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Jackson & Campbell, P.C.
2300 N Street, N.W.
Suite 300
Washington, D.C. 20037-1194
202.457.1600 (p)

SCOTUS Opinion: Entity Conducting Non-judicial Foreclosure Not A Debt Collector Under Fair Debt Collection Practices Act

20 Mar 2019

After Dennis Obduskey went into default on his mortgage that was secured against his home, the lender hired the law firm of McCarthy & Holthus, LLP to conduct a non-judicial foreclosure of the property. The firm sent Obduskey a notice of its intent to so act, and Obduskey requested that the firm provide him with verification of the debt as required under the Fair Debt Collection Practices Act. The firm did not respond, and Obduskey sued. The District Court dismissed the suit and the Tenth Circuit affirmed, holding that enforcing a security interest through non-judicial foreclosure did not come under the Act. The Court, in a unanimous opinion by Justice Breyer resolved a split among the circuits on this issue, affirmed. The Court noted that a debt collector under the Act specifically excluded "any person . . . in any business the principal purpose of which is the enforcement of security interests" from its ambit except for certain specified acts elsewhere in the Act, and that exclusion squarely met the firm's acts here. To read the exclusion otherwise would make it superfluous. Justice Sotomayor, in concurrence, mentioned that this was a close case that Congress may want to rectify if its intention were otherwise, and noted that a foreclosure firm may, in different circumstances, be considered a debt collector under the Act. A link to the opinion in *Obduskey v. McCarthy & Holthus, LLP* is here.

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TAGGED: scotus, Fair Debt Collection Practices Act, Obduskey v. McCarthy Holthus LLP, SCOTUS opinion, Non-judicial Foreclosure, Debt Collector