

# Banking and Finance Law Daily Wrap Up, DEBT COLLECTION—11th Cir.: Bankruptcy claim to collect stale debt violates FDCPA, (Jul. 22, 2014)

By Thomas G. Wolfe, J.D.

In connection with a debtor's Chapter 13 bankruptcy proceeding, a debt collection company's filing of a proof of claim against the debtor to collect a time-barred debt subjected the company to liability under the federal Fair Debt Collection Practices Act, the U.S. Court of Appeals for the Eleventh Circuit has ruled. In refusing to dismiss the debtor's adversary proceeding against the collection company for allegedly violating the FDCPA, the federal appellate court reversed the respective orders of both the bankruptcy and federal district courts below ([Crawford v. LVNV Funding, LLC](#), July 10, 2014, Goldberg, Judge).

**Background.** According to the court, the debtor owed \$2,038 to a furniture company. Eventually, the furniture company charged off the debt. In September 2001, a company affiliated with LVNV Funding, LLC, acquired the debt from the furniture company, and the last transaction on the account occurred about a month later in October 2001.

Under the three-year Alabama statute of limitations governing the debtor's account, the debt became unenforceable in both state and federal court in October 2004. Later, in February 2008, the debtor filed for Chapter 13 bankruptcy in the Middle District of Alabama. During that bankruptcy proceeding, LVNV Funding filed a proof of claim to collect on the \$2,038 debt previously owed to the furniture company.

**Adversary proceeding.** In response to the debt collection company's proof of claim, the debtor filed a counterclaim against LVNV Funding in an adversary proceeding stemming from the debtor's bankruptcy. Among other things, the debtor alleged that LVNV Funding "filed stale claims as a routine business practice." Moreover, the debtor contended that the company's proof of claim for the time-barred debt violated provisions of the FDCPA. More specifically, the debtor alleged that the collection company's filing of a stale proof of claim not only violated the FDCPA prohibition against "any false, deceptive, or misleading representation or means in connection with the collection of any debt" (15 U.S.C. §1692e), but also violated the FDCPA prohibition against a collector using "unfair or unconscionable means to collect or attempt to collect any debt" (15 U.S.C. §1692f).

However, the bankruptcy judge granted LVNV Funding's request to dismiss the debtor's adversary proceeding in its entirety, and the U.S. District Court for the Middle District of Alabama affirmed the order of dismissal. The debtor then appealed to the Eleventh Circuit.

**Eleventh Circuit’s analysis.** The Eleventh Circuit communicated that it was called upon to examine whether LVNV Funding’s alleged conduct—filing and trying to enforce in court a bankruptcy claim known to be time-barred—“would be unfair, unconscionable, deceiving, or misleading towards the least-sophisticated consumer” in violation of the FDCPA.

The court observed that, under the Bankruptcy Rules, unless the debtor or the bankruptcy trustee objects, even a time-barred claim is automatically allowed against the debtor; the debtor must pay the debt from his or her future wages “as part of the Chapter 13 repayment plan, notwithstanding that the debt is time-barred and unenforceable in court.” The Eleventh Circuit emphasized that is what happened in the case before it. The bankruptcy trustee paid monies from the debtor’s bankruptcy estate to LVNV Funding for the time-barred debt. “It wasn’t until four years later...that [the debtor]—with the assistance of counsel—objected to LVNV’s claim as unenforceable.”

From the federal appellate court’s perspective, “a debtor’s memory of a stale debt may have faded and personal records documenting the debt may have vanished, making it difficult for a consumer debtor to defend against the time-barred claim” in a Chapter 13 bankruptcy. Moreover, “a debt collector’s filing of a time-barred proof of claim creates the misleading impression to the debtor that the debt collector can legally enforce the debt.” Ultimately, the court determined that since LVNV Funding “would have violated the FDCPA by filing a lawsuit on stale claims in state court, LVNV violated the FDCPA by filing a stale claim in bankruptcy court.”

The court rejected the debt collection company’s argument that the court’s interpretation of the FDCPA in the bankruptcy context would be “at odds with” the Bankruptcy Code provision governing an automatic stay. The Eleventh Circuit maintained that the Bankruptcy Code’s automatic stay provision pertains to “debt-collection activity outside the bankruptcy proceeding,” and “does not prohibit the filing of a proof of claim to collect a debt within the bankruptcy process.” In the court’s view, filing a proof of claim “is the first step in collecting a debt in bankruptcy and is, at the very least, an ‘indirect’ means of collecting a debt.”

**Disposition.** In underscoring the fact that the lower court found a way to avoid addressing the issue of whether the Bankruptcy Code displaces or preempts certain consumer-protection provisions of the FDCPA concerning creditor misconduct, the Eleventh Circuit declined to rule on that particular issue as well. Consequently, in deciding that, on the face of the debtor’s complaint, LVNV Funding “violated the FDCPA’s plain language,” the Eleventh Circuit vacated the federal district court’s dismissal of the debtor’s action and remanded the matter for further proceedings.

Notably, the Eleventh Circuit’s holding appears to be in conflict with a 2010 decision by the Second Circuit (*Simmons v. Roundup Financing, LLC*) ruling that a proof of claim filed in a bankruptcy court cannot form the basis for an FDCPA claim.

The case is [No. 13-12389](#).

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