



SCOTUS to Resolve Circuit Split on Interplay of FDCPA and Bankruptcy Code

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On October 11, 2016, the Supreme Court of the United States granted cert in *Midland Funding, LLC v. Johnson*, No. 16-348 (Oct. Term 2016) to resolve a split among the Circuits as to the FDCPA's prohibition against deceptive collection practices in the context of filing proofs of claim for debts where a collection action would otherwise be time-barred.

In *Johnson*, creditor Midland Funding filed a proof of claim seeking payment under an account that the debtor had not used in the ten years preceding her bankruptcy filing. The applicable statute of limitations had run years before, making the debt a "stale claim" and uncollectible. Johnson filed an action under the FDCPA alleging that the efforts to collect on the stale claim amounted to a "false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e.

The District Court dismissed the action based on its understanding that the Bankruptcy Code affirmatively authorizes a creditor to file a proof of claim, even a time-barred claim, so long as the right to payment had not been extinguished under applicable state law. *Johnson v. Midland Funding, LLC*, 528 B.R. 462 (S.D. Ala. 2015), *rev'd*, (11th Cir. May 24, 2016), *cert. granted*, (U.S. Oct. 11, 2016). The District Court found a conflict between the FDCPA and the Bankruptcy Code in that the FDCPA would make it unlawful to knowingly file a time-barred claim. Finding a "positive repugnancy" between the two statutes, and relying on the doctrine of implied repeal, the District Court held that a creditor's right to file a time-barred claim under the Code precluded debtors from pursuing actions under the FDCPA in the context of a chapter 13 bankruptcy.

The Eleventh Circuit reversed the District Court's ruling, finding that while a creditor may have a right to file a time-barred claim, the FDCPA prohibits debt collectors from engaging in deceptive practices which may be defined to include the filing of a time-barred claim. (Court of Appeals Case No. 15-11240). The appellate court pointed out that while any creditor may file a proof of claim, creditors who file claims they know to be barred by the statute of limitations may be subject to the consequences resulting from that action. The Circuit Court discussed the District Court's use of the implied repeal doctrine and stated that the doctrine is generally disfavored and the Code and the FDCPA can be read harmoniously. Finding that the Code establishes the initial right to file a claim, and the FDCPA addresses the later ramifications of filing a claim, the court cited *POM Wonderful, LLC*

v. Coca Cola Co., 134 S.Ct. 2228, 2238 (2014), stating: “We read these regimes together as providing different tiers of sanctions for creditor misbehavior in bankruptcy.”

The Eleventh Circuit is joined by the Third and Seventh Circuits in holding that the FDCPA and Code can coexist since creditors can comply with both simultaneously. The Second and Ninth Circuits have disagreed and held that the Bankruptcy Code and FDCPA cannot be read harmoniously and thus the Code has impliedly repealed the FDCPA. The case is expected to be argued early next year.

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