IN THE SUPREME COURT OF THE UNITED STATES

_____

No. A-_____

_____

CROWN ASSET MANAGEMENT LLC, APPLICANT

v.

MARY BARBATO

_____

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

_____

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Crown Asset Management LLC respectfully requests a 60-day extension of time, to and including July 22, 2019, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case. The Third Circuit entered its judgment on February 22, 2019. App., infra, 1a-21a. Unless extended, the time for filing a petition for a writ of certiorari will expire on May 23, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. This case presents a question of statutory interpretation under the Fair Debt Collection Practices Act (FDCPA). Applicant is a purchaser of charged-off receivables -- i.e., accounts on which a consumer has stopped paying the debt owed. Applicant does not itself engage in any debt-collection activity; instead, it refers some of the acquired debts to third-party servicers,

which then take their own steps to collect the debt. App., infra, 3a-4a.

Respondent obtained a consumer credit card, but did not pay it off in full. The credit-card company charged off the unpaid balance, and applicant purchased the charged-off debt. Applicant subsequently referred the debt to a third party, Turning Point Capital, Inc., for debt collection. App., infra, 4a. The contract between applicant and Turning Point expressly stated that Turning Point was an independent contractor, not an employee of applicant, and that Turning Point agreed to comply with all applicable laws, including the FDCPA, while performing its contractual obligations. C.A. App. 104-106. Turning Point sent respondent a letter and left her two voicemail messages in an effort to collect the debt. Applicant never communicated with respondent and did not supervise Turning Point's activities. App., infra, 4a-5a.

2. In the action against applicant, respondent asserted that applicant could be held liable as a "debt collector" under the FDCPA on the basis of Turning Point's communications with her. The FDCPA defines a "debt collector" as any person who falls into one of three categories. First, the FDCPA reaches any person who is engaged in "any business the principal purpose of which is the collection of any debts." 15 U.S.C. 1692a(6). Second, the FDCPA reaches any person who "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." Ibid. And third, the FDCPA reaches "any creditor who, in the process of collecting his own debts, uses any name

other than his own which would indicate that a third person is collecting or attempting to collect such debts." Ibid.

Applicant and respondent filed cross-motions for summary judgment. Relying on then-existing Third Circuit precedent, respondent argued that applicant was a "debt collector" because it purchased debts when they were in default, and because its "principal purpose" was debt collection inasmuch as it referred those debts to third parties for collection. Applicant argued that, regardless of the default status of the debt, it was not a "debt collector" under the "principal purpose" definition because it did not interact with respondent or other consumers, and because its principal purpose was in fact debt acquisition and not debt collection. App., infra, 5a-6a.

The district court agreed with respondent's reading of the FDCPA. It concluded that applicant's principal purpose was to acquire accounts in default for the purpose of collection -- despite the fact that third parties, not applicant, in fact collected the debt. It denied applicant's motion for summary judgment on that basis. The district court also denied respondent's motion for summary judgment, however, on the ground that applicant could be held vicariously liable for Turning Point's conduct only if Turning Point was also a "debt collector," something respondent had failed to establish. The district court allowed the parties to file renewed motions for summary judgment to address that issue. App., infra, 6a-7a.

This Court then issued its decision in Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718 (2017), in which it held that

a party that regularly purchased defaulted debt for its own account and then itself attempted to collect that debt was not a "debt collector" subject to the FDCPA. In light of that decision, applicant filed a motion for reconsideration of the district court's ruling that it was a "debt collector." The district court denied the motion on the ground that Henson applied only to the "regularly collects" definition of "debt collector" and thus did not affect the district court's conclusion that applicant was a "debt collector" under the "principal purpose" definition. App., infra, 7a-8a.

The district court nonetheless certified the case for interlocutory appeal on the ground that it presented "a controlling question of law": namely "whether Henson requires a finding that [applicant] is not a debt collector in this case when it was a third-party buyer of the debt, and the debt was in default at the time it purchased it." App., infra, 8a (citation omitted).

3. The court of appeals affirmed. App., infra, 1a-21a. It cited pre-Henson circuit precedent that had deemed buyers of defaulted debt to be debt collectors under both the "regularly collects" and "principal purpose" definitions, even if such entities referred the debt to third parties for actual collection. Id. at 12a-14a. In the pre-Henson cases, the court had based that conclusion on the premise that under the FDCPA a purchaser of defaulted debt must be a debt collector, because it did not qualify as a creditor. See Pollice v. National Tax Funding, L.P., 225 F.3d 379, 403-404 (3d Cir. 2000). But the Court rejected that

premise in Henson, explaining that "a defaulted debt purchaser" could in fact "qualify as a creditor." 137 S. Ct. at 1724.

The court of appeals acknowledged that Henson had abrogated its precedent with respect to the "regularly collects" definition of "debt collector." App., infra, 13a. But the court reasoned that the rationale of Henson had no bearing on the circuit precedent to the extent it was based on the "principal purpose" definition, rejecting applicant's argument that Henson had undermined "the very foundation" of that precedent. Id. at 12a-13a. Accordingly, the court of appeals applied the pre-Henson circuit precedent to conclude that applicant was a "debt collector" under the "principal purpose" definition. Id. at 14a.

The court of appeals took the view that the plain text of the "principal purpose" definition covers entities that have as their most important goal "the collection of any debts," which the court construed to include not just "overt acts of collection," but also the broader category of "that which is collected" (i.e., acquired debts), regardless of who does the collecting or to whom the debt is owed. App., infra, 15a. In that way, the court of appeals explained, the use of the noun "collection" in the "principal purpose" definition "sweeps more broadly" than the use of the verb "to collect" in the "regularly collects" definition: the noun "collection" naturally includes indirect collection, while the verb "to collect" requires qualification to make clear that "indirect[]" debt collection is covered. Id. at 16a-17a. Based on that reasoning, the court of appeals declined to give weight to the fact that the "regularly collects" definition includes the

term "indirectly," whereas the "principal purpose" definition does not. Id. at 17a.

The court of appeals also rejected applicant's argument that the legislative history shows that Congress did not intend for the FDCPA to cover passive debt buyers that do not interact with consumers. The court of appeals reasoned that, even assuming the FDCPA was meant to regulate only abusive interactions with consumers, that purpose is served by treating applicant as a debt collector because it has "every incentive to hire the most effective repo man" and, unlike a creditor, no incentive to "cultivate good will" with consumers. App., infra, 18a.

Having concluded that applicant was a debt collector, the court of appeals made two observations about the ultimate question of liability. First, the court of appeals noted that vicarious liability may be established even when a principal did not exercise actual control over an agent. Second, disagreeing with the district court, the court of appeals suggested that a "debt collector" can be vicariously liable for its agent's actions even if the agent is not itself a "debt collector" under the FDCPA. App., infra, 20a.

4. Counsel for applicant respectfully requests a 60-day extension of time, to and including July 22, 2019, within which to file a petition for a writ of certiorari. The court of appeals' decision in this case presents complex issues concerning the proper interpretation of the FDCPA. The undersigned counsel did not represent applicant below and needs additional time to review the record and opinions below. In addition, the undersigned counsel

is currently preparing petitions for writs of certiorari in several other cases. Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

KANNON K. SHANMUGAM
Counsel of Record
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300

May 1, 2019