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Debt Collectors Face a Hazard: Writer's Cramp

By [DAVID SEGAL](#)

When Michael Gazzarato took a job that required him to sign hundreds of affidavits in a single day, he had one demand for his employer: a much better pen.

"They tried to get me to do it with a Bic, and I wasn't going — I wasn't having it," he said. "It was bad when I had to use the plastic Papermate-type pen. It was a nightmare."

The complaint could have come from any of the autograph marathoners in the recent mortgage foreclosure mess. But Mr. Gazzarato was speaking at a deposition in a 2007 lawsuit against Asset Acceptance, a company that buys consumer debts and then tries to collect.

His job was to sign affidavits, swearing that he had personally reviewed and verified the records of debtors — a time-consuming task when done correctly.

Sound familiar?

Banks have been under siege in recent weeks for widespread corner-cutting in the rush to process delinquent mortgages. The accusations have stirred outrage and set off investigations by attorneys general across the country, prompting several leading banks to temporarily cease foreclosures.

But lawyers who defend consumers in debt-collection cases say the banks did not invent the headless, assembly-line approach to financial paperwork. Debt buyers, they say, have been doing it for years.

"The difference is that in the case of debt buyers, the abuses are much worse," says Richard Rubin, a consumer lawyer in Santa Fe, N.M.

"At least when it comes to mortgages, the banks have the right address, everyone agrees about the interest rate. But with debt buyers, the debt has been passed through so many hands, often over so many years, that a lot of time, these companies are pursuing the wrong person, or the charges have no lawful basis."

The debt in these cases — typically from credit cards, [auto loans](#), utility bills and so on — is sold by finance companies and banks in a vast secondary market, bundled in huge portfolios, for pennies on the dollar. Debt buyers often hire collectors to commence a campaign of insistent letters and regular phone calls. Or, in a tactic that is becoming increasingly popular, they sue.

Nobody knows how many debt-collection affidavits are filed each year, but a report by the nonprofit [Legal Aid Society](#) found that in New York City alone more than 450,000 were filed by debt buyers, from January 2006 to July 2008, yielding more than \$1.1 billion in judgments and settlements.

Problems with this torrent of litigation are legion, according to the Federal Trade Commission, led by Jon Leibowitz. The agency issued a report on the subject, "[Repairing a Broken System](#)," in July. In some instances, banks are selling account information that is riddled with errors.

More often, essential background information simply is not acquired by debt buyers, in large part because that data adds to the price of each account. But court rules state that anyone submitting an affidavit to a court against a debtor must have proof of that claim — proper documentation of a debt's origins, history and amount.

Without that information it is hard to imagine how any company could meet the legal standard of due diligence, particularly while churning out thousands and thousands of affidavits a week.

Analysts say that affidavit-signers at debt-buying companies appear to have little choice but to take at face value the few facts typically provided to them — often little more than basic account information on a computer screen.

That was made vividly clear during the deposition last year of Jay Mills, an employee of a subsidiary of SquareTwo Financial (then known as Collect America), a debt-buying company in Denver.

“So,” asked Dale Irwin, the plaintiff’s lawyer, using shorthand for Collect America, “if you see on the screen that the moon is made of green cheese, you trust that CACH has investigated that and has determined that in fact, the moon is made of green cheese?”

“Yes,” Mr. Mills replied.

Given the volume of affidavits, even perfunctory research seems impossible. Cherie Thomas, who works for Asta Funding, a debt buyer in Englewood Cliffs, N.J., said in a 2007 deposition that she had signed 2,000 affidavits a day. With a half-hour for lunch and two brief breaks, that’s roughly one affidavit every 13 seconds.

Executives at debt-buying firms say they have systems to ensure the accuracy of their affidavits. Robert Michel, chief financial officer at Asta Funding, says his company hires outside lawyers to read over affidavits, then has staff employees check their work.

“The people who work in this area are well trained, and they know that when they sign a statement they have to follow certain procedures,” he said. “They know what they are doing.”

He added that the pace of affidavits filed by Asta had dwindled since 2007 and was now closer to “several hundred” a day, rather than 2,000.

Even if debt buyers purchase the requisite information directly from a bank, it may be flawed. Linda Almonte oversaw a team of advisers, analysts and managers at JPMorgan Chase last year, when the company was preparing the sale of 23,000 delinquent accounts, with a face value of \$200 million. With the debt sold at roughly 13 cents on the dollar, the sale was supposed to net \$26 million.

As the date of the sale approached, Ms. Almonte and her employees started to notice mistakes and inconsistencies in the accounts.

“We found that with about 5,000 accounts there were incorrect balances, incorrect addresses,” she said. “There were even cases where a consumer had won a judgment against Chase, but it was still part of the package being sold.”

Ms. Almonte flagged the defects with her manager, but he shrugged them off, she says, and he urged her and her colleagues to complete the deal in time for the company’s coming earnings

report. Instead, she contacted senior legal counsel at the company. Within days, she was fired. She has since filed a wrongful termination suit against Chase.

A Chase spokesman declined to comment, citing the pending litigation.

The majority of lawsuits filed in debt collection cases go unanswered, which is why most end with default judgments — victories for creditors that allow them to use court officers or sheriffs to garnish wages or freeze bank accounts, among other remedies.

There is a persistent argument about why so few consumers respond in these cases. Consumers often know they owe the debt and conclude that fighting about it is pointless, said Barbara Sinsley, general counsel at DBA International, a trade group of debt buyers.

Lawyers for consumers, on the other hand, contend that few debtors ever learn about the legal action until it is too late, often because the process server charged with alerting them never actually delivered a notification. In those instances when a consumer hires a lawyer, the consumer often prevails.

“I’ve lost four and I’ve taken about 5,000 cases,” said Jerry Jarzombek, a consumer lawyer in Fort Worth. “If the case goes to trial, I say to the judge, ‘Your honor, imagine if someone came in here to give eyewitness testimony in a traffic accident case and they didn’t actually see the crash. They just read about it somewhere. Well, this is the same thing.’ The debt buyers don’t know anything about the debt. They just read about it.”

Every plaintiff’s lawyer and consumer advocate in this field has a theory about why there has been so much fury over mortgage paperwork abuses but so little about debt collections. The stakes in collections cases are smaller, and of course, debt buyers were never given a taxpayer bailout.

“But what people don’t realize,” said Daniel Edelman, a plaintiff’s lawyer in Chicago, “is that the mortgage issue and debt collections are intimately connected. The millions of default judgments out there — you better believe that’s one reason that homeowners can’t afford their homes.”

Andrew Martin contributed reporting.