# Sorenson Van Leuven LAW FIRM

**July 2017 Newsletter**

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## How to Reach Us...


2015 Delta Boulevard
Tallahassee, Florida
32303

Post Office Box 3637
Tallahassee, FL 32315

850-388-0500 - Local
866-295-8585 - Toll Free
850-391-6800 - Facsimile
www.svllaw.com


## Lock Up That Safety Deposit Box

**By: Blair Boyd**

Credit Unions are often served with writs of garnishment. After service, the Credit Union must take certain steps as set forth by Florida law. This includes determining how much money is in the accounts of the Defendant, and whether or not any of the funds included in said account contains any federally protected funds. However, one area that is included in the statutory language, and often overlooked, is the handling of a safe deposit box. A recent case, *Salcedo v. Wells Fargo Bank, N.A.*, 42 Fla. L. Weekly D1419a, sheds some light on the requirements of a financial institution in this situation, and the potential liability one might have for failing to follow these requirements.

The Case

In the *Salcedo* case, the Plaintiff, Ms. Salcedo, held a final judgment against a third party, Ms. Rodriquez, in the amount of $895,500.00. In an effort to collect on the judgment, she served a writ of garnishment on Wells Fargo. Wells Fargo filed an answer disclosing two bank accounts, as well as a safe deposit box in the name of Ms. Rodriguez, as well as 2 other individuals. In their Answer, Wells Fargo stated that they "placed a hold" on the safe deposit box. Later, the Court entered a Final Garnishment Judgment requiring the payment of the funds on hold at Wells Fargo, and directing Wells Fargo to open the safe deposit box to permit Ms. Salcedo to inventory the contents, and to hold the contents in the safe deposit pending further order of the Court. However, when Ms. Salcedo arrived to inventory the box, she was informed that the contents had been removed, allegedly, by the other owners of the safe deposit box. Ms. Salcedo sued Wells Fargo for negligence based upon their failure to supervise access to the safe deposit box. The trial court dismissed the action for failure to state a case of action; however, the appellate court (case cited above) held that her case for negligence should be allowed to go forward, and that Wells Fargo had a duty to hold the property in the safe deposit box per Florida law.

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## The Law

Section 77.06(1) and (2), Florida Statutes (2016) is the controlling law when discussing the rights of a garnishee regarding a safe deposit box. It states:

(1) Service of the writ shall make garnishee liable for all debts due by him or her to defendant and for any **tangible or intangible personal property** of defendant in the garnishee's possession or control at the time of the service of the writ or at any time between the service and the time of the garnishee's answer. **Service of the writ creates a lien in or upon such debts or property at the time service or at the time such debts or property come into the garnishee's possession or control.**

(2) The garnishee shall report in its answer and retain any deposit, account, or **tangible or intangible personal property in the possession or control of such garnishee**; and the answer shall state the names and addresses, if known to the garnishee, of the defendant and any other persons having or appearing to have an ownership interest in the involved property.

Thus, based upon this statute, once Wells Fargo was served with the writ, it rendered the bank liable as garnishee for the tangible property in the safe deposit box under the bank's control and created a statutory lien on that property. Wells Fargo should have denied any further access to the safe deposit box pending a court directive regarding further disposition of the contents of the safe deposit box. However, the unclear part of this matter is whether Wells Fargo is liable for specific damages.

Florida law clearly sets forth that if a garnishee negligently allows funds withdrawn from a judgment debtor's account, then it is liable for those funds. The *Salcedo* Court extends this stating that "the statute does more than merely make provision to secure the safety and welfare of the public; rather, it protects a garnishor/judgment creditor's lien and rights to funds and property of the debtor upon service of the writ." They go on to ask, "the more difficult question in the present case is how Ms. Salcedo can establish value of any property in the safe deposit box when Wells Fargo negligently permitted the property to be removed and the box to be closed." Ultimately, Ms. Salcedo might obtain discovery and be able to prove that the property removed from the box was Ms. Rodriguez's.

## How the Rule Applies to You

While the majority of writs of garnishments will only involve members who only have deposit accounts, the Credit Union must check to see if the member also has a safe deposit box. If you fail to disclose, or place a hold on the box, as the *Salcedo* case sets out, the Credit Union can be found liable for this mistake up to the value of what is being held inside. Should you have any questions about this issue or the handling of Writs of Garnishment, please feel free to contact a lawyer at our firm for further instruction and guidance.

# See Us At…

◊ **July 20, 2017-**Georgia's Own Credit Union ERM Legal & Compliance Workshop, Atlanta, Georgia.

◊ **August 2-4, 2017-Sorenson Van Leuven Collections & Bankruptcy Seminar,** Orlando, Florida. For more information, contact Whitney Whitaker at whitneyw@svllaw.com.

◊ **September 13, 2017, 6:00—8:30 p.m. –** Southernmost Chapter Meeting, Doral, Florida.

## Attorney Spotlight
## Stephen Orsillo

Steve remembers his family moving from town to town a few different times during his childhood due to his father being in the military. When Steve was two years old, his dad got out of the military and they settled down in Louisville, Kentucky. After the brutal winter that year, Steve's dad decided to move their family back to Florida to escape the snowy months and Tallahassee became their home in 1986. His parents are from Miami originally, so the hot weather and sunshine is more up their alley!

