SUPREME COURT TO DECIDE IF THE FILING OF A FAULTY PROOF OF CLAIM IN BANKRUPTCY PERMITS A DEBTOR TO SUE UNDER THE FDCPA

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The United States Supreme Court will review a decision of the Eleventh Circuit Court of Appeals, Johnson v. Midland Funding, LLC, to resolve a dispute between the circuits regarding whether the Bankruptcy Code provides the exclusive mechanism to determine the validity of a Proof of Claim or whether the filing of a faulty Proof of Claim gives rise to a debtor's right to sue under the Fair Debt Collection Practices Act (the "FDCPA"). The Bankruptcy Code permits a creditor to file a claim if, among other things, the creditor has a right to payment. The FDCPA makes it unlawful for a debt collector to "use any false, deceptive, or misleading representation or means in connection with the collection of any debt." The FDCPA provides for a private right of action to recover actual damages and statutory damages of up to $1,000 plus reasonable attorney's fees. Actual damages need not be proved to recover under the statute. The FDCPA also includes class action provisions.

In Johnson, the creditor (a buyer of unpaid debt) filed a Proof of Claim for an account after the statute of limitations for asserting a claim for collection had expired. The Eleventh Circuit reaffirmed prior decisions of that court holding that the filing of a Proof of Claim is subject to the FDCPA. The decision further discussed the apparent conflict between the Bankruptcy Code's provisions governing the filing and adjudication of Proofs of Claim and the FDCPA but concluded that the Code did not pre-empt the FDCPA. Other circuits have held that the Bankruptcy Code provides the exclusive mechanism to manage and adjudication of Proofs of Claim.

Notably, the Johnson decision confirmed that the Bankruptcy Code permits the filing of a Proof of Claim where the filer does not possess a right to payment and acknowledged the distinction between the ownership of a claim and entitlement to a remedy. Nonetheless, the Eleventh Circuit held that any conflict between the Code and the FDCPA was not irreconcilable.

The Supreme Court's decision may not only impact creditors' rights but also impose liability upon them. It is likely that the Supreme Court's consideration of this issue will not be limited to time-barred claims, but any flaw in a Proof of Claim including any miscalculation of the amount of the debt. If Johnson is affirmed, creditors may be discouraged from filing Proofs of Claim where the right of recovery is at all in doubt, and may encourage debtors and trustees to not only challenge a Proof of Claim via the traditional bankruptcy claims procedures, but also to assert affirmative claims via adversary proceedings that may further burden the courts and hamper the orderly administration of bankruptcy estates.

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