Banking and Finance Law Daily Wrap Up, TOP STORY—7th Cir.: Filing a
time-barred claim in bankruptcy not an FDCPA violation, (Aug. 11, 2016)

By Richard A. Roth, J.D.

Debt collectors that filed accurate proofs of claim on time-barred debts in consumers’ bankruptcy cases did
not engage in false, deceptive, misleading, unfair, or unconscionable debt collection practices, the U.S. Court
of Appeals for the Seventh Circuit has decided. As a result, the debt collectors did not violate the Fair Debt
Collection Practices Act by filing their claims, the court said, even though the Seventh Circuit had previously
determined that suing on a stale claim is a violation (Owens v. LVNV Funding, LLC, Aug. 10, 2016, Flaum, J.).

As outlined by the court, the significant facts in the three consolidated cases were the same: debt buyers filed
proofs of claim in consumers’ bankruptcy cases. All of the filings outlined the claims in a factually accurate
manner, all of the consumers were represented by attorneys, all of them objected to the claims under the
statutes of limitations, and all of the claims were rejected by the bankruptcy courts. All of the consumers then
sued the debt collectors, alleging that filing a time-barred proof of claim violated the FDCPA.

What’s a “claim” in bankruptcy? The court first rejected the consumers’ attempt to narrow the bankruptcy
definition of “claim” to only legally enforceable obligations. If that definition were correct, then filing a proof of
claim on a stale debt would automatically be an FDCPA violation, the court conceded. However, the bankruptcy
definition actually is much broader, encompassing claims that were characterized as unmatured or contingent.
This implies that stale claims are permissible.

The Bankruptcy Code expects that claims will be filed for unenforceable debts and that the bankruptcy court will
disallow such claims, the court said. It is true that this could result in some unenforceable debts slipping through,
the court conceded, but the requirement that a proof of claim include details about the debt would help prevent
this, including by demonstrating the timeliness or untimeliness of the claim.

No FDCPA violation. Of course, a creditor’s ability to file a proof of claim on a time-barred debt under the
Bankruptcy Code did not mean that doing so would not violate the FDCPA, the court continued. However, in this
case, the claims were not false, deceptive, or misleading.

The consumers conceded that the proofs of claim gave complete and accurate information about the debts,
the court pointed out. The consumers all had attorneys and, given the information in the filings, "a reasonably
competent lawyer would have had no trouble evaluating whether the debt was timely."

Precedent disregarded. The court was unpersuaded that its opinion in Phillips v. Asset Acceptance, LLC,
compelled a decision that the FDCPA had been violated. In Phillips, a different three-judge panel of the Seventh
Circuit decided that filing a collection suit on a time-barred debt would violate the FDCPA. However, the factors
that led to the Phillips ruling were not present in the context of bankruptcy court proceedings, the court said.

A consumer being sued might not know about the statute of limitations or might not recall the debt at all, the
court explained. Alternatively, a consumer might choose to surrender rather than litigate a collection suit. These
concerns were not present in bankruptcy proceedings.

Dissenting opinion. Chief Judge Woods disagreed with the other two members of the panel. According to the
dissentor, Seventh Circuit precedent makes clear that misleading a consumer about the collectability of a debt
is a violation, and a bankruptcy court proof of claim is just as misleading as the collection suit found to be a
violation in Phillips.

Contrary to the majority’s belief, an effort to collect a time-barred debt is not a claim permitted by the bankruptcy
rules, she continued. Such a debt is neither contingent nor unmatured.

When a creditor knows that a debt is time-barred, it should not be attempting to collect it in bankruptcy,
according to the dissenting opinion. Nearly 10 percent of recent bankruptcy cases filed in the Chicago district
were filed by consumers without attorneys, she pointed out, and these consumers need to be protected.
Differing interpretations. U.S. appellate courts have reached contrary conclusions on whether filing bankruptcy court proofs of claim on stale debts violates the FDCPA. For example, the Eleventh Circuit recently decided in Johnson v. Midland Funding, LLC that such a filing is a violation (see Banking and Finance Law Daily, May 25, 2016). The bankruptcy code does not displace the FDCPA, in the Eleventh Circuit’s opinion. Creditors can file claims on stale debts, but they are liable for the consequences if they do so.

However, the Seventh Circuit agreed with the Second and Eighth Circuits that filing a claim is not necessarily an FDCPA violation. Most recently, the Eighth Circuit decision in Nelson v. Midland Credit Management, Inc., found there is no violation because bankruptcy court procedures adequately protect consumers, making the application of the FDCPA unnecessary (see Banking and Finance Law Daily, July 12, 2016).

The cases are No. 15-2044, No. 15-2082, and No. 2109.

Attorneys: David P. Leibowitz (Allen Chern Law LLC) for Alphonse D. Owens. David J. Philipps (Philipps & Philipps) for Tia Robinson. Jeanine Kerridge (Barnes & Thornburg LLP) for LVNV Funding, LLC. Rosa M. Tumialan (Dykema Gossett PLLC) for eCast Settlement Corp.

Companies: eCast Settlement Corp.; LVNV Funding, LLC

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