

Debt Buyers & North Carolina's Consumer Economic Protection Act

Last month John Oliver made headlines across the country when his TV show, Last Week Tonight, did an episode focusing on common practices by debt buyers. To illustrate how easy it is to buy consumer debt, Oliver formed a debt-buying company (“CARP”) after complying with legal requirements in Mississippi: paying \$50 to the State and appointing himself Chairman of the Board. The new company set up a very basic website and was quickly offered an opportunity to buy \$3 million of consumer medical debt for \$60,000, along with the names, addresses, and social security numbers of almost 9,000 alleged debtors. At the end of the episode Oliver— in his role as CARP Chairman-- forgave the debt by pushing a giant red button. You can watch the excitement, and perhaps learn something about debt-buying, by going to <https://www.youtube.com/watch?v=hxUAntt1z2c> .

Court systems across the country are currently struggling with large numbers of lawsuits filed by debt buyers. These cases present exactly the sort of challenging problems one would anticipate when third-party companies purchase thousands of delinquent accounts deemed uncollectable by the original creditors. Actions on many accounts are barred by applicable statutes of limitation. Detailed documentation of the original debt is frequently incomplete, sometimes consisting of no more than a single line notation in a list of accounts sold. Because debts are sold and re-sold, even the identity of the original creditor may be unclear, and plaintiffs may struggle to trace the chain of transactions necessary to demonstrate their ownership of the debt. Defendants in these lawsuits often vigorously challenge the existence and amount of the debt as well as their identification as the individual originally liable on the contract. In short, these are contract actions in which evidence establishing the existence of a contract, the terms of the contract, breach of the contract, and even the parties to the contract may be in short supply.

Notably, North Carolina has largely avoided the avalanche of issues experienced by other states thanks to the 2009 enactment of the Consumer Economic Protection Act (CEPA) (amending GS Ch. 58, Art. 70, which regulates collection agencies). Today’s blog post is offered simply to remind judicial officials of the most significant provisions of this law. Frequently these lawsuits are brought against defendants who appear pro se or fail to appear altogether and who thus fail to raise violation of the CEPA as a defense. Nevertheless, the statutes impose a substantial affirmative burden which must be satisfied by the plaintiff/debt buyer as a prerequisite to judgment in its favor.

What’s a debt buyer?

GS 58-70-15 defines a debt buyer as a person or company engaged in the business of buying “delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes.” A debt buyer is deemed a “collection agency” and is thus

required to comply with the statutory requirements set out in Art. 70.

At the pleading stage. . .

GS 58-70-150 requires that a complaint filed by a debt buyer against a consumer must be accompanied by the following additional materials:

- A copy of the contract “or other writing evidencing the original debt” signed by the defendant. If the action is for credit card debt and no such signed writing ever existed, a copy of a document “generated when the credit card was actually used” must be attached.
- Written documentation establishing the plaintiff’s ownership of the debt. If the plaintiff did not purchase the debt from the original creditor, each assignment of the debt must be documented, showing “an unbroken chain.” Each transfer of ownership must contain (1) the original account number, and (2) “clearly show the debtor’s name associated with that account number.”

No default or summary judgment for plaintiff/debt buyer unless. . .

A debt-buyer who satisfies the pleading requirements set out above has merely cleared the first hurdle imposed by the CEPA. GS 58-70-155 requires the plaintiff to produce specific additional evidence establishing the “amount and nature of the debt” as a prerequisite to entry of default or summary judgment for plaintiff. The statute specifies that “the only evidence sufficient” to do so are “properly authenticated business records” complying with GS 8C-1, Rule 803(6). The statute also identifies the required content of these records:

- The original account number
- The original creditor
- The amount of the original debt
- An itemization of charges and fees claimed to be owed
- The original charge-off balance (or if not charged-off, an explanation of how the balance was calculated)
- Date of last payment
- Amount of interest claimed and basis for such charge

Common problems

As explained above, debt buyers may encounter difficulty in producing the evidence required by the North Carolina statute. One common deficit is documentation of the original debt; the original contract signed by the debtor or signed credit card receipts are often not included in the “package” of delinquent accounts purchased by the debt buyer. (Such missing documents may well explain why the accounts were available for purchase at such a steep discount, of course.) Even if the debt buyer possesses copies of these vital documents, Rule 803(6) authentication requirements

must be met, and the plaintiff is unlikely to have personal knowledge of the original creditor's usual business and record-keeping practices. Plaintiffs also frequently struggle to supply the court with the required itemized evidence of charges and fees over the life of the account. A solitary credit card statement showing a balance owed as of a particular date falls woefully short of meeting the statutory requirements. Such evidence would not be sufficient in an action brought on the debt by the original creditor, and the evidentiary burden on a debt buyer is certainly no less.

Also note:

The pleading and evidentiary requirements I've focused on in this post are a relatively small part of CEPA's protections. GS Ch. 58 Art. 70 contains numerous detailed provisions related to required operating procedures and prohibited practices by debt collectors, including debt buyers. GS 58-70-115 specifically identifies several practices by debt buyers as unfair trade practices, including filing an action on the debt without "valid documentation" that the plaintiff owns the debt and "reasonable verification" of the amount of the debt. GS 58-70-115(5). In fact, the statute states that failure to comply with the pleading requirements discussed above is itself an unfair trade practice! GS 58-70-115(7). Even when a defendant fails to assert violation of the statute as a basis for affirmative relief, however, judicial officials should be aware that the statute specifically seeks to protect these consumer/defendants from judgments based on uncontested but insufficient evidence of liability.