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Delaware's No-Usury-Cap Rule Deemed Unenforceable as Contrary to New York Public Policy in FDCPA Class Action

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The Southern District of New York recently refused to enforce Delaware's no-usury-cap rule in a long-running ***Fair Debt Collection Practices Act ("FDCPA")*** class action, concluding that the rule violates New York public policy. See ***Madden v. Midland Funding, LLC*****,** 2017 WL 758518 (S.D.N.Y. Feb. 27, 2017). In *Madden*, the plaintiff claimed that the defendants charged her an interest rate in excess of the limit imposed by New York law, triggering a violation of the FDCPA. The case has a long history.

On remand to the district court, the defendants moved for summary judgment, asserting that (1) as a result of a contractual choice-of-law provision, Delaware law, which does not cap interest rates, applied to the plaintiff's debt, and (2) because New York law did not apply, the plaintiff's FDCPA claim—predicated on the alleged violation of New York law—must fail. The court, however, ruled that the application of Delaware law would violate an "important and longstanding" New York public policy of capping interest charges, as evidenced by New York's criminalization of knowingly charging or collecting interest at a rate above 25% per annum. Because New York rather than Delaware law governed, the plaintiff's FDCPA claim survived summary judgment.

The court also addressed the plaintiff's motion for class certification, which sought to certify a proposed class of all New York residents "who were sent a letter by Defendants attempting to collect interest in excess of 25% per annum," notwithstanding the existence of different finance agreements and attendant choice-of-law provisions among members of the proposed class. When addressing commonality as to the proposed class, the court reasoned that not every usury cap higher than New York's would necessarily violate New York public policy, and thus that the proposed class could not include individuals whose agreement applied enforceable usury law. For instance, the court noted that a state cap allowing interest to be charged at 25.1%—just 0.1% higher than New York's criminal usury cap—would not necessarily violate New York public policy. In such a scenario, the putative class member would not have questions of law and fact in common with the named plaintiff, whose agreement was governed by Delaware's unenforceable law.

In light of its analysis of the parties' choice-of-law provision, the court certified a narrower class than the plaintiff had proposed. The court ruled that the individuals the plaintiff could represent were those

(1) from whom the defendants attempted to collect interest in excess of 25% per annum, and (2) whose debt arrangement was either governed by New York law or by the law of a state that, like Delaware, does not have a usury limit, such that New York's public policy would require application of New York law instead. After the decision, it remains to be seen whether a choice-of-law provision specifying an interest rate cap higher than the New York rate is enforceable against New York residents, and if so, up to what rate.

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