

MIAMIBEACH

NOTICE BY THE CITY OF MIAMI BEACH, FLORIDA, OF THE CITY'S INTENT TO USE THE UNIFORM METHOD OF COLLECTION OF NON-AD VALOREM ASSESSMENTS

NOTICE IS HEREBY given that the City of Miami Beach ("City") intends to use the uniform method for collecting the non-ad valorem assessments to be levied by the City pursuant to Section 197.3632, Florida Statutes, with regard to the Allison Island Security Guard Special Taxing District ("Special Taxing District"). The City Commission will hold a Public Hearing on this matter on **February 12, 2020 at 2:00 P.M.** at City Hall, 1700 Convention Center Drive, 3rd Floor, Commission Chambers, Miami Beach, Florida, 33139.

The purpose of the Public Hearing is to consider the adoption of a Resolution authorizing the City to use the uniform method of collecting non-ad valorem assessments to be levied by the City pursuant to Section 197.3632, Florida Statutes. The City intends to use the uniform method for collecting non-ad valorem assessments after the transfer of control of the Special Taxing District from Miami-Dade County to the City in accordance with Section 18-3.1 of the Miami-Dade County Code.

The City may levy non-ad valorem assessments for the purpose of the continued operation and maintenance of the Allison Island Guard Special Taxing District, including but not limited to the making of infrastructure and security improvements. The area or boundaries of Allison Island Security Guard Special Taxing District are as follows:

A portion of Sections 11, Township 53 South, Range 42 East, Dade County, Florida; being more particularly described as follows:

Lots 2 thru 52 of "Indian Creek Subdivision" according to the plat thereof, as recorded in the Plat Book 31 at page 75.

All the aforementioned plats being recorded in the Public Records of Dade County, Florida.

The City intends to use the uniform method of collecting non-ad valorem assessments for a period of more than one year. This non-ad valorem assessment will be levied by the City for the first time; however, Miami-Dade County has previously levied the non-ad valorem assessment for the Special Taxing District.

The City's non-ad valorem assessments shall be subject to the same discounts and penalties, and the issuance and sale of tax certificates and tax deeds, for non-payment as for the non-payment of ad valorem taxes. The non-payment of such non-ad valorem assessments will subject the property to the potential loss of title.

INTERESTED PARTIES may appear at the Public Hearing, or be represented by an agent, to be heard regarding the use of the uniform method of collecting such non-ad valorem assessments, or may express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This item is available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This item may be continued, and, under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, a sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

City of Miami Beach
Rafael Granado, City Clerk
305-673-7411



Possibility of Applying Fraud-Specific Discovery Rule to FDCPA Suits Left Open

Commentary by
Charles M. Tatelbaum
and **Brittany Hynes**

On Dec. 10, 2019, the U.S. Supreme Court ruled 8-1 that the one-year filing deadline for Fair Debt Collection Practices Act (FDCPA) lawsuits is determined from when the alleged violation occurs, not when it is discovered. The case was an appeal of the U.S. Court of Appeals for the Third Circuit's ruling in *Rotkiske v. Klemm*, 890 F.3d 422 (3d Cir. 2018), where the court found that the statute of limitations starts to run when the defendant violates the FDCPA. This resolution will greatly benefit creditors and those collecting debts for the creditors.



Tatelbaum



Hynes

In 2008, a debt collector sued Kevin Rotkiske due to defaulted credit card debt and attempted to serve him at a prior address. At such address, an individual unknown to Rotkiske accepted service on his behalf. As a result, the debt collector eventually withdrew its lawsuit after it was incapable of locating Rotkiske personally.

In 2009, the debt collector filed a second lawsuit against Rotkiske, again serving the complaint on an individual unknown to Rotkiske at the same address. Because the debt collector chose not to withdraw the suit the second time around, it received a default judgment after Rotkiske failed to answer.

On June 29, 2015, Rotkiske filed his FDCPA action alleging that the debt collector wrongfully collected a default judgment on a debt. According to his complaint, Rotkiske only became aware of the lawsuit and the judgment when he was applying for a mortgage in September 2014, as every notice was sent to his previous mailing address. In the district court, the debt collector argued that the claim was barred by the statute of limitations. Rotkiske responded by arguing that the FDCPA is subject to the discovery rule.

According to the discovery rule, the statute of limitations for specific actions does not start to run until the plaintiff knows or has reason to know of the injury giving rise to the claim. Therefore, under Rotkiske's theory, the one-year statute of limitations did not start until September 2014, which would have made his lawsuit timely. However, the district court rejected his argument finding that the statutory language is clear in suggesting that the one-year time period starts on "the date on which the violation occurs." The district court's ruling was then affirmed by the Third Circuit.

Notably, the Supreme Court considered the operation of the discovery rule in a 2001 ruling involving the Fair Credit Reporting Act. *TRW v. Andrews*, 534 U.S. 19. The Supreme Court reversed a Ninth Circuit ruling by holding that the discovery rule, if to be applied at all, must be justified by the "text and structure" of the statute. Applying

that standard, both the Fourth and the Ninth Circuit have ruled that the limitation period for the FDCPA is subject to the discovery rule, generating an apparent divide among lower courts when the Third Circuit held the contrary in the *Rotkiske* case.

When it agreed to review the *Rotkiske* case, the Supreme Court seemed to be driven to settle the circuit split and to establish conformity to the use of the FDCPA's limitations period. Nevertheless, when analyzing the case, the Supreme Court upheld the Third Circuit's ruling by deciding that Rotkiske brought his FDCPA claim too late. Applying a strict textualist reading to the statute by basing the words "violation" and "occurs" on their dictionary definitions, Justice Clarence Thomas stated that the statute "unambiguously sets the date of the violation as the event that starts the one-year limitations period." He further recognized that it is Congress who determines the limitations, and therefore its intent should not be second guessed by the court.

Thomas went on to discuss the use of the "discovery rule" in situations involving fraud, known as the "fraud-based

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discovery rule," which differs from the traditional equitable tolling doctrine. In the majority opinion, the court reasoned that while the

fraud-based discovery rule may apply, Rotkiske failed to preserve the issue before the Third Circuit nor raised it in his petition for certiorari.

In her dissenting opinion, Justice Ruth Bader Ginsburg affirmed the Third Circuit and believes Rotkiske preserved the issue on appeal and adequately raised the question in the certiorari petition. According to Ginsburg, "the ordinary applicable time trigger does not apply when fraud on the creditor's part accounts for the debtor's failure to sue within one year of the creditor's violation."

Meanwhile, in a concurring opinion, Justice Sonia Sotomayor agreed with the majority's opinion that Rotkiske had not preserved the "equitable, fraud-specific discovery rule" and simply mentioned, "nothing in today's decision prevents parties from invoking that well-settled doctrine." As a result, Sotomayor's concurring opinion is the most compelling for future litigation on the FDCPA's statute of limitations.

The decision in *Rotkiske* resolves a split among federal circuit court of appeals by putting an end to the application of the traditional discovery rule in FDCPA cases. This ruling eliminates an ambiguity for creditors and their representatives attempting to collect a debt to the detriment of creditors seeking to assert rights and remedies under the FDCPA. However, the fraud-specific discovery rule may have a narrow application to FDCPA claims. It seems Rotkiske just did not plead the required elements to claim fraud, as the bar is higher to allege a fraudulent act and he did not allege that the debt collector purposely hid the debt collection lawsuit from him.

Charles M. Tatelbaum is a director and Brittany Hynes is an associate at Tripp Scott in Fort Lauderdale.