1.5.1 Dramatic Growth in Debt Buying

Attorneys representing consumers in collection cases must consider the implications of the dramatic growth of the debt buying industry. A large portion of collection lawsuits are brought by a debt buyer, not the original creditor.

Debt buying is a big business. Testimony from the Office of the Comptroller of the Currency in 2013 revealed that the nineteen largest banks sold about $37 billion a year in debt to debt buyers. While some of these banks have stopped selling charged-off debt since then, volume remains high; the volume is much higher when one considers debt sales by all creditors, not just by these nineteen banks.

A 2013 Federal Trade Commission study cites industry estimates that 75% of all debt purchased involved credit card debt. The Comptroller of the Currency also found that the vast majority of debt sold by the nation’s nineteen largest banks was credit card debt, but other debt involved automobile, home equity, mortgage, and student loans. Other non-bank entities sell different types of debt, such as cell phone, utilities, and medical debt. Recent trends indicate that non-credit-card debt purchases—for example, medical, cell phone, utilities, health spas—have been growing faster than credit card debt purchases.

Debt buyers purchase debt for pennies on the dollar, but how many pennies on the dollar depends on the strength of the U.S. economy and the type of debt sold. The Federal Trade Commission analyzed 3400 debt portfolios sold in 2009 (shortly after the foreclosure crisis began) and found four cents on the dollar to be the average price paid. Prices for purchased debt, however, have climbed in recent years, in part because of an improved economy and better warranties accompanying debt sales. In 2013, the Office of the Comptroller of the Currency indicated that the price at which the nation’s nineteen largest banks sold debt ranged from five to ten cents on the dollar. A Consumer Financial Protection Bureau (CFPB) report found that in 2014 the average price for debt sold soon after charge-off (called “fresh debt”) was slightly over fifteen cents on the dollar.

The price that one debt buyer sells debt to another debt buyer is typically much lower than the price for fresh debt. A Government Accountability Office (GAO) study found that, during the economic downturn, the price to purchase debt more than three years old and/or previously placed with three collection agencies fell from between one and two-and-a-half cents on the dollar to less than half a cent to a cent on the dollar. Since then, the secondary debt has a higher price, probably around nine cents on the dollar.

There is even an online marketplace that sells lower-quality debt, which is typically debt over five years old that has already been sold to two or more debt buyers and often originating from payday loans in default. The CFPB has found that, although billions of dollars in face-value debt is sold this way, its price is extremely low, and one large portfolio had an asking price of one-tenth of a penny on the dollar.

The amount of debt purchased at low face value is only half the story. The other half is that the same debt is often then sold from one debt buyer to another, and even resold multiple times between debt buyers. A chain of ownership might have four, five, or even more links. A GAO report estimates that almost half of all credit card debts purchased by debt buyers are then resold to other debt buyers.

Debt sold multiple times may result in ambiguities as to which debt buyer owns the debt and make it more difficult for a debt buyer plaintiff to prove that it has an unbroken chain of ownership stretching from the original creditor. The increased separation between the entity suing on a debt and the original creditor means that the debt buyer plaintiff will also have difficulty obtaining documentation proving the underlying debt, as the debt buyer often receives little information about a debt when purchasing an account.

Footnotes


1.5.1 Dramatic Growth in Debt Buying

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