

United States Supreme Court
Rules on Two FDCPA Related Cases

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Midland Funding, LLC v. Johnson, 137 S. Ct. 1407 (2017)

Background

Petitioner, Midland Funding, LLC, filed a proof of claim in Aleida Johnson's Chapter 13 bankruptcy case (pending in Alabama) asserting that Johnson owed Midland for credit card debt. The last time any charge appeared on Johnson's account was over ten years ago. The statute of limitations to collect on this debt in Alabama is six years. Johnson objected to the claim based on the statute of limitations, and the bankruptcy court disallowed the claim.

Johnson then sued Midland in district court, alleging that filing a proof of claim for a debt that had exceeded the statute of limitations was false, deceptive, misleading, unconscionable, and unfair under the Fair Debt Collections Practices Act (FDCPA). The district court ruled that the FDCPA did not apply and dismissed the claim. The Eleventh Circuit Court of Appeals disagreed, reversed the district court, and held that Midland's actions violated the FDCPA. Midland filed a petition for writ of certiorari and noted a circuit split on the issue.

The United States Supreme Court granted the petition, considered the arguments, and reversed the Eleventh Circuit's decision. Justice Breyer wrote the majority opinion. Justices Roberts, Kennedy, Thomas, and Alito joined in the majority. Justice Sotomayor wrote a dissenting opinion. Justices Ginsburg and Kagan joined in the dissent. Justice Gorsuch took no part in the decision.

Holding

The Court held that filing a proof of claim in a Chapter 13 case that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice under the FDCPA.

Analysis

Johnson argued that in a prior United States Supreme Court decision, the Court referred to a bankruptcy claim as "an enforceable claim." Johnson asserted that because the debt was not enforceable, it was deceptive or misleading to file a proof of claim based on that debt. But the Court reasoned that the word "enforceable" does not appear in the Bankruptcy Code's broad definition of "claim."

The Court noted that “claim” is broadly defined in the Code. A claim means 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.” A creditor may have a right to payment on the debt even after the limitations period has expired.

Because the creditor may still have a “right to payment,” the creditor may submit a proof of claim. And because the expiration of the statute of limitations is an affirmative defense, it is the responsibility of debtors or Chapter 13 Trustees to figure out what proof of claims may have valid defenses. Debtors who file for bankruptcy are seen as being knowledgeable enough, with the help of the Chapter 13 Trustee or counsel, to determine what proof of claims are allowable in the bankruptcy.

The Court noted this practice presented a closer question on whether it is unfair or unconscionable under the FDCPA. The Court again addressed the legal sophistication of Chapter 13 debtors and questioned whether these debtors would know to object to the claims based on expiration of the statute of limitations. Debtors may feel compelled to pay off the stale debt. In a Chapter 13 case, however, the Court concluded these issues are significantly diminished by the presence and participation of the Trustee’s office. The Court reasoned there is a better likelihood that the attempt to collect on a stale debt would be met with resistance.

Johnson claimed this behavior would give rise to a practice where debt buyers attempt to collect on stale debt hoping for careless Chapter 13 Trustees or debtors. The Court found this argument unpersuasive. The Court also stated that creditors asserting stale claims could benefit a debtor. Filing a proof of claim and disallowance of that proof of claim discharges the debt. A discharged debt no longer shows up on a credit report. The Court found this can help the debtor.

Dissent

Justice Sotomayor wrote that debt collectors act in a predatory manner by buying old debt for pennies on the dollar and attempting to get the debt repaid through “shady” practices—like filing proofs of claim on stale debt in bankruptcy cases. Debt collectors hope that debtors will not realize that the statute of limitations on the debt expired.

This practice started in small claims court where debt collectors would sue hoping the respondents would not know they could make a statute of limitations argument

or not respond to the claim. In these cases, Justice Sotomayor stated, over 90% of consumers did not respond to claims made against them.

The dissent believes that the majority's decision sets up a legal trap for unsophisticated debtors. Justice Sotomayor stated common sense dictates one "should not be able to profit on the inadvertent inattention of others." Debtors that file for bankruptcy, but are unable to notice these stale debts, will be worse off than if they had not filed at all.

Justice Sotomayor concludes by stating that if Congress wanted to—it could amend the FDCPA to make this practice subject to its regulations.

***Henson v. Santander Consumer USA Inc.*, No. 16–349, slip op. (2017)**

Holding

Justice Gorsuch wrote the opinion for the unanimous Court, which held that a company may collect debts it purchased without being considered a debt collector under the FDCPA.

Analysis

A company could be subject to the FDCPA if it collects debts as a third party on behalf of another. But if the company purchases the debt, it no longer collects the debt on behalf of another. The Court explained that the statute focuses "on third party collection agents regularly collecting for a debt owner—not on a debt owner seeking to collect debts for itself." The Court affirmed the Fourth Circuit's opinion.