The Fair Debt Collection Practices Act: A Tenth Circuit Primer

Alvin C. Harrell, Oklahoma City University School of Law
Laurie A. Lucas
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By Laurie A. Lucas and Alvin C. Harrell

Thirty years ago, Congress enacted the federal Fair Debt Collection Practices Act (FDCPA or act) to regulate reported abuses in the consumer debt collection industry. The act has two related goals: protecting consumers from unscrupulous debt collection practices while providing a level playing field for ethical debt collectors. In 1986, the act was amended to specifically include lawyers collecting third-party debts. In Heintz v. Jenkins, the United States Supreme Court held that the act applies to attorney litigation activities directed at debt collection. This article is offered as a research tool for those subject to act’s requirements, focusing on the last 20 years of case law in the Tenth Circuit United States Court of Appeals. Other key issues under the act not yet addressed by the Tenth Circuit also are included, as well as a discussion of recent legislative amendments.

As reflected in these developments, the results of the FDCPA have been a mixed bag. Although FDCPA-related complaints to the Federal Trade Commission (FTC) and FDCPA litigation have increased in volume, the resulting movement toward a focus on technicalities in the act may indicate that many of the serious abuses originally targeted by the act have become rarer. The trend, however, toward more arcane analyses in resolving ordinary collection disputes puts at risk the ethical debt collector, more than the unscrupulous operator. Moreover, these problems with the FDCPA appear to be percolating just as the United States economy is imposing unprecedented burdens on the debt collection system with respect to issues that affect millions of consumers and the solvency of major private and public institutions.

FRAMEWORK FOR FDCPA ACTIONS

The FDCPA regulates third-party "debt collectors" by prohibiting conduct while attempting to collect a consumer "debt" that would harass or abuse, deceive or mislead, or be considered unfair or unconscionable to the consumer. The act also requires that the debt collector make certain disclosures to the consumer regarding the debt and the verification procedures for the alleged debt. Determining whether the act applies to any particular case thus requires answering two predicate questions: was the defendant a "debt collector" as defined by the act, and was the alleged "debt" for consumer purposes.

In addition, standing to sue under the FDCPA does not require a finding of actual damages, since statutory damages also are allowed. Most courts have found that a FDCPA plaintiff...
is entitled to recover only a single $1,000 statutory damage award and not $1,000 per violation, in addition to actual damages and attorney’s fees. Obviously, the latter can be sizeable, representing a major litigation risk for the defendant. Equitable relief is not available to plaintiffs, and the act has a one-year statute of limitations measured from the date the plaintiff last had notice of any FDCPA violations. Although the Tenth Circuit has not yet ruled directly on the issue, most courts treat the FDCPA as a strict liability statute, allowing statutory damages and attorney’s fees for technical violations, even in the absence of actual harm.

Venue requirements under the act require the filing of actions in the “judicial district” where the real property is located if the action is against real property, or in other cases at the location of the consumer’s residence at the time the action is filed, or where the contract was signed that created the alleged debt. The act also allows the debt collector to assert a bona fide error defense, although the defense is narrow and has limited application. In addition, the Tenth Circuit has held that “the FDCPA...is a remedial statute, [and as such] it should be construed liberally in favor of the consumer.” Moreover, the standard in most of the circuits and apparently in the Tenth Circuit for evaluating many of the alleged violations under the act is the “least-sophisticated consumer” standard, a low threshold for a FDCPA plaintiff.

FDCPA DEFINED TERMS

What constitutes a “debt” under the act has been the subject of much litigation. In Ladick v. Van Germer, the Tenth Circuit, determining that condominium assessments are “debts” under the FDCPA, adopted a two-part inquiry used in the Seventh Circuit U.S. Court of Appeals for determining whether an obligation qualified as a debt. Part one of the inquiry evaluates whether the “obligation” emerged from “a voluntary consumer transaction;” part two evaluates whether the voluntary consumer transaction was “primarily for personal, family, or household purposes,” because not every voluntary transaction with a consumer will be primarily for those purposes. This test casts a wide (but not unlimited) net.

