3/19/25

NO. 24-1165

In the
Supreme Court of the United States

ABRAHAM WINTER,
Petitioner,
v.

LABORATORY CORPORATION OF AMERICA,
LCA COLLECTIONS,
Respondents.

On Petition for Writ of Certiorari
To the Supreme Court of the State of New York
Appellate Division, First Judicial Department

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This is a Fair Debt Collection Practices Act case concerning a debt that is invalid and was collected under a false name, two practices expressly forbidden by the Act.

The Appellate Division held that defendant is a creditor under the Act's definition despite the fact that no debt is owed, an erroneous interpretation that has been rejected by the Sixth Circuit. They further held that defendant is not using a 'name other than his own', contradicting the record, using a test derived from FTC opinion, splitting from the Sixth and Seventh Circuits, who reject the FTC's authority over the Act, and various other courts whose tests conform to statute. Congress expressly forbade the FTC from regulating the Act. Lastly, the court applied a version of FDCPA's 'principal purpose' test that depends on an unsupportable reading of the statute.

In *Henson v. Santander Consumer USA, Inc., 137 S. Ct. 810 (2017)*, this Court decided 'who qualifies as a debt collector' with respect to prong two of the Act's debt collector definition. This case offers the chance to do the same for prong one. The questions presented are:

1. Is an entity a creditor under FDCPA if they are not owed a debt?
2. Should the test for the 'name other than his own' exception follow the FTC's non-authoritative opinion, or the text of the statute?
3. Does 'business' in the FDCPA's definition of debt collector mean 'commercial enterprise' despite the inherent surplusage? If not, how does the 'principal purpose' test change.

PARTIES TO THE PROCEEDING

Petitioner is Abraham Winter, the appellant below and plaintiff in the trial court.

Respondent is Laboratory Corporation of America, the respondent below and defendant in the trial court.

LCA Collections is an alias used by Laboratory Corporation of America for collections activity.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a natural person, not a corporation.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Abraham Winter v Laboratory Corporation of America, LCA Collections*, Index No. 152520/2021 (N.Y. Supreme Court) (decision and order granting defendant's motion to dismiss filed Mar. 20, 2023)
- *Abraham Winter v Laboratory Corporation of America, LCA Collections*, Case No. 2023-02167 (N.Y. Supreme Court, Appellate Division, First Judicial Department) (decision and order affirming the trial court's order granting motion to dismiss filed Mar. 19, 2024)

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The N.Y. Supreme Court's decision is reported at Winter v. Lab. Corp. of Am., 2023 N.Y. Slip Op. 30726 (N.Y. Sup. Ct. 2023) and reproduced at App-5.

The New York Appellate Division's decision is reported at Winter v. Lab. Corp. of Am., 208 N.Y.S.3d 62 (N.Y. App. Div. 2024) and reproduced at App-1.

The New York Court of Appeals' order denying plaintiff's motion for leave is reproduced at App-22.

JURISDICTION

The New York Court of Appeals' order denying leave to appeal the case's dismissal was entered on Dec. 19, 2024.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257, which provides that '[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had' may be reviewed by this Court.

This Court may review intermediate state court decisions where the state court of last resort has denied review, as per Stratton v. Stratton, 239 U.S. 55 (1915).

STATUTORY PROVISIONS INVOLVED

This case centers on two definitions provided by FDCPA at 15 U.S.C. § 1692a.

Creditor:

> The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of

> facilitating collection of such debt for another. (15 U.S.C. § 1692a(4))

As well as prong one of the debt collector definition:

> The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts (15 U.S.C. § 1692a(6))

And lastly, the 'name other than his own' exception in the same section, which expressly makes creditors into debt collectors for the purposes of the Act if they use an alias:

> the term includes 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. (15 U.S.C. § 1692a(6))

With respect to the 'name other than his own' clause, some courts, including the Second Circuit in *Maguire v. Citicorp Retail Services, Inc., 147 F.3d 232 (2d Cir. 1998)*, treat as authoritative a non-binding FTC opinion published in the Federal Register (discussed below in Reasons, II).

Note that FTC never had regulatory authority over the statute. At 15 U.S.C. § 1692l(d), the Act grants regulatory authority to CFPB. Before it was amended by Dodd-Frank in 2010, Congress expressly forbade FTC oversight of the Act. The original text of 1692l(d) was:

> Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to

the collection of debts by debt collectors as defined in this title. (Pub. L. 95-109)

STATEMENT OF THE CASE

A. Factual background

Beginning around August 2020, defendant Laboratory Corporation of America ('LabCorp') sent to plaintiff various dunning seeking to collect debts alleged in two distinct invoices.

In September, these letters switched from 'LabCorp' letterhead to bright red 'LCA Collections' letterhead. The practice of collecting under a false name exposes even legitimate creditors to liability under FDCPA: 'the term includes any creditor who ... uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts' (15 U.S.C. § 1692a(6)).

In November, plaintiff disputed the invoices on LabCorp's website. LabCorp did not validate one of the invoices. For the other, LabCorp provided an unsigned order form.

