Creditors Collecting Old Debts Beware

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Creditors in bankruptcy cases may be interested in the July 10, 2014 Opinion issued by the Eleventh Circuit in Crawford v. LVNV Funding, LLC.

The Eleventh Circuit held that the act of filing a proof of claim on a time-barred debt is a violation of the Fair Debt Collection Practices Act (FDCPA). In this case, the debtor last made payment on the debt in question in 2001 in Alabama, which has a three-year statute of limitations. This rendered the debt invalid at some point in 2004. The debtor ultimately filed bankruptcy in 2008 and the owner of the old debt, LVNV Funding LLC, filed a proof of claim for the expired debt, which received no objection at the time and resulted in LVNV receiving payments during the bankruptcy case.

Four years later, however, the debtor complained that the debt in question was time-barred and that the creditor's filing of a proof of claim was a violation of the FDCPA. The Bankruptcy Court dismissed the complaint, and the District Court affirmed the dismissal, but the Eleventh Circuit reversed. In particular, the Eleventh Circuit found that filing a proof of claim on a time-barred debt "creates the misleading impression to the debtor that the debt collector can legally enforce the debt." The Eleventh Circuit analyzed the issues under the "least-sophisticated consumer" standard to evaluate the debt collector's conduct, meaning that the inquiry is "not whether the particular plaintiff-consumer was deceived or misled; instead, the question is 'whether the 'least sophisticated consumer' would have been deceived' by the debt collector's conduct." The Eleventh Circuit concluded that, "under the 'least-sophisticated consumer standard… [the creditor's] filing of a time-barred proof of claim against [the debtor] in bankruptcy was 'unfair,' 'unconscionable,' 'deceptive,' and 'misleading' within the broad scope of section 1692e and section 1692f."

The creditor in the case also argued that filing a proof of claim was not "collection activity" as it is defined by the FDCPA, but the Eleventh Circuit disagreed, relying on a broad definition of what is considered "collection activity" that is increasingly common in terms of FDCPA enforcement. Notably, the Eleventh Circuit declined to weigh in on a related topic that has split the Circuits: whether the Bankruptcy Code "preempts" the FDCPA when creditors allegedly misbehave in bankruptcy. Some circuits hold that the Bankruptcy Code displaces the FDCPA in the bankruptcy context. See Simmons v. Roundup Funding, LLC, 622 F.3d 93, 96 (2d Cir. 2010); Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 510 (9th Cir. 2002). Other circuits hold the opposite. See Simon v. FIA Card Ser., N.A., 732 F.3d 259, 271-74 (3d Cir. 2013); Randolph v. IMBS, Inc., 368 F.3d 726, 730-33 (7th Cir. 2004).

This case serves as a warning for creditors aiming to collect on years-old debt. Generally, businesses attempting to collect business debts are exempt from the FDCPA, but regulators sometimes ignore the distinction between businesses and consumers. Additionally, various states have statutes that may be applicable even where the FDCPA is not, and those state statutes may contain prohibitions similar to those of the FDCPA.

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