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The United States Supreme Court Narrows the Scope of the “Bona Fide Error” Defense in the Fair Debt Collection Practices Act

In *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, decided on April 21, 2010, the United States Supreme Court determined that a debt collector’s erroneous interpretation of the legal requirements of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692 *et seq.*, did not constitute a “bona fide error” under Section 1692k(c), which provides a defense to liability for debt collectors who can show that “the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.” 15 U.S.C. §1692k(c). Resolving a split in the federal circuit courts, the Court ruled that legal errors were beyond the purview of this defense.

The case arose out of a state court complaint filed by the respondent law firm (“Carlisle”) on behalf of its client, Countrywide Home Loans, Inc., against petitioner Karen Jerman. The complaint included a notice stating that unless Jerman disputed her mortgage debt in writing, it would be presumed to be valid. The District Court, acknowledging conflicting case law, held that this notice violated Section 1692g of the statute, but granted summary judgment to Carlisle on the ground that the violation was not intentional and resulted from a bona fide error. The Circuit Court of Appeals affirmed, ruling that mistakes of law were included within the scope of Section 1692k(c).

The Court’s opinion begins with the simple maxim that ignorance of the law is no excuse. It further reasoned that when Congress sought to provide a mistake of law defense, it did so explicitly. Because “legal reasoning is not a mechanical or strictly linear process,” it found the reference to procedures in Section 1692k(c) to imply that legal errors were excluded from the defense. Moreover, it held that the other exception to liability, which excuses “any act done or omitted in good faith in conformity with an advisory opinion of the [Federal Trade] Commission” (15 U.S.C. §1692k(e)), would be rendered meaningless if legal errors were included within the scope of Section 1692k(c). Finally, the Court noted when the FDCPA was passed, three federal courts of appeals had interpreted an identical provision in the Truth in Lending Act, 15 U.S.C. §1640(c), to refer only to clerical errors.

The Court was not impressed by Carlisle’s argument that, with legal errors excluded from Section 1692k(c), debt collection lawyers must choose between forcefully advocating on behalf of clients and exposing themselves to personal liability for misinterpretations of the Act. Among other things, it noted that Federal Rule of Civil Procedure 11 and various ethical rules imposed similar restraints on lawyer conduct.

The end result is that lawyers and others acting within the scope of the FDCPA must proceed extremely cautiously. The Court’s holding in *Jerman* makes clear that a defense based on a single decision or even a minority of cases may still result in liability under the Act.

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