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FINANCIAL SERVICES LITIGATION ALERT

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U.S. Supreme Court Holds Discovery Rule Not Applicable to Fair Debt Collection Practices Act Cases

By Theresa E. Loscalzo

On December 10, 2019, the U.S. Supreme Court issued a long-awaited decision in *Rotkiske v. Klemm*, concluding that the statute of limitations under the Fair Debt Collection Practices Act (FDCPA) begins to run when the alleged violation occurs and not when the violation is discovered, absent the potential application of an equitable doctrine.

The FDCPA authorizes private civil actions against debt collectors who engage in certain prohibited practices. 91 Stat. 881, 15 U. S. C. §1692k(a). An action under the FDCPA may be brought "within one year from the date on which the violation occurs." §1692k(d). The question before the Supreme Court was whether the "discovery rule" applies to the FDCPA's limitations period. The Court, in an 8-1 opinion written by Justice Thomas and joined by Justices Roberts, Breyer, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh, held that the discovery rule is inapplicable to FDCPA claims, but left for another day the question of whether the equitable doctrine of fraudulent concealment might toll the statute of limitations in appropriate cases.

In *Rotkiske*, the Supreme Court was asked to resolve a split in the Circuits with regard to when the one-year FDCPA statute begins to run. In this case, the Petitioner Kevin Rotkiske failed to pay approximately $1,200 in credit card debt. His credit card company referred the debt to respondent Klemm & Associates (Klemm) for collection. In March 2008, Klemm sued Rotkiske, seeking to collect the unpaid debt. Klemm attempted service at an address where Rotkiske no longer lived, and a person whose description did not match Rotkiske's accepted service of the complaint. Klemm later withdrew the suit, but refiled it in January 2009, and a process server attempted service at the same address. Once again, someone other than Rotkiske accepted service. Rotkiske failed to respond to the summons, and Klemm obtained a default judgment. Rotkiske claimed that he was not aware of Klemm's 2009 debt-collection lawsuit until September 2014, when he was denied a mortgage because of the default judgment against him.

On June 29, 2015, more than six years after the default judgment was entered, Rotkiske brought suit against Klemm under the FDCPA alleging that equitable tolling excused his otherwise untimely filing because Klemm purposely served process in a manner that ensured he would not receive service. Klemm moved to dismiss the action as barred by the FDCPA's one-year statute of limitations. Rotkiske argued that the court should apply a "discovery rule" to delay the beginning of the limitations period until the date he knew or should have known of the alleged FDCPA violation. In support of his position, Rotkiske relied on the Ninth Circuit's decision in *Mangum v. Action Collection Serv., Inc.,* 575 F. 3d 935 (2009), which held that that, under the "discovery rule," limitations periods in federal litigation generally begin to run when plaintiffs know or have reason to know of their injury.

The District Court dismissed the action relying on the plain language of the statute. The District Court also concluded that Rotkiske was not entitled to equitable tolling because, even accepting the truth of the allegations in the complaint, he was not misled by Klemm's conduct. On appeal, the Third Circuit *sua sponte* reviewed the case en banc and unanimously affirmed, holding that under the clear language of the FDCPA, the statute of limitations begins to run from the "date on which the violation occurs," not the date on which a potential plaintiff discovers or should have discovered the violation.

The Supreme Court began and ended its analysis with the statutory language, holding that the statute unambiguously provides that the limitations period begins to run on the date the FDCPA violation actually happens. "We must presume that Congress 'says in a statute what it means and means in a statute what it says there.'" Slip op. at 5. The Court reiterated that the length of a limitations period "reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones. It is Congress, not this Court, that balances those interests." Slip op. at 6 (internal citations omitted).

In addressing the application of equitable tolling in the face of fraud, the Court held that Petitioner failed to preserve the issue before the Third Circuit, and left open the question of whether the FDCPA allows the application of equitable doctrines. Justice Ginsburg filed a dissent disagreeing that Petitioner failed to preserve a fraud-based equitable tolling claim.

Financial institutions and debt collectors should take note of this precedent-setting decision, which provides a strong defense to late-submitted claims. ◆

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