Reflecting this, the law in the Tenth Circuit on this issue is varied. In Beaton v. Reynolds, Ridings, Vogt and Morgan, the court found that the plaintiff, a self-employed public accountant who had purchased accounting publications for business use, could not bring a FDCPA action against the law firm attempting to collect the debt because the debts were commercial in nature. The court rejected the plaintiff’s argument that because she was also a “consumer,” her debts as a sole proprietor were covered by the act. In addition, courts have consistently held that child support payments are not “debts” under the FDCPA. In Snow v. Riddle, the Tenth Circuit also held that an extension of credit is not required for an obligation to be a debt, and therefore a check constitutes a debt if it is otherwise for consumer purposes. A recent case also found that attempts to secure replacement checks, after the original checks had been lost, was an attempt to collect a “debt” under the act. Finally, a request for attorney’s fees in an otherwise properly filed state eviction action did not qualify as a debt under the act. Pursuing a judicial foreclosure action, however, does.

To qualify as a “debt collector” under the act, the person or entity must have as its principal purpose the collection of consumer debts or must regularly collect or attempt to collect consumer debts. As noted above, lawyers may qualify as “debt collectors” under the act. How courts make this determination varies, with some looking specifically at the volume of the collection work a firm handles, while others focus on the percentage of debt collection work relative to the overall business of the firm, and still others look at the relationship between the firm and the creditor. Thus, there is little consistency on this issue.

The act also includes several exemptions to the definition. Tenth Circuit precedent on the issue has dealt primarily with whether those exemptions are applicable. For example, a creditor attempting to collect a debt that it originated was not considered a debt collector because that activity is specifically exempted under the act. Another case held that a student loan held by a guarantor was covered by the exemption for collections “incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement,” because the defendant was a holder of loans purchased under the Federal Family Education Loan program, making the holder a “fiduciary.” In Scales v. Spellings, the court held that the United States Secretary of Education was not a debt collector because the act exempts “any officer or employee of the United States or any State to the extent that collecting...any debt is in the performance of his official duties.”
Cases interpreting the prohibition against harassment or abuse are common. For example, a recent case held that it was not harassment when a debt collector made four phone calls attempting to collect a debt over a seven-day period. Nor was it harassment or abuse when that same debt collector elected not to leave a telephone message when making those calls. But the fact that this case went to trial (and resulted in a reported decision) reflects how far the FDCPA litigation has come from the more egregious behavior that was cited as indicating the need for the act. Even the common use of automated calling devices by debt collectors has become an issue, since a debt collector who leaves a message may violate the act by indicating that the call is from a debt collector. Of course, not indicating that the call is from a debt collector also may violate the act’s requirement that the debt collector disclose in communications with the consumer that the debt collector is “attempting to collect a debt and that any information obtained will be used for that purpose.”

This disclosure requirement is frequently referred to as the act’s “mini-Miranda” requirement; the disclosure is required in the “initial written [or initial oral] communication with the consumer.” The requirement was amended in 1996 to also require the disclosure in “subsequent communications” with the consumer. In the 2006 amendments, however, the requirement was changed again, to exclude the disclosure requirement from “formal legal pleadings made in connection with a legal action.” In addition, the Tenth Circuit has held that the disclosure need not be included in verbal communications to a consumer’s attorney “when the matters required to be disclosed would be clear to an attorney from the communication viewed in context.” Failure to include the required disclosure also violates the act’s prohibition against making false or misleading representations.

