

Are Attorneys Conducting Nonjudicial Foreclosures “Debt Collectors?” U.S. Supreme Court To Decide.

8 Jan 2019

On January 7, 2019, the U.S. Supreme Court will hear argument in [Obduskey v. McCarthy Holthus, LLP](#), in which Wells Fargo, through counsel, conducted a nonjudicial foreclosure on Obduskey’s home after he defaulted on a loan. The foreclosure notice did not request that Obduskey make any payments on the debt—it simply set forth the total amount due under the defaulted loan, gave Obduskey 30 days to dispute the amount or Wells Fargo would assume it to be valid, and stated that Wells Fargo’s foreclosure counsel “may be considered a debt collector attempting to collect a debt.” Obduskey responded to the foreclosure notice by disputing the debt. Normally, under the [Fair Debt Collection Practices Act](#), such a response by the debtor would trigger various safeguards under federal law, such as requiring the debt collector to obtain verification of the debt, or a copy of the underlying judgment, and mailing it to the debtor. Wells Fargo’s counsel disregarded the Act and moved forward with foreclosure. The district court ruled that the Act did not apply to nonjudicial foreclosure proceedings, and the Tenth Circuit, citing to a prior ruling by the Ninth Circuit, affirmed. However, the Fourth, Fifth, and Sixth Circuits, along with the Colorado Supreme Court, have held that the Act *does* apply to nonjudicial foreclosures. The U.S. Supreme Court is therefore primed to resolve the circuit split. A ruling is expected before the Court recesses in June.

For a full transcript of the arguments given before the U.S. Supreme Court in the case of *Obduskey v. McCarthy Holthus, LLP*, check out the Supreme Court [website](#).

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TAGGED: scotus, Nonjudicial Foreclosures, Debt Collectors, Fair Debt Collection Practices Act, *Obduskey v. McCarthy Holthus LLP*