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Attorneys

Second Circuit Seeks Guidance On NYC Regulation of Law Firms

The U.S. Court of Appeals for the Second Circuit Oct. 29 asked New York's highest court whether the city of New York may regulate law firms as debt collection agencies (*Eric M. Berman P.C. v. City of New York*, 2d Cir., 13-cv-00598, *questions certified*, 10/29/14).

The Second Circuit certified two questions to the New York Court of Appeals on the effect of Local Law 15, which a district court in 2012 held void with respect to law firms that collect debts, saying state law preempts the city measure.

According to the Second Circuit, the case “raises unresolved and significant issues concerning the scope of New York State’s regulatory authority” over attorneys.

The New York Court of Appeals is not required to accept the case.

Local Law 15 amended an earlier law by requiring and proscribing certain debt collection practices, and creating new penalties.

Two law firms, Eric M. Berman P.C. and Lacy Katzen, LLP, sought a declaratory judgment that from the U.S. District Court for the Eastern District of New York that the law does not apply to their firms.

The court ruled for the firms on summary judgment and the city appealed to the Second Circuit.

State Law Unclear. In its Oct. 29 order, the Second Circuit said it needs guidance from the New York Court of Appeals, which it said has not yet addressed the question posed by this case.

“It is sufficient for the purposes of this opinion to note that there is certain attorney conduct—conduct traditionally performed by debt collectors—which, if regularly performed by an attorney, is subject to Local Law 15,” Judge Rosemary S. Pooler said. “The question is whether Local Law 15’s regulation of this attorney

conduct that is not particular to licensed attorneys is preempted by the State’s authority to regulate the practice of law,” she said.

The city, the city council, and the New York City Department of Consumer Affairs are represented by Janet L. Zaleon of the New York City Law Department.

Attorneys Weigh In. The law firms are represented by Max S. Gershenoff, Evan H. Krinick, and Michael P. Versichelli of Rivkin Radler in Uniondale.

“While some abuses may exist within the debt collection business, and while the city is entitled to enact legislation in an attempt to curb those types of abuses, the city, just like the debt collectors they seek to regulate, must operate within the confines of the law,” Gershenoff told Bloomberg BNA Oct. 29. “Plaintiffs believe that in New York it is and always has been the state judiciary that is responsible for the regulation of attorney licensing and the practice of law. Local law 15 constituted an improper encroachment on the judiciary’s authority to regulate attorneys, which is why plaintiffs brought this case in the first place. We think it is pretty clear cut,” he said.

Consumer Lawyers Hopeful. Attorneys for consumer advocacy organizations are in the case as friends of the court. They are Carolyn E. Coffey of MFY Legal Services, Inc., in New York, and Theodora Galacatos of the Feerick Center for Social Justice at the Fordham University School of Law in New York.

In an Oct. 29 email to Bloomberg BNA, Coffey said the local oversight of debt collection law firms is an important policy issue for the state.

“Complaints about debt collectors account for the top source of consumer complaints,” Coffey said. “Debt collection law firms dominate the industry and there is firm precedent under federal law to treat debt collection law firms as debt collectors. We’re hopeful that the New York State Court of Appeals will reach a result in this case that will strengthen consumer protection policies,” she said.

By CHRIS BRUCE

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The Oct. 29 order is at <http://www.bloomberglaw.com/public/document/>

Eric_M_Berman_PC_v_City_of_New_York_Docket_No_1300598_2d_Ci

The 2012 district court ruling is at <http://>

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