Other common allegations involving the prohibition against false or misleading representations include misrepresentations as to the correct amount of the debt, falsely representing that an attorney is involved in the collection process and threatening to take an action that

The Financial Services Relief Act of 2006 added an exemption to the act’s definition of “debt collector” for private entities operating bad check enforcement programs, if the private entity “is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of [same].” The applicability of this exemption also depends on the type of checks being collected; the amendment excludes six categories. Private entities collecting checks in a program exempted under the 2006 amendments are still required to include a validation notice in the initial communication with an “alleged offender,” but that notice is not the same as that required for other debt collectors under FDCPA section 1692g. The requirements for the exemptions under the 2006 amendments are technical and should be reviewed carefully by those relying on them. Likewise, the consumer’s attorney should make sure that any debt collector claiming an exemption is qualified for the exemption, has complied with the appropriate disclosure provisions, and is collecting a debt that is excluded from the otherwise applicable FDCPA requirements. In Del Camp v. Kennedy, for example, a bad check collection case initiated before the 2006 amendments were enacted, the Ninth Circuit U.S. Court of Appeals held that one of the nation’s largest debt collection agencies involved in bad check diversion programs was not entitled to sovereign immunity in a California class action alleging, among other things, violations of the FDCPA.

**PROHIBITED ACTIONS**

As noted above, under the FDCPA debt collectors must refrain from engaging in abusive collection practices. Care should be taken since actions that violate one of the act’s prohibitions are likely to form the basis for alleging a violation of another. Thus it is common for complaints to allege multiple FDCPA violations, making it very difficult for the defendant to have confidence in the likelihood of prevailing on all issues. All it takes for the plaintiff to prevail, and recover statutory damages and attorney’s fees, is to win the argument on one such issue.
is illegal or unintended.\footnote{10} One case on this issue found that filing a lawful foreclosure action was not a violation of the act: there was no false representation, because the debt collector intended to file and in fact had filed the action.\footnote{41} Again, it is instructive as regards the evolution of the FDCPA that this seemingly self-evident proposition had to be litigated all the way to the Tenth Circuit. Another case held that an attempt to collect a time-barred debt was not a false representation under the act, because the statute of limitations bars only judicial remedies related to the debt and the collection letter did not threaten litigation; the court distinguished cases that did threaten such litigation as possibly constituting a violation.\footnote{32}

A debt collector also may violate the act by actions that are considered unfair or unconscionable. For example, it is a violation to request a payment not otherwise “authorized by the agreement creating the debt or permitted by law.”\footnote{6} However, a request for attorney’s fees in a foreclosure action when a flat-fee arrangement had been made previously with the creditor was not considered an unfair practice, since the attorney’s fees were allowed under state law.\footnote{46} Also, the repossession of a consumer’s car with personal property inside, pursuant to an enforceable security interest, was not an unfair practice violation because the act’s prohibition against taking any property in which there is no “present right to possession” was held to be inapplicable to “the incidental taking of personal property within the car at the time it was repossessed.”\footnote{65} The vagueness of the act’s terminology, together with its strict liability attributes, means that such cases can go either way, providing an incentive to attack customary and ordinary practices along with the abuses targeted by the act.

REQUIRED DISCLOSURES

One of the most litigated sections of the act is the validation of debts section.\footnote{66} In its initial communication with the consumer or within five days thereafter, the debt collector must inform the consumer of the following: how much the consumer owes; who the creditor is that claims the debt; how the consumer may dispute the validity of the debt; that the consumer may make a written request requiring the debt collector to furnish proof, or verification, that the consumer owes the debt; and that the consumer may make a written request for the name and address of the creditor that originated the debt if the current creditor is not the same.\footnote{47}

The consumer’s request for verification of the debt must be in writing in order to be effective.\footnote{48} The creditor’s validation notice also must be effectively conveyed to the consumer and not merely included in the body of a collection letter or other initial communication. Validation notices that are contradicted or overshadowed by other information in a collection letter may violate the act.\footnote{49} If the initial notice is in compliance, however, subsequent communications that may overshadow the validation notice do not necessarily constitute a violation.\footnote{50}

