

## Law Day Remarks: Consumer Credit Reforms

Just as our democratic system of government is built on the premise that every vote matters, the legitimacy of our justice system rests on the principle that every person has a meaningful right to be heard in court before a judgment may be entered against them. Our commitment to this principle has led to far-reaching reforms in New York over the last years in foreclosure cases, where we now require mandated settlement conferences and appropriate supporting documents and protocols that, along with increased legal representation for homeowners, ensure the integrity of the courts' foreclosure process. No one should be deprived of the roof over their head without these kinds of basic due process protections.

On this Law Day, in the wake of the foreclosure crisis,

there is another issue of great importance to the lives of New Yorkers that must be addressed by the justice system – that is the adjudication of well over 100,000 consumer credit lawsuits filed in our state courts every year totaling hundreds of millions of dollars. Most of these actions are brought by third-party debt buyers who routinely purchase large portfolios of delinquent credit card debt – often for pennies on the dollar – and then commence lawsuits against individual debtors based on little more than boilerplate language and a few fields of data from a spreadsheet. All too often, these credit card debts are several years old, have been resold multiple times, and critical documents like the original credit agreement and account statements are missing.

By the time these so-called “zombie” debts show up in

court, it is extremely difficult for debtors – 98% of whom are unrepresented – to assess the validity of the claims against them: whether they actually owe the debt at issue, whether the amount due is correct, and whether the plaintiff is the actual owner of the debt. As a result, many debtors who receive court papers fail to appear in court. Compounding these deficiencies is the nefarious practice of sewer service, a well-documented problem in consumer credit litigation in which court papers never get served on debtors. In fact, many debtors first realize they've been sued when they find their bank accounts frozen or their wages garnished.

It is hardly surprising, then, that significantly more than half of consumer credit cases filed in the New York courts result in a default judgment – in other words, a judgment is entered in favor of the creditor because the debtor fails to

answer or appear in court to contest the allegations. The law requires that a creditor seeking a default judgment must submit an affidavit of merit containing some firsthand confirmation of the key facts in the case, including that the debtor entered into a credit agreement and defaulted in making payments, the amount due at the time of default, and the creditor's legal ownership of the debt at issue. In practice, however, default judgments are routinely obtained on the basis of "robotically signed" affidavits containing hearsay allegations and few if any facts relating to the history of the debt at issue. Creditors frequently secure default judgments for the wrong amount of money, for debt that has already been paid or discharged in court, and for debt on which the statute of limitations has already expired – default judgments have even been obtained against the wrong person.

While the vast majority of consumer credit cases filed in the New York City Civil Court, the City Courts outside New York City and the District Courts on Long Island involve a few thousand dollars, interest and penalties can build up until the final judgment far exceeds the original debt. And the consequences of an unwarranted default judgment can be devastating for the typical debtor – ordinary consumers, a lower-income or working person, who is almost always unrepresented. Such people can ill afford to have their bank accounts seized, their wages garnished, their credit ruined . . . not when they're trying to support a family, find a job, and keep a roof over their heads.

The problems I have described have not gone unanswered. Attorney General Schneiderman's Bureau of Consumer Frauds and Protection has, in fact, been highly

proactive in investigating and combating deceptive debt collection practices – as he has been in so many areas involving consumer rights. Likewise, Superintendent Benjamin Lawsky of the State Department of Financial Services is in the process of adopting rigorous regulations to protect consumers from debt collection abuses at the pre-litigation stage. And Assembly Judiciary Chair Helene Weinstein continues to be a leader in this area, sponsoring important changes in law to protect consumer debtors as far back as 2008, and now sponsoring the Consumer Credit Fairness Act, a comprehensive legislative reform package that we strongly support and endorse. All of these efforts have helped to inspire the reforms that the court system announces today.

