her office in the last five years. She suggested that since Department of Consumer Affairs in New York City issues licenses to debt buyers, they should be required to list their licensing numbers in their filings for default judgments.

In joint comments, the Consumer Affairs Committee and the Civil Court Committee of the New York City Bar Association also endorsed the Lippman proposal, particularly its provision to provide answer and order-to-show-cause forms so that unrepresented debtors can challenge default judgments. But they requested changing the form to clarify under what basis the consumer was contesting the default.

The Consumer Frauds & Protection Bureau of Attorney General Eric Schneiderman's office said Lippman's plan would correct "several of the problems endemic to debt collection litigation" that civil prosecutions of the industry have identified in recent years.

Among those who are generally opposed to the proposed rules are the New York State Banking Association. It argued that requiring the original agreement between the creditor and initial debtor be produced to verify a consumer's debt obligation could have the unintended effect of rendering any account in New York uncollectible if that agreement has not been maintained.

"We believe that this requirement could ultimately and direly result in a freeze in credit markets in New York state, as financial institutions (and other companies) would be faced with a near impossible regulatory hurdle to overcome and will be forced to restrict credit in response," the bankers' group said.

ACA International, a credit and collection industry group, told the OCA that the proposed rules would place "burdensome" requirements on its members while providing consumers and the courts with little of the relief sought. It urged Lippman to withdraw the proposal and initiate a study of all types of default judgments in New York, not just those related to consumer debts.

DBA International, which represents more than 500 debt buyers, also had "significant" concerns about the proposal and the effect it would have on the availability of consumer credit. It urged that the rules be altered to more closely parallel the state's requirements in foreclosure actions, where the burden is put on the assignee plaintiff to execute affidavits required by OCA, not the original creditor.

DBA International said the proposed rule would place an unreasonable burden on the credit industry that is not carried by the foreclosure industry.

A leading debt collection firm, Cohen & Slamowitz of Woodbury, told OCA that requiring original creditors on a loan to break down the outstanding amount to reflect principal, interest and fees and charges would be difficult and beyond federal requirements for original credit issuers to maintain account balances.

The firm said enforcement of the June 15 date would preclude its clients from collecting in already-filed legal actions and in future default cases where the debt is not broken down according to the three components of principal, interest and fees. "This result will cause irreparable harm to our clients by rendering millions of dollars of otherwise valid debts uncollectible," Cohen & Slamowitz said.

The Manhattan firm of Mel S. Harris and Associates predicted that the rules could create an "extreme and permanent fate of business extinction and mass layoffs" in the credit and collection industries. The debt collection industry is already under enormous legal pressure to go after only valid debts, the firm said.

"If anyone in this industry forgets to dot an 'i' or cross a 't,' they are immediately served with a summons and a complaint with class allegations and vicious personal attacks primarily based on the goal to build enormous fees from gratuitous protracted litigation," firm partner Scott Wortman said.

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