COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

Patricia S. Dodszuweit, Clerk
United States Court of Appeals
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

November 13, 2023

RE: Robert Petro v. Lundquist Consulting Inc.
Case Number: 22-3051

Dear Ms. Dodszuweit:

The Secretary of the Pennsylvania Department of Banking and Securities ("Department"), by and through the undersigned counsel, submits this amicus curiae letter brief in response to the Court's letter dated October 17, 2023.

The Court invited the Department to address a question concerning the application of the Pennsylvania Consumer Discount Company Act ("CDCA"), 7 P.S. §§ 6201–6219 to a specific factual situation. Both the question and Department's response are set forth below.[1]

I. Question Presented

Whether the CDCA applies to an entity not holding a license under the act where (a) it purchases or attempts to collect on charged-off consumer loan accounts of debtors in bankruptcy that consist in whole or in part of unpaid "interest or discount" and "service charge[s]" included in a contract with a CDCA licensee, 7 P.S. § 6202; and (b) "the prior written approval of the Secretary of Banking" was never obtained to purchase said accounts from a CDCA licensee. 7 P.S. § 6214.I?

II. Answer

The CDCA does not apply in this situation.

The "central purpose" of the CDCA "is to protect borrowers 'against extortionate interest charges' for 'loans of comparatively small amounts, since the business of making such loans profoundly affects the social life of the community.'" *Cash Am. Net of Nev., LLC v. Dep't of*

[1] This letter brief reflects the Department's official position on the issues described herein. If this letter brief conflicts or is otherwise inconsistent with any prior statements made by the Department, this brief controls.

Banking, 978 A.2d 1028, 1036 (Pa. Commw. Ct. 2009) (quoting *Equitable Credit & Discount Co. v. Geier*, 21 A.2d 53, 57, 58 (Pa. 1941)). Section 6203.A of the CDCA "impose[s] restrictions on unlicensed entities 'in the business of negotiating or making loans or advances of money on credit, in the amount or value of twenty-five-thousand dollars ($25,000) or less.'" *Lutz v. Portfolio Recovery Assocs., LLC*, 49 F.4th 323, 329 (3d Cir. 2022) (quoting 7 P.S. § 6203.A). "Those unlicensed entities may not 'charge, collect, contract for[,] or receive interest' at an annual interest rate above 6%." *Id*. (quoting 7 P.S. § 6203.A) (alteration in original). "[T]he term 'negotiate' as used in § 6203.A means 'to bargain.'" *Id*. at 633. Thus, the plain language of section 6203.A makes clear that the restrictions in the statute only apply to entities "in the business of negotiating or bargaining for the initial terms of loans or advances." *Id*. at 634.

Here, an unlicensed entity that purchases or attempts to collect on charged-off consumer loan accounts of debtors in bankruptcy is not "in the business of negotiating or making loans" within the meaning of section 6203.A. "Charge-off" means "[t]o treat (an account receivable) as a loss or expense because payment is unlikely." Black's Law Dictionary (11th ed. 2019). A charged-off account is no longer a loan. *See Cooper v. Pressler & Pressler, LLP*, 912 F. Supp. 2d 178, 181 n.3 (D.N.J. 2012) (defining "charged off" to mean that the creditor "ceased its own efforts to bring the account current, closed the account, and referred it for collection"). As a result, "it is not reasonable to infer that an entity that purchases charged-off debt would also be in the business of negotiating or bargaining for the initial terms of loans or advances." *Lutz*, 49 F.4th at 334. Rather, the entity is in the business of collecting debt and debt collectors are not regulated by the Department.[2] For these reasons, the CDCA does not apply here. *See Zirpoli v. Midland Funding, LLC*, 48 F.4th 136, 143 (3d Cir. 2022) ("Midland's purchase of a charged-off loan does not constitute extending loans or negotiating credit as the CDCA would prohibit.").[3]

In addition, an unlicensed entity that purchases charged-off accounts from a CDCA licensee does not need to obtain prior written approval from the Department. Section 6214.I provides: "A licensee may not sell contracts to a person or corporation not holding a license under this act without the prior written approval of the Secretary of Banking." 7 P.S. § 6214.I. Under controlling precedent, the Department "should not interpret statutory words in isolation, but must read them with reference to the context in which they appear." *Roethlein v. Portnoff Law Assocs*., 81 A.3d 816, 822 (Pa. 2013). When read in its entirety, it is clear that the CDCA is a consumer

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[2] As an administrative agency, the Department "can only exercise those powers which have been conferred upon it by the Legislature in clear and unmistakable language." *Commonwealth, Human Relations Com. v. Transit Cas. Ins. Co.*, 387 A.2d 58, 62 (Pa. 1978). Here, the legislature has not provided the Department with any statutory authority to regulate debt collectors or debt collection.

