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ALERT

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7TH CIRCUIT SAYS PROOF OF CLAIM ON TIME-BARRED DEBT DOES NOT VIOLATE FDCPA

The U.S. Court of Appeals for the Seventh Circuit has determined that filing a proof of claim in bankruptcy on a time-barred debt did not constitute a false, deceptive, misleading, unconscionable or unfair collection practice in violation of the federal Fair Debt Collection Practices Act (FDCPA). *Owens v. LVNV Funding LLC,* Nos. 15-2044, 15-2082, 15-2109 (7th Cir. Aug. 10, 2016).

The Seventh Circuit addressed three consolidated cases arising from Chapter 13 bankruptcies with the following essential facts: a debt buyer filed an accurate proof of claim on a debt for which the statute of limitations had expired. The debtor's counsel objected to the claim and discharged the time-barred debt. The debtor filed suit against the debt buyer alleging that filing a proof of claim on a time-barred debt violated of the FDCPA. The district court dismissed the debtor's suit.

The debtors in the consolidated cases proffered two arguments to the Seventh Circuit on appeal: (1) the act of filing a proof of claim on a time-barred debt is inherently misleading because "claim" under the Bankruptcy Code means only legally enforceable obligations and (2) the act of filing a proof of claim on a time-barred debt is deceptive or unfair because debtors and their attorneys can sometimes fail to object to time-barred claims allowing collectors to collect an unenforceable debt.

In response to the debtors' first argument, the Seventh Circuit found that filing a proof of claim on a time-barred debt is not inherently misleading or deceptive because the Bankruptcy Code defines "claim" broadly to include the right to payment whether such right is contingent or unmatured. "Claim" does not include only legally enforceable claims. The Seventh Circuit determined that the Bankruptcy Code contemplates that creditors will file proofs of claim for unenforceable debts based on certain aspects of the bankruptcy process.

To tackle the debtors' second argument, the Seventh Circuit first recognized that there is a circuit split on whether filing a proof of claim on time-barred debt is a misleading or deceptive act prohibited by the FDCPA. The Seventh Circuit declined to follow the Eleventh Circuit's conclusion in *Crawford v. LVNV Funding, LLC* that the filing of a proof of claim on a time-barred debt created a misleading impression in violation of the FDCPA that the collector can legally enforce the debt. Instead, the Seventh Circuit agreed with the Eighth Circuit in *Nelson v. Midland Credit Mgmnt.* that merely filing a proof of claim on a time-barred debt does not violate the FDCPA.

The Seventh Circuit reasoned that concerns about debtors being misled or deceived by time-barred debt are less acute in bankruptcy proceedings than in general collection lawsuits because bankruptcy proceedings include certain protections to challenge unenforceable claims. In bankruptcy proceedings, debtors are usually represented by counsel or the court appoints a trustee who has a duty to object to improper claims. A creditor must file a proof of claim, which gives the debtor's counsel or the trustee adequate information to object to an unenforceable claim. Because debtors typically must initiate bankruptcy proceedings, they are more likely to challenge claims than in the typical collection lawsuit.

The Seventh Circuit also noted that applying the Eleventh Circuit's ruling in *Crawford* would contradict Seventh Circuit precedent because the Eleventh Circuit used the "least sophisticated consumer" standard to evaluate whether the collector's conduct is deceptive or misleading. In *Owens*, the debtors were represented by counsel so the Seventh Circuit evaluated the collectors' conduct based on a "competent attorney" standard. The Seventh Circuit concluded that the collector's act of filing an accurate and complete proof of claim is not deceptive or misleading where a reasonably competent attorney would have no trouble evaluating whether the claim is time-barred based on the information in the proof of claim.

The Seventh Circuit ended its opinion by reiterating that if the collectors had provided inaccurate information in their proofs of claim or engaged in another deceptive or misleading debt collection practice, then the FDCPA would have been violated.❑

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