No. 14-858

In The
Supreme Court of the United States

LVNV FUNDING, LLC; RESURGENT CAPITAL SERVICES, L.P.; AND PRA RECEIVABLES MANAGEMENT, LLC,

Petitioners,

v.

STANLEY CRAWFORD,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF DBA INTERNATIONAL AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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February 19, 2015

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DBA International respectfully submits this amicus curiae brief in support of Petitioners.[1]

STATEMENT OF IDENTITY AND INTEREST IN CASE

DBA International (DBA) is the nonprofit trade association that represents more than 550 companies that purchase performing and nonperforming receivables on the secondary market, as well as law firms, collection agencies, originating creditors and companies that provide goods and services to the industry.

DBA International members, recognizing the importance of their work to the nation's economy, have developed rigorous standards and practices to which all members must conform. Members of DBA International must conform to its Ethics Rules and Ethical Considerations which require a high standard of professional conduct surpassing existing legal and regulatory requirements imposed on debt buyers.

[1] Pursuant to Rule 37.6 of the Rules of the Supreme Court, counsel of record for all parties received notice at least 10 days prior to the due date of the amici curiae's intention to file this brief. All parties have consented to the filing of this brief. Those consents have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

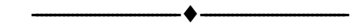
Introduced in 2012, DBA's Receivables Management Certification Program ("the Program") set the "gold standard" within the receivables industry due to its rigorous uniform industry standards of best practice which focus on consumer protection. The Program accomplishes this through the adoption of a national standard for the debt buying industry to ensure that those who are certified are aware of and are complying with state and federal statutory requirements, responding to consumer complaints and inquiries, and adhering to debt buying industry best practices. Certification is offered at the individual and company level.

The Program requires certified individuals to attend two introductory courses. The first course is a four-hour survey of the debt buying industry and best practices, which addresses the laws and regulations applicable to debt buying companies. The second course is a two-hour course examining ethics particularly as it relates to the debt buying industry. On a biannual basis, certified individuals must complete 24 additional credit hours of continuing education.

The Program requires debt buying companies to undergo a three-tier audit process, including a full third-party compliance audit to validate conformity with the Program's standards and integration of the standards into the member company's operations. Program certification also requires DBA International member companies to engage a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or

general counsel of the company (unless the chief compliance officer is the president, chief executive officer, member of the board of directors, or general counsel). The chief compliance officer must also be individually certified through the Program.

The debt buying companies certified by the Program hold approximately 80 percent of all purchased receivables in the country, by DBA International's estimates. Because DBA International's debt buying company members are often subject to the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq*., ("FDCPA") conflicting interpretations of FDCPA pose significant harm to its members. Here such a conflict exists. The Eleventh Circuit Court of Appeals holding that a debt buying company (and only a debt buying company) violates the FDCPA when it files a proof of claim in a Chapter 13 bankruptcy case on a "time-barred" debt, conflicts with existing decisional law finding that the same conduct is entirely permissible.



SUMMARY OF ARGUMENT

The Eleventh Circuit's holding has altered the claims filing and objection process in such a way that it will have almost no benefit to debtors (except for their attorneys who will recover fees under the FDCPA) and will in fact ultimately harm debtors more than help them. For years, debt buying companies and other collectors have filed proofs of claim on debts that were subject to a statute of limitations

defense. This was provided for in the Bankruptcy Code and resulted in all creditors sharing in a debtor's limited assets of a chapter 13 debtor. In cases where the debtor failed to schedule these older claims, the debtor would receive a discharge of a debt that would not otherwise have been discharged. Now, that process is changing for the worse as a result of the Eleventh Circuit's opinion and that change will result in fewer debts being discharged, fewer debts being sold to debt buying companies and ultimately either more collection suits against consumers by original creditors or worse, less credit being made available to consumers.

ARGUMENT

THE IMPACT OF *CRAWFORD* ON DEBT BUYING COMPANIES, CONSUMERS AND THE LIFE CYCLE OF DEBT.

"A deluge has swept through U.S. bankruptcy courts of late." *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1256 (11th Cir. 2014). However the deluge is not just a deluge of proofs of claim, it is a deluge of consumer bankruptcy cases. Over 900,000 nonbusiness bankruptcy cases were filed in 2014 and over 300,000 of those were chapter 13 cases.[2] The deluge has nothing to do with debt buying companies or

[2] www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2014/1214_f2.pdf.

time-barred debts but rather is just a sign of our economic times. Neither debt buying companies nor original creditors unilaterally create debts. Rather, creditors extend credit to consumers and sometimes, for one reason or another these consumers are unable to repay the credit that was extended and unfortunately sometimes end up having to file for protection under the United States Bankruptcy Code. This is one of the possibilities in the life cycle of a debt. But make no mistake about it, "consumer credit is a critical component of today's economy." Federal Trade Commission, *Collecting Consumer Debts, The Challenges of Change, A Workshop Report*, p. ii (2009), publically available and last accessed on February 18, 2015 at www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf.

A. The life cycle of debt and debt buying companies' important place in the life cycle

Prior to *Crawford*, debt buying companies would participate in the Bankruptcy Court's claims process as would any other creditor. However, the Eleventh Circuit's decision in *Crawford* has a disparate impact on debt buying companies that will also have serious implications on the ***entire*** life cycle of a debt all the way back to the original extension of credit to a consumer. As an initial matter, *Crawford*'s holding does not apply to banks or any other original creditors. Thus, the "deceptive" time-barred proof of claim is

only "deceptive" if it is filed by a debt collector. If an original creditor files it, the claim is not "deceptive."