Plaintiff told LabCorp he did not send them this order form. (And LabCorp does not allege that he did). LabCorp has not produced the 'agreement creating the debt' (15 U.S.C. § 1692f(1)) in the language of the statute.

As it was clear LabCorp could not validate the debts, in December, plaintiff sent them a demand letter asking them to cease collection on the invoices. They did not respond.

In February 2021, plaintiff sued in the N.Y. State Supreme Court.

In March and April, defendant sent these invoices to a external collections company, CCS, which is relevant to the state law defamation cause of action but not relevant to the FDCPA questions at issue in this Court.

In October 2021, plaintiff filed an amended complaint which included defendant's communication to the collection agency in the allegations.

B. Proceedings Below

Plaintiff sued, alleging that in seeking to collect a debt that does not exist, defendant had committed "[t]he false representation of the character, amount, or legal status of any debt" (15 U.S.C. § 1692e(2)(a)), as well as "collection of any amount ... unless such amount is expressly authorized by the agreement creating the debt" (15 U.S.C. § 1692f(1)).

Plaintiff's amended complaint was dismissed by the N.Y. Supreme Court's order of Mar. 20, 2023, holding that defendant LabCorp is a creditor (at App-19) despite the factual allegation, supported by clear evidence, that defendant is not owed a debt. The court cites New York law holding that factual allegations at the motion to dismiss stage must be taken 'as true and provide[d] the benefit of every possible inference' (App-11).

The order further applies a test saying that 'LCA Collections', the false name used by defendant, is actually an acronym for LabCorp (at App-20), and is therefore not a false name. The test is from *Rivero v Laboratory Corporation of America, et al., 13 CV 4793 [Dist Ct, ED NY, Feb. 14, 2015])*, which purports to get it from *Maguire v. Citicorp Retail Services, Inc., 147 F.3d 232 (2d Cir. 1998)*,

although E.D.N.Y.'s test in *Rivero* differs significantly from the Second Circuit's in *Maguire*.

The N.Y. App. Div. affirmed on Mar. 19, 2024.

The N.Y. Court of Appeals denied leave to appeal on Dec. 19, 2024.

REASONS FOR GRANTING THE PETITION

I. The Appellate Division's holding that creditors include entities who are not owed a debt conflicts with other circuits and the text of the Act

As the case was disposed at the motion to dismiss stage, Plaintiff's factual allegations may be taken as true for the purposes of legal analysis. The New York Supreme Court expressly acknowledged this standard (Order of Mar. 13, 2023, at App-10), and noted the allegation that 'there is no debt here' (id., App-8), yet still treated Defendant as 'a creditor' (id., App-19). The First Department affirmed.

This holding strips an important protection from consumers targeted by false collection actions.

Other courts treat this situation differently. With respect to FDCPA, the Sixth Circuit explains the importance of preventing false collection actions in *Bridge v. Ocwen Federal Bank, FSB, 681 F.3d 355 (6th Cir. 2012)*:

> The statutory language itself confirms that Congress intended to provide protection for those persons being dunned in error. *Schroyer v. Frankel, 197 F.3d 1170, 1174 (6th Cir.1999)* ("When interpreting the FDCPA, we begin with the language of the statute itself."). ... Throughout the FDCPA coverage is based upon actual or merely alleged debt. Thus, a debt

> holder or servicer is a debt collector when it engages in collection activities on a debt that is not, as it turns out, actually owed.

Herman v. Egea (In re Egea), 236 B.R. 734 (Bankr. D. Kan. 1999), interpreting similar language in the bankruptcy code, writes:

> "creditor to whom such debt is owed" means literally that the creditor *is owed* money by the debtor

N.Y. App. Div.'s holding that an FDCPA creditor can include an entity who is not owed a debt endangers consumers and should be addressed by this Court.

II. The Appellate Division's test for 'name other than his own' splits from other states and circuits, and flows from an agency opinion expressly restricted by Congress

The courts below apply a test from *Rivero v Laboratory Corporation of America, et al., 13 CV 4793 [Dist Ct, ED NY, Feb. 14, 2015])*, which Rivero took from *Maguire v. Citicorp Retail Services, Inc., 147 F.3d 232 (2d Cir. 1998)*. Here the trial court cites *Rivero*:

> The FTC Official Staff Commentary excludes a creditor's collection division from the definition of debt collector if the "creditor's correspondence is clearly labeled as being from the 'collection unit of the (creditor's name).'" *53 Fed. Reg. 50097, 50102.* (from Order at App-20)

Note that the test *Maguire* develops from FTC commentary differs from the statute in analyzing the contents of the document rather than merely the name.

Note also that FTC was not intended by Congress to regulate the Act (see 'Statutory provisions' above).

The test *Rivero* adapts from *Maguire* further moves the goalposts, creating a strange acronym test that ignores both the statute's text and the FTC commentary:

> The past due notices ... are clearly marked "LCA COLLECTIONS." "LCA," it cannot reasonably be disputed, is an acronym for Laboratory Corporation of America. (trial court citing *Rivero* at App-20).