[3] While the Pennsylvania Superior Court has held that "the Third Circuit's interpretation of Pennsylvania state law" is not binding on state courts, the Department agrees with this Court's interpretation of the CDCA in *Lutz* and *Zirpoli*. *Meyer v. Gwynedd Dev. Grp., Inc*., 756 A.2d 67, 69 (Pa. Super. Ct. 2000).

loan statute and not a debt collection statute. *See Cash Am. supra*. Within the context of this broader statutory framework, the restriction on the sale of contracts in section 6214.I is properly understood as applying to CDCA loan contracts. The restriction does not apply to contracts relating to charged-off consumer loan accounts because charged-off accounts are debt and not loans subject to the CDCA. *See Zirpoli*, 48 F.4th at 143 ("This assignment falls outside of the CDCA's purview as it is a charged-off loan—i.e., no longer performing as a loan.").

Indeed, if section 6214.I were to apply in this situation the result would be far-reaching and illogical. In practice, the Department would be required to review every sale of debt from a CDCA licensee to a debt buyer.[4] But the CDCA does not provide the Department with any criteria, guidance, or direction for performing such a review. Nor does any other provision of the CDCA, or other statute more generally, confer the Department with authority to regulate debt collectors in this or any other manner. "[S]tatutory provisions cannot be interpreted in a vacuum[,]" and the Department does not interpret section 6214.I as requiring the Department to perform a function when the CDCA does not tell the Department how to perform the function and the Department has absolutely no prior experience or expertise in performing that same function. *Iacurci v. Cnty. of Allegheny*, 115 A.3d 913, 916 (Pa. Commw. Ct. 2015). *See Raynor v. D'Annunzio*, 243 A.3d 41, 55 (Pa. 2020) ("the rules of statutory construction indicate we must presume the legislature does not intend a result that is absurd, impossible of execution or unreasonable") (citing 1 Pa.C.S. § 1922(1)).

Finally, an unlicensed entity may also purchase or seek to collect on charged-off consumer loan accounts when the account balances consist of unpaid "charges" that were originally authorized by the CDCA. The CDCA's implementing regulations state, in part, that "[t]he privilege of collecting the charges authorized by the act may not be transferred to an unlicensed purchaser." 10 Pa. Code § 41.6(a). The CDCA defines "charges" as "all interest or discount and the service charge which a licensee is authorized to collect by the provisions of this act." 7 P.S. § 6202. Within the statutory framework of the CDCA as a whole, the language in section 41.6(a) should be understood as applying to loan transactions that are otherwise subject to the CDCA. In other words, if a CDCA licensee transfers a loan to an unlicensed entity with or without approval from the Department, then the unlicensed entity may not seek to collect the CDCA authorized charges as payment from the borrower. The language in section 41.6(a) does not apply to charged-off consumer loan accounts purchased by an unlicensed entity because charged-off accounts are debt – i.e., a single numerical figure – and there are no longer any CDCA authorized charges that accrue for the buyer to collect as payment.

III. Conclusion

For the foregoing reasons, the Department's position is that the CDCA does not apply to an entity not holding a license under the act where (a) it purchases or attempts to collect on

[4] While section 6214.I restricts sales of contracts from licensees to unlicensed debt buyers, the Department is not aware of any debt buyers that possess a license issued by the Department.

charged-off consumer loan accounts of debtors in bankruptcy that consist in whole or in part of unpaid "interest or discount" and "service charge[s]" included in a contract with a CDCA licensee, 7 P.S. § 6202; and (b) "the prior written approval of the Secretary of Banking" was never obtained to purchase said accounts from a CDCA licensee pursuant to 7 P.S. § 6214.I.

Respectfully submitted,

For the Commonwealth of Pennsylvania
Department of Banking and Securities,
Office of Chief Counsel

/s/ Alexander T. Korn
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