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## Suit Claims Fraud by New York Debt Collectors

Ray Rivera

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The first notice that a debt judgment had been entered against her came in July, said Monique Sykes. Big red letters were splashed across the top: “Marshal’s Notice of Execution.”



Chester Higgins Jr./The New York Times

Facing a court judgment, Monique Sykes said a process server falsely claimed that he had notified her of a court action against her.

“I was in a panic,” recalled Ms. Sykes, 29, of the Bronx. “For like 5 or 10 minutes all my eyes could focus on were those words, ‘Marshal’s Notice,’ and ‘lien on property.’ ”

Ms. Sykes is among thousands of New Yorkers who, according to a class-action lawsuit, are victims of a network of debt collectors who used fraudulent documents to surreptitiously win court judgments — all without the debtors’ knowledge.

The lawsuit, filed in Federal District Court in Manhattan this week, takes aim at a decades-old practice known in legal circles as “sewer service.” This is when a debt collector fails to serve a notice of complaint and then files a false affidavit claiming the notice has been properly served. When the debtor doesn’t show up in court, the collector can then apply for, and almost always wins, a default judgment.

The first a victim often learns about the judgment is when a bank account is seized or a lien is threatened. The judgments can also ruin a person’s credit report.

Consumer advocates say the practice has grown in recent years, fueled by the recessionary rise in consumer debt actions and the emergence over the last decade of companies that buy up charged-off debt for pennies on the dollar, then seek to recover the full debt, along with interest, for themselves.

The economic collapse has put new scrutiny on the scheme as more and more people have found themselves in debt-related legal actions. In April, Attorney General Andrew M. Cuomo arrested the owner of a Long Island process-serving company, American Legal Process, for engaging in the practice.

The investigation suggested that on hundreds of occasions, servers claimed to be in several places at once, often over distances impossible to cover in a day. The attorney general's office is seeking to vacate more than 101,000 court judgments statewide obtained by debt collection law firms that used American Legal, and has expanded its inquiry into other firms.

Valerie Hayes, corporate counsel for A.C.A. International, a trade association of credit-collection companies, said they rely on process servers to provide honest service. She said she did not believe that fraudulent filings were widespread. "The problem is with a few disreputable process servers," she said, "and I don't think it's limited to the debt-collection industry."

But a 2008 report by MFY Legal Services, a nonprofit law firm in New York, found that defendants in consumer debt cases showed up in court less than 10 percent of the time, raising questions about whether they were ever properly served and about the prevalence of sewer service in the industry.

The class-action lawsuit filed on Monday goes after an entire debt collection chain, starting with the debt-buying companies, the law firm they hired to collect the debt, and the process-serving firm used to notify debtors. The suit names five debt-buyer firms with variations of the names L-Credit and LR Credit. All are subsidiaries of Leucadia National, a \$6 billion publicly traded holding company engaged in various businesses, including timber and manufacturing. The company, which is also named as a defendant, declined comment on the suit.

Mel S. Harris & Associates, the law firm named in the suit, did not return phone calls seeking comment. The process-serving company, Samserv Inc., out of Brooklyn, denied allegations that it filed false affidavits of service.

"Absolutely not, absolutely not," said William Mlotok, Samserv's owner. Mr. Mlotok said he could not comment on the specifics of the lawsuit because he had not seen it.

The lawsuit was filed by MFY, the Neighborhood Economic Development Advocacy Project and the law firm of Emery Celli Brinckerhoff & Abady. It claims it could represent more than 100,000 victims of judgments won through the actions of the companies in New York civil courts since 2006. A central claim of the action is that most debt-buying firms do not get enough information in the volume data they buy to meet the burden of proof to win a debt case. They therefore seek default judgments.

When Ms. Sykes got her marshal's notice, she learned that a judgment had been won against her nine months earlier, but this was the first she had heard of it. A process server claimed in an affidavit that he served notice to her Bronx apartment on July 18, 2008, at 7:15 p.m., giving the summons to a "Ms. Rolanda."

A parent of two young children, Ms. Sykes said that either she or her husband, a union carpenter who was looking for work at the time, would certainly have been home then. Further, she said, she had never heard of Ms. Rolanda, nor had any of her neighbors.

Ms. Sykes did have an old Chase credit card that had a small balance when she was laid off a few years earlier that she had hoped to repay, but nowhere near the \$2,500 judgment won against her.

With the help of the advocacy project, she went to court and insisted on a hearing to prove that she had never been served. A lawyer with Mel S. Harris instead offered to settle for \$800, then to drop it altogether. She refused, insisting on a hearing. A judge finally dismissed the case, but without prejudice, meaning the company can go after her again.

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