

U.S. Supreme Court Favors Lenders in Recent Foreclosure Decision

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A recent U.S. Supreme Court ruling may increase protections and reduce costs for lenders and law firms engaged in non-judicial foreclosure proceedings.

In a 9-0 decision, the Court held in [*Obduskey v. McCarthy & Holthus LLP*](#) that businesses engaged in non-judicial foreclosure do not qualify as debt collectors under the [*Fair Debt Collections Practices Act*](#) (FDCPA).

The decision resolves a circuit split among the U.S. Courts of Appeals, and provides much needed guidance to consumers, lenders and servicers regarding the applicability of the federal FDCPA to non-judicial foreclosure activities. Ultimately, this should help consumers and the entire industry reduce the costs and delays associated with litigating these issues and in getting to a final foreclosure.

In 2007, Dennis Obduskey obtained a loan for \$329,940 to buy a residential property in Colorado but defaulted two years later. In 2014, his creditor-retained respondent - a law firm - initiated a non-judicial foreclosure, a process by which a trustee is authorized to take and sell a consumer's home to fulfill an unpaid home mortgage. Obduskey filed a complaint with the Consumer Financial Protection Bureau and sued in federal district court, alleging that the law firm violated the FDCPA by failing to provide the written verification of the debt. The district court held that Obduskey failed to state a claim because the FDCPA does not apply to non-judicial foreclosure. The U.S. Court of Appeals for the 10th Circuit affirmed the district court's ruling. Thereafter, Obduskey successfully petitioned for the Supreme Court to hear his case, and it was decided by the Court on March 20.

The Court discussed three considerations leading it to conclude that a business engaged in no more than the kind of security-interest enforcement involved in non-judicial foreclosure proceedings is not a "debt collector" subject to the main coverage of the FDCPA.

First and most decisively was the text of the law itself. The FDCPA regulates debt collectors, but defines them in two parts. The primary definition of the term is "any person in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts." The act also sets forth a limited-purpose definition, which states that "[f]or the purpose of section 1692f(6) [the] term [debt collector] also includes any person in any business the principal purpose of which is the enforcement of security interests." The Court found that by giving a limited-purpose definition to security-interest enforcers, Congress intended to treat them differently outside the main coverage of the act, otherwise it would not have included a separate definition.

The Court also believed Congress may have chosen to treat security-interest enforcement differently from ordinary debt collection in order to avoid conflicts with state non-judicial foreclosure schemes.

The Court then used the legislative history to help interpret this statute, noting that two prior versions of the bill would have treated security-interest enforcers differently. One would have subjected them to the full coverage of the act, while another would have totally excluded them from the law's coverage; thus, the current version was seen as a compromise meant to distinguish those only engaged in security-interest enforcement from debt collectors more generally.

Although security-interest enforcers are not subject to the main coverage of the act, enforcing a security interest does not grant an actor blanket immunity from the FDCPA. Rather, they are only subject to the subsection of the statute prohibiting debt collectors from taking or threatening to take any non-judicial action to effect dispossession or disablement of property under [certain enumerated conditions](#).

If you have any questions about this ruling or how it could affect your business, please contact [Joseph Schalk](#), [Derek Rowe](#) or any member of the [Barley Snyder Finance & Creditors' Rights Practice Group](#).

WRITTEN BY:



Derek J. Rowe

Associate

Tel: (717) 553-1057

Email: drowe@barley.com