



Western District of Missouri Bankruptcy Court Finds No FDCPA Violation for Proof of Claim Filed on Time-Barred Debt

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Recently, several courts across the country have considered whether filing a proof of claim on debt that is barred by the statute of limitations violates the Fair Debt Collection Practices Act ("FDCPA"). The increased attention on this issue was sparked by the Eleventh Circuit's decision in *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014). The Eleventh Circuit held that filing a proof of claim on debt that is barred by the applicable statute of limitations violates the FDCPA. After the Eleventh Circuit's decision, many other courts have decided the issue, and the results of these cases have been mixed. Last week, the Bankruptcy Court for the Western District of Missouri weighed in, and it found that there was no violation of the FDCPA. *Dunaway v. LVNV Funding, LLC*, No. 14-04132-drd, Adv. No. 14-4132, Doc. 29 (Bankr. W.D. Mo. May 19, 2015).

In *Dunaway*, the debtors had filed a Chapter 13 bankruptcy case. The defendants filed a proof of claim in the bankruptcy case, and the proof of claim included an attachment with information about the date the account was charged off by the original creditor, the last payment date, and the last transaction date. The debtors objected to the claim and filed an adversary proceeding against the defendants. In the adversary proceeding, debtors alleged that defendants violated the FDCPA by filing the proof of claim because the debt was barred by the applicable statute of limitations.

The court in *Dunaway* disagreed with the debtors' argument. The court noted that there is nothing in the bankruptcy code that prohibits filing a proof of claim on debt that is barred by the statute of limitations. It found that there was no "threat," nothing false or misleading, and no unfair or unconscionable behavior when filing a proof of claim that contained accurate information and was in compliance with the bankruptcy rules. The court also noted some of the differences between filing a proof of claim on stale debt and litigation on stale debt, "all indicating that the deception and unfairness of untimely lawsuits is not present in the bankruptcy claims process." *Dunaway*, Adv. No. 14-4132, Doc. 29 at 11. These differences include the fact that there is a trustee with a fiduciary duty to examine claims, debtors are more likely to be represented by an attorney, the claims objection process is simpler than a lawsuit, and there is less of an impact on a debtor in bankruptcy than a defendant in a collection suit.

While the law is not settled everywhere, the *Dunaway* case provides some guidance for creditors within the Western District of Missouri.

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