The fact is that these claims are absolutely valid claims that may be filed pursuant to the United States Bankruptcy Code. The primary purpose of Bankruptcy is to provide "the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). One of the fundamental purposes of the bankruptcy system is to adjudicate and conciliate all competing claims to a debtor's property in one forum. *Gray-Mapp v. Sherman*, 100 F. Supp. 2d 810, 813 (N.D. Ill. 1999). In a Chapter 13 case, the debtor's property consists of all of his pre-petition assets as well as his post-petition income. 11 U.S.C. § 1306. It is from this future income that a debtor will fund his Chapter 13 Plan. 11 U.S.C. § 1322(a)(1). Thereafter, that income is distributed to creditors pursuant to the terms of the plan. Except in the rare cases where a debtor is going to pay his unsecured creditors 100% of their claims, the amount of the debtor's monthly payment is unaffected by the claims that are filed. *See, e.g., In re Davidson*, 72 B.R. 384, 387 (D. Colo. 1987) (describing a 100% plan as "relatively rare").

Since one of the purposes of the bankruptcy code is to distribute this limited property of the estate to the debtor's creditors, all creditors who hold claims are entitled to file proofs of claim so that they may

share in that distribution. The Bankruptcy Code provides an incredibly broad definition of "claim" which includes a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5). The broad definition of "claim," is intentionally broad. 11 U.S.C. § 101(5) and 1978 Legislative History ("By this broadest possible definition . . . , the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 21-22 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News, 5787 at 5807-08 and 6266). A "right to payment" exists regardless of whether the person holding the claim has a viable cause of action allowing it to bring a lawsuit. *In re Remington Rand Corp.*, 836 F.2d 825, 831-32 (3d Cir. 1988). It does not matter that a claim may be subject to an affirmative defense; a contractual right to recover an outstanding extension of credit is a "right to payment," and thus a "claim" within the broadly defined scope of that term for bankruptcy purposes. *See* 11 U.S.C. § 101(5). With its broad definition of "claim" "Congress established that the existence of a right to payment is more extensive than the existence of a cause of action that entitles an entity to bring suit." *In re Keeler*, 440 B.R. 354, 362 (E.D. Pa. 2009) (citing *In re Remington Rand Corp.*, 836 F.2d at 831-32).

With this incredibly broad definition of claim, any claim fitting into that definition is a ***valid*** claim that may or may not become an ***allowed*** claim entitled to payment. If no one objects to the claim it automatically becomes an allowed claim pursuant to 11 U.S.C. § 502(a). However, if a party in interest objects, a court may disallow a claim for any of the reasons set forth in 11 U.S.C. § 502(b), including that the claim is "unenforceable against the debtor . . . under applicable law." A determination under § 502(b) that a claim is "disallowed" does not mean that the claim is invalid, unfair, false, deceptive or unconscionable. Rather, it simply means that it is "disallowed." Similarly, a court may disallow a claim because the creditor forgot to attach documents or provide information required by Bankruptcy Rule 3001. This does not mean that the claim was invalid or false or otherwise deceptive, it just means that the claim will not be allowed due to the creditor's failure to comply with the rule.

B. *Crawford* has a material, adverse impact on the life cycle of debt, on debt buying companies and consumers

The Eleventh Circuit's opinion has now subjected debt collectors to liability under the FDCPA for taking an action that is expressly permitted and contemplated by the Bankruptcy Code. Why? So that it can help combat the deluge? To protect the debtor? The debtor does not need any extra protections from the FDCPA in this situation. The Debtor already has

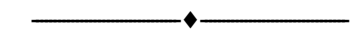
the protections of the Bankruptcy Code and has both the court and trustee, and more often than not, his own attorney to protect him from potential abuses by creditors. *See Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 96 (2d Cir. 2010); *B-Real, LLC v. Rogers*, 405 B.R. 428, 432 (M.D. La. 2009).

Moreover, statute of limitations defenses are just that, defenses. They are not self-executing. *See*, *e.g., Notte v. Merchs. Mut. Ins. Co.*, 185 N.J. 490, 500, 888 A.2d 464, 469 (N.J. 2006) (holding that a statute of limitations defense must be raised or it is waived and "until adjudicated time-barred, a stale claim filed after the expiration of the applicable statute of limitations is nonetheless valid."). Unlike the often unrepresented debtor in state court collection litigations, Chapter 13 debtors will have the court, the trustee and most likely his attorney to "protect" him and assert that statute of limitations defense to the proof of claim. Of course, except for the "rare" 100% plan cases, the debtor is not going to care about those defenses because his plan payment is not going to change. If anyone should be concerned about these claims it is other creditors who will receive a smaller share of the distribution as a result of the added claims.

Applying these "protections" to the claims process ignores the definition of claim and ignores the process which contemplates the filing of these objections. It is also a short sighted solution to a non-existent problem that is going to harm consumers in the long run.

The Eleventh Circuit's opinion also creates a slippery slope with regard to liability for filing proofs of claim. This week it is the affirmative defense of the statute of limitations. Next week it could be that the collector failed to attach documents to the proof of claim. The following week it could be that the amount of the claim was incorrect. Of course none of this is directed at the debtor. Rather, the proof of claim is a form submitted to the clerk to permit a creditor with a valid claim to participate in the distribution of property of the estate. It is during this process that the court will determine whether to allow or disallow the claim.

The Petitioners are debt buying companies. All of the defendants identified in the Petition for Certiorari (footnote 6) are debt buying companies. The conduct vilified by the Eleventh Circuit is only "deceptive" because it was performed by a debt buying company. If debt buying companies cannot participate in the claims process to collect these older debts, then they are going to be less likely to purchase them. If they are less likely to purchase them then original creditors will no longer be able to sell debts and will have to return to collecting these accounts themselves and filing lawsuits long before the statute of limitations runs. This will lead to more consumers being sued and having to deal with these accounts sooner rather than later.



CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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