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Drexel Debt Collection Fight Isn't Barred, Alum Tells 3rd Circ.

By **Jeannie O'Sullivan**

Law360, Philadelphia (November 7, 2018, 3:28 PM EST) -- A former Drexel University student urged the Third Circuit on Wednesday to revive his lawsuit alleging the school and a Pennsylvania law firm used deceptive means to serve a complaint seeking to collect on outstanding tuition, arguing a lower court wrongly found the issue had already been litigated.

During oral arguments before a three-judge panel in Philadelphia, an attorney for Philip Tiene said that a municipal court judge presiding over Drexel's collection action, in which the school was represented by the Law Office of J. Scott Watson, didn't rule on Tiene's claim that the firm purposely sent the complaint to Tiene's former address in order to procure a nearly \$10,600 default judgment.

A Pennsylvania federal judge ultimately tossed Tiene's subsequent Fair Debt Collection Practices Act lawsuit after finding the claim was barred by the doctrine of res judicata, or claim preclusion, which bars claims that have already been litigated. But the claim was "far removed" from the collection action, and the federal judge admitted as much, Tiene's attorney, Predrag Filipovic, told the court.

"Even the district court judge wrote in the opinion that the municipal judge made no findings on the FDCPA [claim]," Filipovic said.

However, an attorney representing Drexel and the law firm, Richard J. Perr of Fineman Krekstein & Harris PC, disagreed.

"The service issue was clearly litigated in the first proceeding," Perr told the court.

Tiene was enrolled in Drexel from September 2008 to June 2014, according to his complaint. He registered his Boonton, New Jersey, address with the university using its online student account system.

In April 2015, Drexel's collection team sought to recoup \$7,881.73 in tuition Tiene owed and made several calls to Tiene's employer attempting to collect on the debt, according to court records.

In May 2015, Tiene spoke with a Drexel collection specialist and provided his updated address in Philadelphia, which was recorded in the school's student account system. But when Drexel filed its suit in January 2017 in Philadelphia municipal court, seeking the delinquent tuition and attorneys' fees, the complaint was sent to the Boonton address, Tiene claimed.

Tiene contends in court records that the school did so to avoid the personal service requirement in Philadelphia County.

As a result, Tiene missed the March 2017 trial that was scheduled in his case and the court entered a \$10,596.35 default judgment against him. After Tiene successfully had the judgment vacated and the case went to trial in June 2017, a municipal judge reinstated the original judgment.

Tiene then filed the instant lawsuit in federal court, accusing the law firm of violating the FDCPA by using an incorrect service address and Drexel of violating Pennsylvania's Unfair Trade Practices and Consumer Protection Law.

Granting the defendants' October 2017 motion for summary judgment, the district judge found that while the FDCPA claim survived the Rooker Feldman doctrine, which states that federal courts cannot review state-court decisions, it was barred under res judicata.

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.

--Editing by Aaron Pelc.

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