

NCO, Attys Can't Duck Suit Over Debt-Collection Practices

By **Andrew Scurria**

Law360, New York (September 05, 2013, 3:19 PM ET) -- A New York federal judge on Wednesday trimmed a consumer class action targeting NCO Financial Inc.'s debt collection practices, but said the lead plaintiff offered a cogent case that the company and its attorneys illegally called and sued him when he owed nothing.

Plaintiff James LaCourte is suing NCO for allegedly employing a "factory approach" to debt-collection litigation whereby it pressures attorneys at co-defendant Forster & Garbus LLP and other firms into filing large numbers of lawsuits against consumer debtors based on scant and unverified information regarding their finances.

LaCourte said that he was contacted with letters and phone calls and later sued in New York state court over a \$4,128 American Express debt that NCO later admitted had already been settled.

U.S. District Judge Jed Rakoff determined that LaCourte had "amply" alleged that Forster & Garbus filed a lawsuit against him without conducting a reasonable inquiry into his debt, a violation of the New York Judiciary Law.

"According to the complaint, after LaCourte settled and paid off his debt, received further collection notices, and disputed them, Forster & Garbus nevertheless filed the New York action without reviewing the back-up documents or otherwise verifying with American Express that the debt was in fact valid and unpaid," the judge said.

The allegations "are more than sufficient" to raise a reasonable inference that Forster & Garbus knowingly failed to conduct a reasonable inquiry before certifying to the New York court that the lawsuit was not groundless, Judge Rakoff said.

The judge also declined to dismiss claims that NCO was liable for conspiring to violate the NYJL.

LaCourte mounted his complaint in December, arguing that NCO regulates a nationwide network of attorneys — named in the suit as John Doe defendants — who are under contract to collect consumer debts. According to his complaint, the attorneys are prohibited from communicating directly with creditors despite the creditors' status as the nominal plaintiff when a debt collection suit is ultimately filed.

NCO also blocks its contract attorneys from requesting documents backing up the alleged debts they are charged with collecting, according to the complaint, and ties their compensation to the number of debts that are quickly reduced to court-ordered judgments, resulting in frivolous lawsuits that bully consumers into paying down debts that were either inflated, nonexistent or had already been paid off.

The suit brought additional claims for violations of the Fair Debt Collection Practices Act tied to the

communications LaCourte received, the bulk of which were dismissed in Judge Rakoff's order.

During motion practice, LaCourte conceded that he received all but one of the calls and letters outside the law's one-year limitations period, but said that the statute should be tolled on those communications because NCO had fraudulently concealed its violations and caused him to suffer continuous, ongoing harm.

Judge Rakoff rejected those arguments, finding that LaCourte had alleged a "dense cluster" of harassing communications in 2010 and 2011 that were time-barred, followed by one isolated call that occurred within the one-year window.

"The only reasonable inference is that any continuing harm LaCourte suffered ceased long before that one timely call," Judge Rakoff said.

But the FDCPA claim related to the one isolated call can move forward, the judge ruled, noting that the defendants admitted that it was made — presumably by Forster & Garbus, at NCO's direction.

Lastly, the judge dismissed from the suit three of NCO's parent companies — its direct parent NCO Group Inc., NCO Group's majority owner One Equity Partners, and OEP's former owner JPMorgan Chase & Co. — saying they couldn't be held liable for NCO Financial's alleged wrongdoing.

"While the FDCPA's definition of 'debt collector' is broad, this court declines to read it so expansively as to negate, solely on the basis of one corporation's ownership of another, the usual presumption of separateness afforded to related corporations," the judge said.

Representatives for the parties were not immediately available for comment Thursday.

The plaintiffs are represented by Joseph S. Tusa of Tusa PC and by Catherine E. Anderson, Oren Giskan and Jason Solotaroff of Giskan Solotaroff Anderson & Stewart LLP.

NCO and Forster & Garbus are represented by David Israel, Bryan C. Shartle, Michael D. Allmont, Aaron R. Easley and James Schultz of Sessions Fishman Nathan & Israel LLC.

JPMorgan and One Equity Partners are represented by Andrew A. Ruffino, Robert D. Wick and Laura Brookover of Covington & Burling LLP.

The case is LaCourte v. JPMorgan Chase & Co. et al, case number 1:12-cv-09453, in the U.S. District Court for the Southern District of New York.

--Editing by John Quinn.