

THOUGHT LEADERSHIP

LEGAL UPDATES

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Court Finds Solar Energy Company Is Subject to California Rosenthal FDCPA Claim

On August 30, 2023, the California Court of Appeals addressed whether the Rosenthal Fair Debt Collection Practices Act (Rosenthal FDCPA) protects a non-party to an agreement to pay for electricity produced by a solar energy system. In short, it does.

In *Hagey v. Solar Service Experts, LLC*, a homeowner brought a Rosenthal FDCPA claim, asserting that a solar energy company unlawfully attempted to collect a purported debt. Notably, the homeowner was not a party to the solar energy agreement, and the solar energy company agreed that the homeowner did not owe the debt. However, the solar energy company continued to send bills to the homeowner in an effort to collect on the debt. In *Hagey*, the court grappled with whether the solar energy company acted as a consumer debt collector when it continued to send bills to the homeowner, including a late payment notice. The court focused on three definitions in determining whether the Rosenthal FDCPA applied to the solar energy company: (1) “debt collector,” (2) “consumer debt,” and (3) “consumer credit transaction.” The court relied heavily on the definition of a “consumer debt,” which is defined as “money, property, or their equivalent, due or owing or *alleged to be due or owing* from a natural person by reason of a consumer credit transaction.” The court held that a person does not have to actually owe a debt to maintain a viable Rosenthal FDCPA claim. Rather, the debt collector must merely allege that the person owes a debt.

What is more concerning for solar energy companies, and other sellers, is the court’s treatment of the solar energy agreement as a “consumer credit transaction.” Under the Rosenthal FDCPA, a consumer credit transaction is broadly defined as “a transaction between a natural person and another person

in which property, services, or money acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.” Notably, the Rosenthal FDCPA does not further define the term “credit.” In this case, the agreement at issue was for the solar energy company to install a solar panel system on the home; operate, maintain, and repair the system; and sell all electric energy produced by the system. The party to the agreement, in return, agreed to pay for all electricity produced. The court noted that because the payments due under the agreement are for past services (the bill sent in September covered electricity generated in August), it was in fact credit.

The Rosenthal FDCPA was enacted to “prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts.” Under the Rosenthal FDCPA, creditors and first-party debt collectors are required to comply with the federal FDCPA. Therefore, the sweeping application of the *Hagey* decision has significant implications for solar energy companies and other California sellers.

What this means to you

Accuracy when attempting to collect a debt is critical to remain complaint with debt collection laws and regulations. Even more so, companies must have reliable compliance management systems in place to appropriately respond to consumer requests and disputes. Solar energy companies, and other companies that bill for past services, should review current billing practices to ensure these practices comply with both state and federal debt collection regulatory requirements.

Contact us

If you have any questions regarding whether your current business practices are in compliance with FDCPA requirements, please contact Christopher Friedman, Sabrina Neff, Shelby Lomax, or your Husch Blackwell attorney.