Steve earned his Bachelor of Science degree in Political Science and History from The Florida State University and his Juris Doctorate from the Stetson University College of Law in Gulfport, Florida, in 2010. He was admitted to the bar April of 2011 and began practicing law in February of 2012. At Sorenson Van Leuven, Steve is the attorney in our office who handles all foreclosure-related files and he also does various collection and bankruptcy work, as well.

Steve has been married to his wife Virginia for 9 years. They have 2 children - Arthur, who is 6 and Audrey, who is 1½. Stephen and Virginia have also just announced they are expecting #3! The baby's gender is unknown at this time and the Orsillos are planning on being surprised this go around – so exciting!

While away from the office, Steve loves spending time with his family, as well as watching and attending Florida State sports.  GO NOLES!!

## LAST CALL to Register for Sorenson Van Leuven's Collections & Bankruptcy Seminar!

**MARK YOUR CALENDARS!!** Monday, July 24th is the <u>last</u> day to register for Sorenson Van Leuven's first annual state-wide Collections & Bankruptcy Seminar. The seminar is being held August 2-4, 2017 at The Florida Mall Hotel in Orlando, Florida. Our firm is excited to share new timely information you will not want to miss out on. When you register for the seminar, you will receive extensive materials, an invitation to join us for a group dinner at a local Orlando restaurant on Wednesday night and a networking cocktail reception on Thursday evening.

If interested in registering for this event, please contact Whitney Whitaker, at whitneyw@svllaw.com, or 850-633-5831 prior to July 24, 2017 to secure your seat. Sorenson Van Leuven is looking forward to seeing you in Orlando!

# U.S. Supreme Court Dials Back Scope of FDCPA

## By: Jim Sorenson

On June 12, 2017, the Supreme Court issued its unanimous decision in *Henson vs. Santander Consumer USA, INC.,* 137 S.Ct. 1718. Justice Gorsuch authored the opinion of the Court. The issue before the Court was whether the Fair Debt Collection Practices Act ("FDCPA") applies to a lender who purchased defaulted loans from another lender. The Court held that the FDCPA does not apply to a Creditor who is collecting debts it purchased while those debts were in default.

The FDCPA is a federal law that applies to the collection of consumer debts. The Act applies to "debt collectors" and the definition of a debt collector is anyone who "regularly collects or attempts to collect . . . debts owed or due . . . another." The act does not apply to a Creditor collecting a debt it originated. The FDCPA provides private rights of action and has become a tool of consumer lawyers looking to make money against unaware and non-compliant debt collectors.

Over the years, consumer lawyers have attempted to argue for a broad definition of the term "debt collectors." One such argument is that the term includes those who purchased defaulted loans and then collected those debts. The lower courts have been split on this issue with some courts holding that the term debt collector does include those who purchase a defaulted debt from another. For clients in Florida, Georgia and Alabama, the 11th Circuit Court of Appeals had ruled that the term debt collector did include those entities that purchased or acquired defaulted loans from a third party. Because of the potential for a lawsuit, this doubt in the law caused Creditors to assume that if they purchased a defaulted loan, the FDCPA would apply.

This issue impacted credit unions which were contemplating or completing a merger. In a merger, the surviving credit union acquires the loans of the other credit union. Of course, some of the loans obtained in the merger include loans in default. As a result, there was an argument that the FDCPA applied to the surviving Credit Union when it took steps to collect on those loans that were in default at the time of the merger. This meant that collection processes and procedures had to change for a pool of loans and this lead to increased compliance costs and headaches for collection departments.

In its decision, the Supreme Court makes clear that a Creditor who purchases defaulted loans is not a debt collector when it acts to collect on those loans. In short this can be good news for a Credit Union who is completing a merger. However, as with many legal issues there are potential side issues to consider.

The Supreme Court left unaddressed whether Santander could have been classified as a debt collector because it regularly acts to collect debts owed to another. If a Credit Union does regularly act to collect debts for another entity this could lead to the application of the FDCPA to their collection actions. The Supreme Court also left unaddressed another argument involving the definition of a debt collector which arguably could have applied to Santander.

While this case provides some clarity in the law, a Credit Union should still obtain a legal opinion on whether the FDCPA would apply to it if it is the surviving entity in a merger. Should you have questions or concerns about the FDCPA and its application to your Credit Union, please do not hesitate to contact one of the attorneys at Sorenson Van Leuven Law Firm.

**Disclaimer – No Legal Advice:** The information in this newsletter is intended for general informational purposes only and does not constitute legal advice. DO NOT act upon this information without first consulting directly with your attorney regarding the specific application of the laws, regulations and issues referenced herein to your specific circumstances. No attorney-client relationship is formed as a result of this newsletter.

## Staff Spotlight
## Jamie Bell

Jamie was born and raised in Tallahassee, Florida.  At Sorenson Van Leuven, she is one of our foreclosure legal assistants and just celebrated her 9 year anniversary working in the legal field on July 14th.

Jamie and her husband, Bobby, have been married for 11 years and they have three children, Bayleigh, 15, who just finished her first year of high school and got her first job as a lifeguard this summer; Coleman, 14, who is big into baseball and cross country, and also tried out and made the soccer team this school year; Jace, who celebrated his 3rd birthday in June and loves swimming, riding his bike, playing with hot wheels and anything Paw Patrol.

In Jamie's time away from the office, she is kept busy throughout the week juggling the kids' different schedules and activities, loves spending time with her family, going on vacation (they just got back from Disney World!) and getting pampered with pedicures!

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Questions or comments?
E-mail us at whitneyw@svllaw.com or call Whitney at 866-295-8585.