The FDCPA requires the debt collector to cease communication with the consumer upon receiving the debtor’s written request for verification, until the validation is provided.\footnote{51} The 2006 amendments clarify that (absent a validation request) the 30-day period in which to request validation is not a grace period for the debtor, and “collection activities and communications that do not otherwise violate” the act may continue during the 30-day period so long as those activities do not “overshadow” or create “inconsistencies” with the consumer’s validation rights.\footnote{72} As noted, the 2006 amendments also expressly exclude “formal pleading[s] in a civil action” from the definition of “initial communication,” negating the need to include the validation disclosures in such pleadings.\footnote{73} Three United States Courts of Appeals have held that it is not a violation for the debt collector to elect not to verify the debt after receiving a consumer’s written verification request, if the debt collector instead stops all collection attempts.\footnote{74}

A consumer also may elect to send the debt collector a cease-and-desist letter under section 1692c(c), which is different from a validation request.\footnote{79} One court held that a letter from the consumer requesting the debt collector to
cease-and-desist collection efforts on "all accounts" did not extend the act's prohibition against continuing contact with a consumer as to future debts, as section 1692c(c) only covers the consumer's current debts and not debts subsequently assigned to the debt collector.\textsuperscript{76} Similarly, continued contact with the consumer after having knowledge that the consumer was represented by counsel could violate the act, but there is no violation if the contact was made with respect to debts that were assigned later, even with knowledge of the representation regarding past debts.\textsuperscript{77}

\textbf{OTHER CURRENT ISSUES}

There are several other current issues that merit discussion. One concerns the application of the \textit{Rooker-Feldman}\textsuperscript{78} doctrine to FDCPA actions. A trend that had been emerging under FDCPA case law was to assert a defense that a plaintiff's FDCPA action was barred by the doctrine if the FDCPA action was based on a state court judgment, because the doctrine does not permit federal court review of a state court's judgment.\textsuperscript{79} The United States Supreme Court recently narrowed the scope of this doctrine,\textsuperscript{80} however, arguably negating many of the benefits to defendants asserting it in this context.

For example, in \textit{Carvana v. MFG Financial Inc.},\textsuperscript{81} the district court found that the \textit{Rooker-Feldman} doctrine did not apply to a FDCPA action alleging improper venue in a related state court collection action because the state court action was not final.\textsuperscript{82} The \textit{Carvana} court also noted that the holding would be the same even if the state court judgment was final because the FDCPA violation "did not arise from the state court judgment, but instead arose from the practices Defendants employed in collecting the underlying debt...and issues no invitation to this court to overturn prior state court judgments."\textsuperscript{83} Similarly, in \textit{McCormon v. Bibler, Newman & Reynolds, P.A.},\textsuperscript{84} the court stated that the \textit{Rooker-Feldman} doctrine does not bar a FDCPA action based on illegal collection practices that were independent of the state court judgment.\textsuperscript{85} In sum, the \textit{Rooker-Feldman} doctrine remains a viable affirmative defense to a FDCPA claim if the FDCPA claim is based on or "inextricably intertwined" with a final state court judgment,\textsuperscript{86} but likely will fail if the FDCPA claim is based on actions by the debt collector that were independent of the state court judgment.

Another current issue concerns the act's bona fide error defense.\textsuperscript{87} The Tenth Circuit has held that in order to prevail under this affirmative defense, the debt collector must prove that the alleged violation of the act was "1) unintentional, 2) a bona fide error, and 3) made despite the maintenance of procedures reasonably adapted to avoid the error."\textsuperscript{88} The court held that the "intent prong" of the defense requires proving only "that the violation was unintentional, not that the underlying act itself was unintentional."\textsuperscript{89} The defense, therefore, "covers mistakes of law,"\textsuperscript{90} but only if the mistake was reasonable, an inquiry which "will often turn on the debt collector's due diligence practices."\textsuperscript{91} The Tenth Circuit noted that most bona fide error defenses assert clerical mistakes and not mistakes of law, but concluded that the inquiry can be adapted to evaluate legal mistakes.\textsuperscript{92} The key is whether the debt collector "himself...[has] employed procedures to avoid committing an error, and those procedures must have been reasonably adapted to avoiding the core legal error that occurred."\textsuperscript{93} The Tenth Circuit ruling adds to a split in the United States Courts of Appeals on this issue.\textsuperscript{94}

