

SUPREME COURT OF ARKANSAS

Simpson v. Calvary SPV I, LLC

2014 Ark. 33 (2014) · No. CV-14-45 · Decided January 23, 2014

SUMMARY

The Arkansas Supreme Court accepted certified questions from the United States District Court for the Eastern District of Arkansas concerning whether an entity that purchases delinquent accounts and uses an Arkansas lawyer to collect them is a collection agency under Arkansas law and must be licensed. The per curiam order establishes briefing, potential oral-argument, amicus, and addendum requirements for the certified-question proceeding.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 23, 2014
DOCKET	CV-14-45
DISPOSITION	cert_granted
PROCEDURAL POSTURE	The Supreme Court of Arkansas considered a certification order and motion from the United States District Court for the Eastern District of Arkansas requesting answers to two questions of Arkansas law.
PRECEDENTIAL VALUE	precedential
PARTIES	Patty E. Simpson v. Calvary SPV I, LLC, as assignee of HSBC Bank Nevada, N.A./Orchard Bank

TOPICS

[appellate procedure](#)[statutory interpretation](#)[consumer protection](#)[commercial litigation](#)[civil procedure](#)

PRACTICE AREAS

[appellate procedure](#)[civil procedure](#)[consumer protection](#)[commercial litigation](#)

QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court should accept certification of two questions of Arkansas law from the United States District Court for the Eastern District of Arkansas.
2. Whether an entity that purchases delinquent accounts and retains a licensed Arkansas lawyer to collect the accounts and file lawsuits is attempting to collect under Arkansas Code Annotated section 17-24-1101 and therefore meets the statutory definition of collection agency.
3. Whether such an entity is attempting to collect and is therefore required to be licensed under Arkansas Code Annotated section 17-24-301(4).

HOLDINGS

1. The court accepted certification of the two questions of Arkansas law because the questions could be determinative of the pending federal cause and there was no controlling precedent in Arkansas Supreme Court decisions.

KEY QUOTATIONS

“After a review of the certifying court’s analysis and explanation of the need for this court to answer the questions of law presently pending in that court, we accept certification of the following questions:” (at 1)

“Certified questions accepted.” (at 3)

FACTUAL BACKGROUND

The underlying federal action concerns an entity that purchased delinquent accounts and retained a licensed Arkansas lawyer to collect the accounts and file lawsuits in Arkansas. The certified questions concern whether those activities constitute attempting to collect under Arkansas's statutory definition of collection agency and whether the entity was required to obtain a license from the Arkansas State Board of Collection Agencies. The Arkansas Supreme Court addressed only whether to accept certification of those questions.

PROCEDURAL HISTORY

Judge J. Leon Holmes of the United States District Court for the Eastern District of Arkansas, Northern Division, filed a motion and certification order on January 14, 2014. The federal court requested certification because the questions could be determinative of a pending cause and there was no controlling Arkansas Supreme Court precedent. The Arkansas Supreme Court accepted certification and established briefing and related procedural requirements, but did not answer the certified questions in this order.

DISPOSITION

cert_granted

REMAND INSTRUCTIONS

The court directed the parties to proceed with briefing under the specified schedule and requirements, to include specified pleadings in an addendum, and to process the matter as a case on appeal. The court did not remand the underlying federal action or answer the certified questions in this order.

OPINION

PER CURIAM.

Cite as 2014 Ark. 33 SUPREME COURT OF ARKANSAS No. CV-14-45 PATTY E. SIMPSON Opinion Delivered January 23, 2014 PETITIONER REQUEST TO CERTIFY V. QUESTIONS OF LAW FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN CALVARY SPV I, LLC, AS ASSIGNEE DISTRICT OF ARKANSAS OF HSBC BANK NEVADA, (NORTHERN DIVISION) N.A./ORCHARD BANK RESPONDENT CERTIFIED QUESTIONS ACCEPTED.

PER CURIAM In accordance with section 2(D)(3) of amendment 80 to the Arkansas Constitution and Rule 6-8 of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas, the Honorable J. Leon Holmes of the United States District Court for the Eastern District of Arkansas, Northern Division, has filed a motion and certification order with our clerk on January 14, 2014.

The certifying court requests that we answer questions of law that may be determinative of a cause now pending in the certifying court, because it appears that there is no controlling precedent in the decisions of the Supreme Court of Arkansas.

After a review of the certifying court's analysis and explanation of the need for this court to answer the questions of law presently pending in that court, we accept certification of the following questions: 1. Whether an entity that purchases delinquent accounts and then retains a Cite as 2014 Ark. 33 licensed Arkansas lawyer to collect on the delinquent accounts and file lawsuits on its behalf in Arkansas is "attempt[ing] to collect," thus meeting the definition of "collection agency," pursuant to Arkansas Code Annotated section 17-24-1101?

2. Whether an entity that purchases delinquent accounts and then retains a licensed Arkansas lawyer to collect on the delinquent accounts and file lawsuits on its behalf in Arkansas is "attempt[ing] to collect" and, thus, is required to be licensed by the Arkansas State Board of Collection Agencies pursuant to Arkansas Code Annotated section 17-24-301(4)? This per curiam order constitutes notice of our acceptance of the certification of these questions of law.

For purposes of the pending proceeding in this court, the following requirements are imposed: A. Time limits will be calculated from the date of this per curiam order accepting certification. The plaintiff in the underlying action, Patty E. Simpson, is designated as the moving party and will be denoted as the "Petitioner," and her brief is due thirty days from the date of this per curiam.

The defendant, Cavalry SPV 1, LLC, shall be denoted as the "Respondent," and its brief shall be due thirty days after the filing of Petitioner's brief. Petitioner may file a reply brief within fifteen days after Respondent's brief has been filed. B. The briefs shall comply with this court's rules as in other cases except for the briefs' content. Only the following items required in Arkansas Supreme Court Rule 4-2(a) shall be included: (3) Points on appeal which shall correspond to the certified questions of law to be answered in the federal district court's certification order.

(4) Table of authorities. (6) Statement of the case which shall correspond to the facts relevant to the certified questions of law as stated in the federal district court's certification order. (7) Argument. (8) Addendum. 2 Cite as 2014 Ark. 33 (9) Cover for briefs. C. Oral argument will be permitted only if this court concludes that it will be helpful for presentation of the issues.

D. Arkansas Supreme Court Rule 4-6 with respect to amicus curiae briefs will apply. E. This matter will be processed as any case on appeal. F. Rule XIV of the Rules Governing Admission to the Bar shall apply to the attorneys for the Petitioner and the Respondent. Pursuant to Arkansas Supreme Court Rule 6-8(d), we request that the parties include in an addendum the following pleadings: the complaint; the answer, if any; the motion to dismiss; and any responses, replies, and briefs in support thereof.

In addition, if the parties believe that any additional pleadings will be useful to our understanding of the legal issues presented, those pleadings should be included as well. Certified questions accepted. 3