



A federal district in Pennsylvania dismisses a putative FDCPA class action based on the filing a proof a claim on a time-barred debt in a Chapter 13 bankruptcy

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I recently wrote about a decision from a federal district court in Alabama that sidestepped the Eleventh Circuit's *Crawford*^[1] decision by finding that the Bankruptcy Code (the "Code") and the Fair Debt Collection Practices Act ("FDCPA") were in irreconcilable conflict, and the FDCPA gave way to the Code on the question of whether the mere act of filing a proof of claim on a stale debt in a Chapter 13 bankruptcy violated the FDCPA.^[2]

A federal district court in Pennsylvania has now followed suit in *Torres v. Asset Acceptance, LLC*, No. 14-6542 (E.D. Pa. April 7, 2015). On October 7, 2013, plaintiff Margaret Torres filed a Chapter 13 bankruptcy. On November 22, 2014, defendant Asset Acceptance, LLC filed a proof of claim for an alleged debt of \$1,296.86 Asset Acceptance had previously acquired. The proof of claim demonstrated the last payment date was June 10, 2002, which placed the claim outside of Pennsylvania's four-year statute of limitations period for breach of contract claims. In other words, Asset Acceptance filed a proof of claim on a time-barred debt. Plaintiff subsequently filed a complaint on behalf of herself and all others similarly situated in federal court alleging that Asset Acceptance breached the FDCPA by filing the proof of claim on her time-barred debt. Asset Acceptance filed a motion to dismiss, arguing it did not.

Fortunately, the district court in *Torres* felt free to confront "the interaction and apparent conflict...between the FDCPA and the Bankruptcy Code" because the Third Circuit had not addressed this issue and it obviously was not bound by *Crawford*. The parties in *Torres* disagreed about whether a direct and irreconcilable conflict existed. The defendant contended it did because the Bankruptcy Code grants creditors the right to file a time-barred proof of claim while the FDCPA precludes it. Plaintiff argued there was no direct conflict because while the Bankruptcy Code permitted the filing of a time-barred proof of claim, it didn't require it.

While the *Torres* court recognized that the *Crawford* court's concern about a least sophisticated consumer being duped into settling a stale debt was legitimate outside of the bankruptcy context, this risk was attenuated for debtors in bankruptcy because they are "already under the protection of the bankruptcy court." The *Torres* court found that no violation occurred and dismissed Torres' complaint.

Hopefully district courts outside of the Eleventh Circuit will be emboldened to try to stem the tidal wave of these claims following *Crawford*.

[1] *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014) held that filing a proof of claim to collect a time-barred debt in a Chapter 13 bankruptcy did indeed violate the FDCPA.

[2] *Johnson v. Midland Funding, LLC*, No. 1:14-cv-00322-WS-C, Doc. #28 (S.D. Ala. March 24, 2015). That comment can be found here: <http://bit.ly/1ywo0z9>

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