Finally, another split in the circuits has emerged over whether the individual owners of a limited liability corporation engaged in debt collection can be treated as debt collectors under the act without piercing the corporate veil. In \textit{Brumbelow v. the Law Offices of Bennett and Deloney, P.C.},\textsuperscript{95} the court confronted the issue when a plaintiff filed a class action against the law firm collecting the debt, and also the principal shareholders in the firm individually, for attempting to collect amounts for a bad check not authorized under Utah law.\textsuperscript{96} The court noted the split in the circuits on this issue,\textsuperscript{97} but also noted that another district court in Utah had found personal liability against a sole shareholder of a firm without requiring the plaintiff to pierce the corporate veil.\textsuperscript{98} The court noted, "There is no doubt that in a generic sense a person who authors collection letters, supervises collection activities, and is the sole attorney in a debt collection firm is a 'debt collector' as defined by the [plain language] of the FDCPA.\textsuperscript{99} The court acknowledged that the effect of this position could be to "abrogate the protections of the corporate form for individuals engaged in debt collection through a corporation[.]\textsuperscript{100} After lamenting the lack of guidance on this issue in the Tenth Circuit,\textsuperscript{101} the \textit{Brumbelow} court distinguished and rejected the Seventh
Circuit’s position and held that the act’s “broad language” requires a holding that piercing the corporate veil is not required if there is sufficient personal involvement in the debt collection activities of the firm.

CONCLUSION

Several basic points are apparent from this review of the FDCPA case law in the Tenth Circuit. Courts, in the common law tradition, often have attempted to ameliorate the “rough edges” of the act by the use of common sense and traditional legal reasoning. But the FDCPA is not a traditional statute. The act combines vague terminology, technical requirements, statutory damages, attorney’s fees and (in most circuits) a low threshold for demonstrating consumer confusion (the least-sophisticated consumer standard). This is a potent combination for generating litigation over ordinary business practices. As a result, a great deal of FDCPA litigation does not involve the more egregious violations originally targeted by the act.

It is hard to avoid the conclusion that the FDCPA has gone awry. The courts’ efforts to navigate a middle ground often devolve into arcane legal analyses that bear little resemblance to the act’s intended purposes. At a time when the nation is already facing a debt crisis, this creates damaging and unnecessary costs and uncertainties for the financial markets, consumers, and the legal profession. It is time for Congress, the courts, regulators and the legal profession to face up to the problems that have been created in the name of “fair” debt collection.

