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ALERT

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U.S. SUPREME COURT: FILING AN ACCURATE PROOF OF CLAIM FOR A TIME-BARRED DEBT IS NOT A FDCPA VIOLATION

In a 5-3 decision, the U.S. Supreme Court concluded that filing a proof of claim in a Chapter 13 bankruptcy that is obviously time-barred is not a false, deceptive, misleading, unfair or unconscionable debt collection practice within the meaning of the federal Fair Debt Collection Practices Act ("FDCPA"). *Midland Funding LLC v. Johnson*, No. 16-348 (May 15, 2017). The Court resolved a circuit split, siding with the majority of Courts of Appeals that have addressed this issue.

First, the Court concluded that filing an accurate proof of claim is not "false," "deceptive" or "misleading". The Bankruptcy Code ("Code") defines "claim" to mean a "right to payment," which in turn is determined by state law. Like most state laws, Alabama law provides that a creditor has a right to payment of a debt even after the limitations period has expired. Thus, "claim" includes unenforceable claims.

The Court rejected the debtor's argument that "claim" means an "enforceable claim" because (i) "enforceable" does not appear in the Code's definition of "claim" and (ii) other provisions of the Code, such as provisions that give a debtor an affirmative defense to a time-barred claim, indicate that "claim" includes unenforceable claims. In further support of its conclusion, the court noted that whether a statement is misleading depends on the legal sophistication of its audience, which, in a Chapter 13 proceeding, includes a trustee. A trustee is likely to understand statements in a proof of claim that indicate a claim is time-barred.

Next, the Court analyzed whether filing a proof of claim is "unfair" or "unconscionable" within the FDCPA. The Court rejected the debtor's arguments that (i) the Court should follow lower court decisions that have held that it is "unfair" for debt collectors to knowingly assert a time-barred claim and (ii) permitting the filing of proofs of claim on time-barred debt creates risk of harm to debtors and serves no legitimate purpose. The Court noted that the lower court cases involve ordinary civil actions and distinguished those cases by highlighting differences between ordinary civil actions and bankruptcy proceedings. According to the Court, the concern that consumers might unwittingly repay a time-barred debt is significantly decreased in Chapter 13 bankruptcy proceedings because (i) debtors initiate bankruptcy proceedings, (ii) knowledgeable trustees are available to evaluate claims and (iii) procedural bankruptcy rules guide the evaluation of claims. These features make it more likely that a claim for time-barred debt will be disallowed in a Chapter 13 bankruptcy. The court also recognized that at least on occasion the assertion of a stale claim can benefit a debtor insofar as discharging the debt means the debt will not remain on the debtor's credit report and affect the debtor's ability to borrower money.

In its concluding remarks, the Court acknowledged that the FDCPA and Code have different purposes and structural features. Finding a FDCPA violation for filing a proof of claim on time-barred debt would upset the "delicate balance" struck by the Code between debtor protection and obligations. The court refused to create a significant bankruptcy-related remedy in absence of express language in the Code.

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