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FDCPA Did Not Apply to Auto Repossessor's Demand for Property Retrieval Fee, Seventh Circuit Rules

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The U.S. Court of Appeals for the Seventh Circuit recently ruled that an auto repossession company's alleged demand that a debtor pay an administrative property retrieval fee to retrieve personal property left in her repossessed car was not subject to the Fair Debt Collection Practices Act (FDCPA).

Issues surrounding the disposition of and charges related to personal property left in a repossessed vehicle are ubiquitous. Significantly, the Seventh Circuit has indicated that these issues do not necessarily involve the application of federal and state debt collection laws. But it is important for creditors and collectors to note that the court's analysis is at odds with that of the Consumer Financial Protection Bureau (CFPB).

In *Duncan v. Asset Recovery Specialists, Inc.*, the plaintiff claimed that the repossessor's demand for a $100 retrieval fee represented an unlawful demand for loan repayment under the FDCPA. The district court granted summary judgment for the repossessor, concluding that (1) the plaintiff had failed to allege an FDCPA claim because she had not produced any evidence refuting the repossessor's showing that neither the repossessor nor the lender had attempted to collect a $100 payment from her; and (2) even accepting the plaintiff's contention that $100 was demanded of her, she had not produced any evidence casting doubt on the repossessor's position that the $100 fee was an administrative handling fee owed to the repossessor rather than a demand for repayment on her auto loan. (The repossessor also produced documentary evidence indicating that the lender had agreed to pay the fee.)

The Seventh Circuit affirmed the district court's entry of summary judgment on the repossessor's behalf, finding that the record did not contain any evidence beyond the plaintiff's "own say so" that the repossessor had demanded the $100 fee. Instead, it found that the documentary evidence showed that the fee was "an administrative expense that [the repossessor] sought to recover for its role in

processing requests to redeem personal property from repossessed vehicles" and that the fee would be paid by the lender. The Seventh Circuit concluded that "there is no way on this record to view the handling fee as some sort of masked demand for a principal payment to [the lender]."

The Seventh Circuit also concluded that even if the court accepted the plaintiff's claim that the repossessor had demanded a $100 payment to retrieve her property, she needed to go further on summary judgment and create a genuine issue of fact as to whether the demand was on the lender's behalf. In support of its conclusion, the Seventh Circuit cited its own 1997 decision that held that a repossessor does not act on a creditor's behalf or otherwise play the role of debt collector by charging an administrative fee for its own services.

It should be noted that CFPB examiners have found that a finance company engages in an unfair practice when a repossession company that has repossessed a vehicle on the finance company's behalf refuses to return personal property found in the repossessed vehicle until the consumer has paid a fee—regardless of what the consumer agreed to in the contract. Even when the consumer's agreement and state law provided support for lawfully charging the fee, CFPB examiners concluded there were no circumstances in which it was lawful for the repossessor to refuse to return property until after the fee was paid, instead of simply adding the fee to the borrower's loan balance. The Seventh Circuit's decision seems to be contrary to the premise behind the CFPB's position, since the decision treats the fee charged by the repossession company as being separate from any debt owed to a finance company.

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