4. 514 U.S. 291 (1995). This is the only United States Supreme Court opinion on the FDCPA.
7. See 15 U.S.C. § 1692a(6) (defining “debt collector” as “any person who uses any instrumentality of interstate commerce or the mails 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 owed or due or asserted to be owed or due another.”). When this article uses the term “debt collector” it means a third-party debt collector, as defined by the FDCPA, and not the original creditor collecting its own debt. But see 15 U.S.C. § 1692a(6) (“[T]he term [debt collector also] includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.”) (emphasis added).
8. 15 U.S.C. § 1692(a)(5) (“The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.”).
9. See 15 U.S.C. § 1692(d)(1)-(6) (listing six violations considered to constitute harassment or abuse under the act, and also noting that the list is not exhaustive).
10. See 15 U.S.C. § 1692e(1)-(6) (listing 16 violations considered false or misleading under act, and also noting that the list is not exhaustive).
11. See 15 U.S.C. § 1692f(1)-(8) (listing eight types of conduct considered a violation of this section, and also noting that the list is not exhaustive).
13. See Robey v. Shapiro, Merinas & Cepeda, L.L.C., 434 F.3d 1208 (10th Cir. 2006) (holding same). An interesting bankruptcy issue was recently addressed by the Tenth Circuit: who has standing to bring an FDCPA action — the debtor or the bankruptcy trustee? See Smith v. Rockett, 522 F.3d 1080 (10th Cir. 2008) (reversing and remanding the district court’s holding that FDCPA claims filed after a bankruptcy action belong to the bankruptcy trustee and not the debtor, because the Chapter 13 debtor, unlike a Chapter 7 debtor, retains ownership of his or her property and therefore also has ownership (standing to sue) of the FDCPA claim). One court held that the spouse of a deceased consumer had standing to sue because allegations of violations made by the debt collectors against her personally were included in the complaint. Barnard v. Harrast’s Kansas Casino Corp., 260 F.Supp. 2d 1109 (D. Kan. 2003). But see McDaniel v. South Assocs., P.C., 325 F.Supp. 2d 1210 (D. Kan. 2004) (the plaintiff was never an obligor on the note that was the subject of the claim, so a FDCPA action was not available since the plaintiff not a “consumer” under the act). The act defines “consumer” as “any natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3). See also Bitoh v. Global Collection Services, 968 F.Supp. 618, 621 (D. N.M. 1997) (consumers include “not only the actual debtors, but their spouses, parents (minors), guardians, executors, and administrators.”) (citations omitted).
14. 15 U.S.C. §§ 1692k(a)(1)-(2)(A) (allowing actual and statutory damages up to $1,000 and also damages for class actions set at “the lesser of $500,000 or 1 per centum of the net worth of the debt collector.”). See also Harris v. Anderson, Crenshaw & Assocs., LLC, No. 07-CV-01328, 2008 U.S. Dist. LEXIS 30145, *10-12 (D. Col. Apr. 14, 2008) (offer to settle claim for $100), which was rejected, did not moot the action as the plaintiff also alleged actual damages, so the defendant’s offer “was not an offer of complete relief.”) (citations omitted).
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15. See e.g., Wright v. Fin. Sers., Inc., 22 F. 3d 647 (6th Cir. 1994); Harper v. Better Bus. Sers., Inc., 961 F.2d 1561 (11th Cir. 1992). The Tenth Circuit has not specifically ruled on this issue, although a recent holding noted that an act “permits the recovery of statutory damages up to $1,000,” implying that it would rule in accord with the other circuits. Robey v. Shapiro, Marinovich & Ceja, L.L.C., 434 F.3d 1208, 1212 (10th Cir. 2006) (emphasis added). See also Whayne v. U.S. Dep’t of Educ., 915 F.2d 1142, 1145 (11th Cir. 1990) (“[T]he limitation on FDCPA damages limits the statutory damages judgment to $1,000.”) (emphasis added).


17. 15 U.S.C. § 1692(a) ("a suit filed on the one-year anniversary of accrual of the violation was not intentional and resulted from a bona fide error.").

18. 15 U.S.C. § 1692e(11) ("A claim is filed "within" one year.").

19. 15 U.S.C. § 1692e(11) ("A suit filed on the one-year anniversary of accrual of the violation was not intentional and resulted from a bona fide error.").

20. 15 U.S.C. § 1692e(11) ("A suit filed on the one-year anniversary of accrual of the violation was not intentional and resulted from a bona fide error.").

21. Johnson v. Riddle, 365 F.3d 1107, 1117 (10th Cir. 2002) ("[C]ourts generally treat the FDCPA as a strict liability statute.").

22. 15 U.S.C. § 1692e. See Martines v. Albuquerque Collection Sers. Inc., 867 F.Supp. 1495 (D. N.M. 1994) (proper venue is debtor’s place of residence if contract creating the debt was oral; debt collector vicariously liable for debtor’s attorney’s improper venue selection).


