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## 3rd Circ. Revives Drexel Student's Tuition Debt Complaint

By **Matthew Santoni**

Law360 (November 29, 2018, 7:04 PM EST) -- The Third Circuit on Thursday revived a former Drexel University student's claims that the university and its debt collection firm violated the federal Fair Debt Collection Practices Act by serving notice of his unpaid tuition and court hearings at his old address, overturning a lower court's ruling that the issue had already been decided in state court.

In the nine-page, nonprecedential decision, the appeals panel found the U.S. District Court had erred in ruling that collateral estoppel — which bars a party from relitigating an issue a judge has already decided — kept Philip Tiene from pursuing claims against Drexel and the Law Office of J. Scott Watson just because a Philadelphia Municipal Court judge said he didn't think they intentionally served Tiene's old address so they could obtain a default judgment of nearly \$10,600 when he didn't show up for court. In spite of the judge's statements about the defendants' intent, he reopened the default judgment anyway.

To meet the requirements of collateral estoppel, the issues must be identical, the previous ruling must be final, the party must be the same or related to the previous party, the parties must have had the opportunity to fully litigate the previous case and the determination in the previous proceeding had to be essential to the final judgment, the Third Circuit noted.

"Although the Municipal Court's finding may meet the first four elements of collateral estoppel, its determination that appellees did not intentionally serve Tiene at the wrong address was not essential to its judgment at that hearing, i.e., vacating the default judgment. In fact, its finding was contrary to this ultimate judgment," wrote Judge Marjorie Rendell for the panel.

The ruling overturned the summary judgment in the defendants' favor and remanded Tiene's FDCPA claims to the lower court to decide whether there had been false and deceptive notice of the debt collection process, whether the university and law firm improperly opposed his efforts to reopen the default judgment against him and whether the collection letter he received misrepresented vital information like the case caption, case number and court where it was filed.

The appeals court upheld the ruling that kept Tiene from amending his original complaint since the lower court believed he was stalling, but also ordered the lower court to reconsider Tiene's discovery motions and whether it can also take up his claims that the defendants violated state law.

Tiene had originally entered a Boonton, New Jersey, address in Drexel's student information system, but after he was first contacted about an unpaid \$7,881.73 tuition bill, he gave a Drexel collection specialist his new address in Philadelphia in May 2015. When the debt remained unpaid, the university and the law firm filed suit in January 2017 but sent the notices to the New Jersey address.

Tiene didn't show up in court, so a default judgment for the full amount plus attorneys' fees and court costs was entered against him; he found out and petitioned to reopen the judgment because, he argued, the collectors had intentionally served his old address to avoid the personal service requirement in Philadelphia County.

After the Municipal Court judge reopened the debt and sent it to trial, the court still ruled against Tiene for the full amount, but he filed the instant FDCPA lawsuit against Drexel and the law firm in

federal court.

U.S. District Judge Robert F. Kelly then granted the defendants' October 2017 motion for summary judgment, finding that while Tiene's claim survived the Rooker-Feldman doctrine, which states that federal courts cannot review state-court decisions, it was barred because the Municipal Court had already ruled the debt collectors' actions were not intentional.

Tiene had sought to amend his complaint after the defendants moved for summary judgment, but Judge Kelly denied him because amending would only drag out the proceedings without adding or subtracting any parties or claims.

"Given the timing of this motion and that the amended complaint would not substantially differ from the initial complaint, the District Court did not abuse its discretion in denying the motion for leave to amend, and we will affirm," the Third Circuit opinion says.

"We feel justice has been served; we deserve to continue to prosecute these claims," Tiene's attorney, Predrag Filipovic, told Law360. He said he was not bothered by the court's ruling that he could not amend the complaint, since he said the amendment was a "condensed" version.

Attorneys for the Drexel parties did not immediately respond to requests for comment Thursday.

Third Circuit Judges Thomas L. Ambro, Anthony J. Scirica and Marjorie O. Rendell sat on the panel.

Tiene is represented by Predrag Filipovic.

The law firm and Drexel are represented by Monica M. Littman and Richard J. Perr of Fineman Krekstein & Harris PC.

The case is Philip Tiene v. The Law Office of J. Scott Watson PC et al., case number 18-1221, in the U.S. Court of Appeals for the Third Circuit.

Additional reporting by Jeannie O'Sullivan. Editing by John Campbell.

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