FTC Advisory Opinion Affirms Broad Consumer Rights Under Holder Rule

Christie Grymes Thompson

May 10, 2012

Earlier today, the Federal Trade Commission (FTC) issued an advisory opinion affirming broad consumer rights under the Holder in Due Course Rule ("Holder Rule"). The National Consumer Law Center (NCLC), joined by Public Citizen, the Center for Responsible Lending, the National Association of Consumer Advocates, and the federation of state Public Interest Research Groups, requested this opinion.

Promulgated in 1976, the Holder Rule protects consumers who enter into credit contracts with a seller of goods or services by preserving their right to assert claims and defenses against any holder of the contract, even if the seller subsequently assigns the contract to a third-party creditor. In particular, the Holder Rule requires sellers that arrange or offer credit to finance consumers' purchases to include in their credit contracts the following disclosure:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED . . . . RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Thus, according to the Rule, a creditor or assignee of the contract is subject to all claims or defenses that the consumer could assert against the seller. As a result, consumers are permitted to assert a seller's misconduct in two situations: (1) to defend against a creditor's lawsuit for amounts owed, and (2) to maintain a claim against the creditor for a refund of money. The only limitation included in the Rule is that a consumer's recovery "shall not exceed amounts paid" under the contract.

Some courts have barred consumers from affirmative recoveries unless rescission is warranted under state law. In light of this practice, NCLC and the other entities sought affirmation by the FTC of consumers' broad rights under the Holder Rule. The FTC's opinion letter affirms that the Rule unambiguously places no limits on a consumer's right to an affirmative recovery of payments already made under a credit contract. According to the FTC, this interpretation gives full effect to its original intent of the Rule to hold sellers and creditors responsible for misconduct and to shift seller misconduct costs away from consumers. The advisory opinion provides a good reminder for companies offering credit to check contractual terms to ensure they meet federal requirements and to evaluate current practices.

Written by Christie G. Thompson