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Debt collectors pushing to get their day in court

More aggressive strategies fill court dockets, result in mistaken identities

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Cook County Circuit Court has been turned into a frenetic debt collections machine, a reflection of easy credit gone sour and a collections industry determined to get paid.

More than 119,000 civil lawsuits against alleged debtors are clogging courtrooms, and at least half will result in judgments that debt collectors will use to dock wages, seize bank accounts and file liens against homes, compounding the woes of troubled borrowers.

But because debt collectors operate on volume—pushing through lawsuits based on little more than lists of names, addresses and alleged amounts due—there are also plenty of instances of mistaken identities, cases where debts are alleged when the bills have been paid and even situations where people have fallen behind and tried to work out repayments only to be hauled in to court.

"The system is out of control," said Michelle Weinberg, a supervisory attorney at the Legal Assistance Foundation of Metropolitan Chicago. "It's one thing to call a debtor on the phone. It's another thing to file a lawsuit in court."

The cases that bother the judges the most are those where people have simply fallen behind because of illness or job loss or inability to keep up with escalating bills, a situation that is expected to worsen as a result of rising food, gasoline and housing costs.

"These people aren't deadbeats," said Cook County Circuit Judge Daniel Gillespie, whose docket contains 12,000 debtor suits, about double from two years ago. He also supervises seven courtrooms on the Daley Center's 11th floor where such cases are brought. "These are real people with real problems," he said.

Down slippery slope

Geraldine Wandall is an example. When her health began failing about four years ago the retired bookkeeper, who lives on Social Security, fell behind on bills.

Wandall said she wrote letters to the department store that issued the credit card to see if it would reduce or eliminate some of the interest charges and late fees on her account. She said she never got a response.

"I have never bought anything that I couldn't pay for," said Wandall, 77, who suffers from congestive heart failure and now spends much of her days lying in bed in the living room of her Southwest Side bungalow.

She lifted the bedcovers over her face in shame while discussing her inability to repay on time. "I can't tell you how bad I feel."

In January she was sued by LVNV Funding LLC, the debt collector claiming she owed \$4,759.92 on her old account. The suit was filed Oct. 17, 2007, more than five years after her last purchase with the card, according to court papers.

Her attorney, Alan Alop of the Legal Assistance Foundation, asked the court to dismiss the case because the statute of limitations to legally enforce the credit agreement expired after four years. LVNV's attorneys countered in court papers that she was legally liable for up to 10 years.

On May 29, Circuit Judge Moira Johnson threw out the suit, ruling the debt was too old.

For its part, debt-collection industry officials say they want to help consumers who fall behind on bills, said Rozanne Andersen, general counsel of ACA International, the main industry trade group. "No one wants to go to court."

On Mondays and Tuesdays, the heaviest court days in Chicago, judges often encourage the parties to go outside the courtroom and try to settle their cases. But sometimes people who pay their bills are forced into court.

Take Amy Volpert of Chicago. In 2006, she began getting calls about a credit card balance of \$986.92, according to court papers. She repeatedly told the collector and its law firm that she had settled the account a year earlier and faxed them copies of the release letter. But she was sued anyway, on Dec. 8, 2007.

She and her lawyer did not show up for a scheduled court date in January because they had been assured that the collector would investigate her complaint, said her attorney, Jason Shanfield. Later, on Jan. 28, RJM Acquisitions LLC obtained a judgment against her because she did not appear in court.

The collector's Chicago law firm said the judgment was an innocent mistake. Once it learned of the error, the law firm vacated the judgment and dismissed the suit, the firm said in court papers.

Shanfield said Volpert's experience is "a perfect example of zombie debt. You pay it, and it comes back to life."

A default judgment could have allowed RJM to begin garnishing 15 percent of Volpert's wages. State judges once had discretion to lower the amount docked from paychecks. But a change in the law last year pushed by creditors' lawyers took away that judicial discretion.

In the courtroom, the biggest advantage collectors have are lawyers while defendants rarely have legal

representation. The courts where such suits are handled were set up for small claims, involving less than \$10,000, and lawyers weren't deemed necessary.

But debt collecting is anything but small claims. In 2006, industry revenues were about \$15.5 billion, according to Kaulkin Ginsberg Co., a collections-industry strategic-advice company.

Changes to system

A new breed of collector has transformed the industry in the last decade, purchasing distressed debt from credit card issuers, retailers and other consumer lenders. Debt buyers usually only pay pennies on the dollar for packages of unpaid bills that include limited electronic information about the borrowers. Before filing lawsuits, debt buyers attempt to recoup money via letters and phone calls.

Collectors cannot misrepresent the amount of a debt and aren't allowed to harass consumers or falsely threaten legal action under the federal Fair Debt Collection Practices Act and Illinois law.

Last year, the Federal Trade Commission received 70,951 complaints against third-party debt collectors, a fivefold increase from 2000.

Complaints have soared because debt buyers more aggressively pursue aging accounts, consumer groups say.

These firms are more likely to sue. Publicly traded Asset Acceptance Capital Corp., for example, said that in 2007, 39.9 percent of collections came via the courts, up from 28.5 percent in 2003.

The increase in litigation also reflects easy credit, and consumers falling behind on payments. U.S. credit card debt has grown 75 percent in the past 10 years to more than \$940 billion, according to the Federal Reserve. Another reason for more suits is that debtors increasingly tell collectors to stop contacting them, said Andersen of ACA International. But that doesn't make debts go away.

Since 2000, the number of debt-collection cases in Cook County has more than doubled, to an estimated 130,000. The vast majority of suits are against Chicago residents. In 2007, debt collectors obtained 60,699 default judgments where the accused debtor did not appear in court.

"Most people know they owe the money," said Bob Markoff, a Chicago lawyer who is president of the National Association of Retail Collection Attorneys. "But for whatever reason they choose not to show up."

Filled with flaws

Consumer groups say the high number of default judgments can mask flaws with the lawsuits. Credit agreements and payment histories are often not included when suits are filed. Instead, debt collectors file an affidavit attesting to the validity of the debt, and it's not unusual for that affidavit to be erroneous, said Bob Hobbs, deputy director of the National Consumer Law Center.

Andersen acknowledged that there is ambiguity about the minimum evidence needed to verify a debt. In New York, an Urban Justice Center study in 2006 found that in 99 percent of a sampling of default judgments that the evidence used to obtain the judgment did not meet the state's legal standards.

"If the debtor wants accurate information about their debt they allegedly owe, she has to work hard to

find that out," said Dan Edelman, a Chicago lawyer who represents borrowers.

Michelle Moore has been learning that the hard way. The pregnant mother of two sat holding a crinkled manila envelope bursting with papers outside Courtroom 1106 in the Daley Center last month.

A debt collector called CACH sued the Blue Island woman in December for \$1,685.33 allegedly owed on a Bank of America credit card. Moore maintained that she had never owned such a card, and she had documents proving she was not living at the address where the card was being billed.

When her case was finally called, Moore, who didn't have a lawyer, asked CACH to show her paperwork that proved she held the account. For more than a year she had been waiting to see a credit agreement or a monthly statement. "We ordered the documents from our client and they haven't arrived," the CACH lawyer replied.

Moore produced letters showing that she lived in Las Vegas, not Chicago, where the card was allegedly billed.

"We can't resolve it today if that's what we're getting at," the judge said.

The CACH attorney asked for a postponement until late July, but that's when Moore's baby is due. Both sides agreed on Oct. 6 for another court date. If she fails to show up, Moore could face a default judgment.

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