This is bad reasoning. The name used here is 'LCA COLLECTIONS', not 'LCA'. 'LCA COLLECTIONS' is not an acryonm for any legal name of the Laboratory Corporation of America unless they have a name that is 15 words long.

Other courts split from the Second Circuit. The Sixth Circuit, in *Lewis v. ACB Business Services, Inc., 135 F.3d 389 (6th Cir. 1998)*, says generally of the FTC and FDCPA:

> Additionally, we are unpersuaded by Lewis's argument that the Federal Trade Commission's statement on § 1692c(c) is dispositive. Initially we note the limited precedential value of FTC pronouncements regarding the FDCPA in light of the restricted scope of its power under the Act.

The Southern District of West Virginia, in *Dickenson v. Townside T.V., 770 F. Supp. 1122 (S.D.W. Va. 1990)*, provides a 'consistent name' test:

> This language of the statute, along with its legislative history and the commentary of the Federal Trade Commission [hereinafter "FTC"], leads this Court to conclude that a creditor may use any

> established name under which it is known, to collect its debts from a particular debtor as long it has consistently dealt with such debtor since the beginning of the credit relationship at issue under such name.

Dickenson is widely cited by state and federal courts, including *Leggett v. Louis Capra & Assocs., LLC, No. 13 C 05847 (N.D. Ill. Apr. 10, 2015)*, *Morgan v. Bank of Am., No. 38115-3-III (Wash. Ct. App. May 3, 2022)*, and *Mahon v. Anesthesia Bus. Consultants, LLC, Civil Action No.: 15-1227 (RC) (D.D.C. Apr. 13, 2016)*.

Dickenson's 'consistent name' test is outcome-determinative in the instant case, as first, Defendant did not use the alias 'LCA Collections' at the inception of the credit relationship. And second, as Plaintiff did not buy anything from Defendant or owe them any money, there was no credit relationship.

III. The Appellate Division's 'principal purpose' holding fails as a matter of plain statutory interpretation and incapacitates the statute

N.Y. App. Div. (at App-2) writes 'Defendant showed that its principal purpose is not the collection of debts'.

This is referring to language in prong one of *15 U.S.C. § 1692a(6)*, 'any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts'.

The First Department erred in requiring that the 'principal purpose' of a corporation must be collections in order to satisfy the definition. In the statute, 'principal

purpose' attaches to 'business'. And 'business' cannot, under norms of statutory interpretation, refer to Defendant.

The word 'business' is ambiguous. From Merriam-Webster, it can mean a commercial enterprise (1b), 'dealings or transactions' (1c), 'task or objective' (2b), or 'affair, matter' (3). Or a bowel movement, 'used especially of pets' (9).

This ambiguity vanishes in the statute, however, because 'person' undeniably includes corporate entities. Therefore, under the canon of surplusage, 'business' cannot also mean a corporate entity. Two words cannot do the same job in a sentence.

In the present case, and in the case of most dunning letters, the 'business' (affair or matter) for which the mails are being used is the collection of a debt. The principal purpose of a dunning letter is debt collection.

Note also that 'business' in statutory contexts tends to mean affair or activity rather than corporate entity. Take for example the Delaware General Corporation Law *Del. Code tit. 8 § 101*, where the word 'corporation' means an entity and the word 'business' is exclusively used for activity.

Take also the phrase 'all those with business before the court are admonished to draw near'. That phrase is not telling litigants to show the court their LLCs.

Lastly, treating 'business' as 'entity' in the text opens a loophole where any debt collector can merge with a larger, unrelated business and produce the excuse that debt collection is a minority of their revenue.

The First Department's reading of prong one is not supportable by the text.

IV. This case is a good vehicle because this fact pattern, while common, evades review

When faced with legal action, both Defendant and the secondary collection agency CCS paused collections. This pattern tends to keep the dark matter of deceptive practices out of the courts, especially at the appellate level.

These small dollar collection violations are legion, but one would have to be crazy to brave the appellate process over one of them.

The factual allegations are supported by clear documentary evidence and, as this case arises on appeal from a motion to dismiss, the facts are not in dispute.

V. This is important because meritless collections use the courts as a bludgeon against unrepresented litigants

'Debt collection actions are extremely common in New York. By one estimate, they comprise approximately a quarter of all lawsuits in the State's court system.' (*Upsolve, Inc. v. James, 604 F. Supp. 3d 97 (S.D.N.Y. 2022)*). 'Many of these lawsuits are viewed as "clearly meritless," where the defendants sued do not actually owe the amount claimed, or any amount at all.' (*id.*). '[E]veryone agrees the vast majority of New Yorkers default when faced with debt collection actions. Plaintiffs provide estimates of the default rate that range from over 70% to up to 90%.' (*id.*).

The courts are being abused by private actors seeking to take advantage of the public. Enforcing valid debts is one thing, but collecting spurious debts through default subverts the power of the courts to assist in crimes. FDCPA is a bulwark protecting consumers from deceptive

practices, but only if supported by clear law; and the law is currently muddied, requiring the intervention of this Court.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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