27. Dikeman v. First Nat’l Educators Inc., 81 F.3d 949, 951 (10th Cir. 1996), cited with approval in, Every v. RJM Acquisitions Funding, L.L.C., 505 F.3d 769, 774 (7th Cir. 2007) (“[T]he "unsophisticated consumer" [the standard used in the Seventh and the Eighth Circuits] standpoint is inapprop-riate for judging communications with lawyers…[."]). See also, Guerrero v. RJM Acquisitions, L.L.C., 499 F.3d 926 (9th Cir. 2007) (same).


30. 15 U.S.C. § 1692e(5). See, e.g., O’Connor v. Check Rite, LTD., 973 F.Supp. 1010, 1017-18 (D. Colo. 1997) (letter sent by an attorney not licensed in the state where the consumer resided was not threatening an action that could not be taken).

(D. N.M. 1995) (debt collector filing litigation in its own name on debts taken in a contingency fee arrangement violated New Mexico law and therefore the FDCPA); see supra note 59 and accompanying text.

61. O'Connor v. Check Rite, LTD., 2006) (the court relied on the plain language in the text (30-day period is not a grace period).

62. Id. at 144 (citations omitted).

63. See Nielsen v. Dickerson, 307 F.3d 623 (7th Cir. 2002). (whether debt collectors entitled to a defense in a case of clerical error is a fact question for a jury).

64. The Second, Eighth and Ninth Circuit Courts of Appeals have held that mistakes of law are not covered by the bona fide error defense. See Piplis v. Credit Bureau of Lockport Inc., 886 F.2d 22 (2d Cir. 1989); Picht v. Jon R. Hawks, Ltd., 236 F.3d 445 (8th Cir. 2001); Baker v. G.C. Servs. Corp., 677 F.2d 775 (9th Cir. 1982). The Seventh Circuit has ruled in accord with the Tenth. See Nielsen v. Dickerson, 307 F.3d 623 (7th Cir. 2002). (whether debt collectors entitled to a defense in a case of clerical error is a fact question for a jury).


66. Id. at 619.

67. Id. at 618 (citing White v. Goodman, 200 F.3d 1016 (7th Cir. 2000) (piercing the corporate veil required before there can be personal liability); Pettit v. Retrieval Masters Creditors Bureau Inc., 372 F.3d 1057 (7th Cir. 2000) (same).


70. Id. at 619. ("If only the Tenth Circuit had given me some guidance on this issue! But after having carefully considered the arguments, I must spurn Judge Posner in favor of my own colleague.").

71. Id. at 621-22 (citations omitted).

72. id. at 621.

73. id. at 622. Question of whether two shareholders were "debt collectors" was not resolved but motion for summary judgment was denied. This case was recently followed by the Sixth Circuit in Kistner v. The Law Offices of Michael P. Mangoldsky, L.L.C., 518 F.3d 433 (6th Cir. 2008).

ABOUT THE AUTHORS

Laurie A. Lucas is an assistant professor of legal studies at Oklahoma State University in Stillwater. Prior to joining the OSU faculty, she was an associate professor at Arkansas Tech University, where she received the 2005-06 Faculty Excellence Award for Research. Professor Lucas's research focuses on consumer finance law and business ethics, and she is a member of the American and Oklahoma Bar Associations. She graduated from the OU College of Law in 1988.

Alvin C. Harrell is a professor of law at OCU School of Law and president of the Home Savings and Loan Association of Oklahoma City. He is a co-author of a dozen books, including "The Law of Modern Payment Systems and Notes" (with Professor Fred H. Miller). Professor Harrell chairs the UCC Legislative Review Subcommittee of the Oklahoma Bar Association. He also chairs an ABA UCC Committee Task Force on State Certificate of Title Laws, and was the Reporter for UCOTA.
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