We have already done much. Under the leadership of

Deputy Chief Administrative Judge Fern Fisher, the New York City Civil Court has created special court parts that focus solely on consumer credit cases, with dedicated judges and clerks. Special court forms, including user-friendly form answers and mandatory discovery orders, have been developed to help unrepresented debtors understand and safeguard their rights in court. Rules and policies have also been adopted to address the high default judgment rate and prevent time-barred lawsuits. Nonetheless, a continuing stream of complaints from consumers, bar associations and advocacy groups, such as the New Economy Project and many others, has made it clear that a more comprehensive and rigorous approach is needed on a statewide basis.

No one disputes that consumers should pay their debts, or that businesses have every right to resort to the courts to

collect what is legally owed to them. But at the same time, the Judiciary has an obligation to address inequitable debt collection practices in the courts, prevent unwarranted default judgments and ensure a fair legal process for all litigants. Therefore, I am announcing a package of reforms which, in their totality, represent the most comprehensive effort by a court system nationally to reform debt collection litigation practices. These reforms are being issued today for a 30-day public comment period, expiring on May 30<sup>th</sup>, with implementation by June 15<sup>th</sup>. They are available on the court system's website: [www.nycourts.gov](http://www.nycourts.gov).

The first prong of our reform efforts focuses on requiring creditors to submit stronger affidavits containing detailed proof in support of default judgment applications. Every affidavit submitted in support of a default judgment must be

made by a person having personal knowledge of the relevant facts and records – no more robo-signing, and no more affidavits riddled with hearsay allegations. Plaintiff debt buyers will be required to submit full and complete documentation in order to make out a prima facie case in support of a default judgment – no more affidavits that rely on boilerplate language and cryptic data taken from spreadsheets and bulk files that merely list the debtor’s account as one among dozens or even hundreds of credit card accounts. Instead, plaintiffs will be required to submit affidavits from: the original creditor, identifying the specific account at issue with a copy of the credit agreement; each prior owner of the debt, stating when they purchased and sold the debt and the amount owed at the time of sale; and the plaintiff, stating the amount owed itemized by principal,

interest and other charges and the complete chain of ownership of the debt with copies of all written assignments of the debt.

By requiring these affidavits we will ensure that creditors meet the substantive and evidentiary standards for default judgments required under New York law.

In addition, to prevent the practice of suing on debt when the statute of limitations has expired, we will expand statewide the requirement that the plaintiff or its counsel submit an affidavit attesting that the statute of limitations has not expired.

In order to combat sewer service in consumer debt cases, we will adopt, on a statewide basis, the additional notice rule that we have successfully tested in the New York City Civil Court. In addition to filing an affidavit of service

swearing that the court papers were served on the debtor, the creditor must submit to the court an envelope bearing the return address of the clerk's office and containing a further notification of the lawsuit addressed to the debtor. The notice is mailed by the clerk's office to the debtor at the same address listed in the affidavit of service. The court will not grant a default judgment in any case where the notice is returned to the court because of an "unknown" or "wrong" address. This rule will decidedly help to lower the high default rate in our state.

Further, we will be reviewing the procedures and forms already in use in specialized consumer credit court parts and exporting the best practices to the entire state. This will ensure that unrepresented debtors who appear in court have access to comprehensible information and resources so that

they can understand the claims against them and formulate appropriate defenses. One of these best practices includes a consumer credit answer form specially designed for self-represented litigants, which is written in plain English and sets forth a list of standard defenses that creditors can simply check off where applicable.

Finally, we will work with local bar associations, law schools and providers to increase pro bono representation of debtors in consumer credit cases, in the hardest hit areas, similar to the great advances we have made in increasing legal representation for homeowners in foreclosure actions. We have many excellent programs to draw upon as resources for increased legal representation and assistance, including the Consumer Debt Volunteer Lawyer for the Day Project, the Attorney Emeritus Program, and the CLARO

Program, to name but a few. Equal justice demands a level playing field, with all of us in the legal profession, the bar and the provider community working together to ensure legal representation in this critical area of consumer rights affecting tens of thousands of New Yorkers around the state.

With the comprehensive reforms announced today, and the ongoing efforts of our partners in the Executive and Legislative Branches, I have every confidence that Law Day 2014 will mark the day that New York State set the national standard by which consumer debtors receive fair treatment in the courts.