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Down the Rabbit Hole: *Crawford v. LVNV Funding, LLC* Upends the Role of the Fair Debt Collection Practices Act in Consumer Bankruptcy

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Comment

Down the Rabbit Hole: *Crawford v. LVNV Funding, LLC* Upends the Role of the Fair Debt Collection Practices Act in Consumer Bankruptcy

> "If I had a world of my own, everything would be nonsense. Nothing would be what it is because everything would be what it isn't. And contrary-wise; what it is it wouldn't be, and what it wouldn't be, it would. You see?"[1]

I. INTRODUCTION

For decades courts have faced the issue of whether the Fair Debt Collection Practices Act (the FDCPA)[2] applies to filing proofs of claims in consumer bankruptcy cases.[3] Courts have historically been cautious

1. ALICE IN WONDERLAND (Walt Disney Productions 1951).
2. 15 U.S.C. §§ 1692-1692p (2012).
3. *See, e.g.*, Simmons v. Roundup Funding, LLC, 622 F.3d 93, 96 (2d Cir. 2010); Claudio v. LVNV Funding, LLC (*In re* Claudio), 463 B.R. 190, 194 (Bankr. D. Mass. 2012); McMillen v. Syndicated Office Sys. (*In re* McMillen), 440 B.R. 907, 913 (Bankr. N.D. Ga. 2010).

of applying the FDCPA in the realm that the Bankruptcy Code[4] covers.[5] As such, the majority of courts faced with this question found the answer to be a resounding "no."[6] However, in *Crawford v. LVNV Funding, LLC*,[7] the United States Court of Appeals for the Eleventh Circuit turned the tide when it held that the filing of a proof of claim on a time-barred debt in Chapter 13 bankruptcy violated the FDCPA.[8] The court determined that filing a proof of claim on a debt barred by the applicable statute of limitations was "unfair, unconscionable, deceptive and misleading" to the least-sophisticated consumer.[9] In doing so, the court's decision created a circuit split.[10] As a result, debtors in the Eleventh Circuit may recover certain damages under the FDCPA that are unavailable under the Bankruptcy Code.[11] Furthermore, *Crawford* may significantly impact the practices of consumer debt collectors, which previously relied on a debtor's failure to object to proofs of claim under § 502 of the Bankruptcy Code[12] to collect on debts that would be otherwise invalid under state law.[13]

II. FACTUAL BACKGROUND

Crawford v. LVNV Funding, LLC began on February 2, 2008, when Stanley Crawford filed a petition for relief under Chapter 13 of the Bankruptcy Code in the Middle District of Alabama.[14] Crawford was indebted to Heilig-Meyers, a furniture company, for $2,037.99 on an account opened in the late 1990s.[15] Heilig-Meyers charged off the debt in 1999; however, in September of 2001, Heilig-Meyers sold the debt to a consumer debt collection company associated with LVNV Funding,

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4. *See* 11 U.S.C. §§ 101-1502 (2012).

5. *See, e.g., Simmons*, 622 F.3d at 95.

6. *E.g., Simmons*, 622 F.3d at 96; *In re Claudio*, 463 B.R. at 194; *In re McMillen*, 440 B.R. at 914.

7. 758 F.3d 1254 (11th Cir. 2014).

8. *Id.* at 1261.

9. *Id.* (quoting 15 U.S.C. §§ 1692c-1692f (2012)) (internal quotations omitted).

10. *See id.* at 1262; *but cf. Simmons*, 622 F.3d at 96 (holding that the FDCPA did not apply to filing of proofs of claim in bankruptcy).

11. *Crawford*, 758 F.3d at 1262.

12. 11 U.S.C. § 502 (2012).

13. *See Crawford*, 758 F.3d at 1259.

14. *Id.* at 1257. This petition was Crawford's second attempt at receiving relief under the Bankruptcy Code; Crawford had first filed a Chapter 13 petition in 2000, which was dismissed in August of 2001. Complaint Seeking Damages in Adversary Proceeding for Stay Violation and Federal Laws at 4, Crawford v. LVNV Funding, LLC, No. 08-30192-DHW (Bankr. M.D. Ala. May 3, 2012) [hereafter Complaint].

15. *Crawford*, 758 F.3d at 1257. Heilig-Meyers subsequently filed for bankruptcy on August 16, 2000. Complaint, *supra* note 14, at 4.

LLC (LVNV). On May 21, 2008, LVNV filed a proof of claim on the unsecured Heilig-Meyers debt in Crawford's bankruptcy case.[16]

The core issue with LVNV's proof of claim was that the last transaction on the Heilig-Meyers account took place on October 26, 2001. Due to Alabama's three-year statute of limitations on the enforcement of a debt, the time to collect the Heilig-Meyers debt ran in October of 2004, rendering the debt unenforceable in both state and federal court. Therefore, when LVNV filed its proof of claim, it did so on a debt where its recovery had expired four years earlier. Despite this, both Crawford and the bankruptcy trustee failed to object to LVNV's claim during the Chapter 13 proceeding, and LVNV was paid from the bankruptcy estate for the Heilig-Meyers debt. Crawford did not learn of the untimeliness of LVNV's claim until four years after the proof of claim was filed.[17]

In May 2012, Crawford objected to the enforceability of LVNV's claim.[18] Crawford sought to recover damages and filed an adversary proceeding, listing three companies as defendants: LVNV, Resurgent Capital Services, L.P. (Resurgent), and PRA Receivables Management, LLC (PRA). Crawford claimed that LVNV was in the business of purchasing portfolios of consumer debt owned by credit grantors; that Resurgent operated as a master servicer for LNNV; and that PRA was in the business of collecting consumer debts associated with LVNV's business practices.[19] The basis of the adversary proceeding was Crawford's allegation that LVNV filed proofs of claim on stale, time-barred debts as a routine business practice in violation of the FDCPA.[20]

The bankruptcy court dismissed the adversary proceeding.[21] The court relied on *Simpson v. PRA Receivables Management, LLC (In re Simpson)*[22] to conclude the filing of a proof of claim in a consumer bankruptcy does not violate the FDCPA, even if the claim is time-barred.[23] Crawford appealed the finding to the United States District Court for the Middle District of Alabama.[24] However, the district court affirmed the bankruptcy court and held that a proof of claim filed on a

16. *Crawford*, 758 F.3d at 1257; *see also* Complaint, *supra* note 14, at 5.

17. *Crawford*, 758 F.3d at 1257, 1259.

18. *Id.*

19. Complaint, *supra* note 14, at 2-3. Crawford included Resurgent and PRA because LVNV allegedly filed its proof of claim through Resurgent in May of 2008 and transferred the claim to PRA in September 2010. *Crawford*, 758 F.3d at 1257 n.2.

20. *Crawford*, 758 F.3d at 1257.

21. Order Dismissing Adversary Proceeding at 1-2, Crawford v. LVNV Funding, LLC, No. 08-30192-DHW (Bankr. M.D. Ala. July 12, 2012).

22. No. 08-00344-TOM-13, 2008 Bankr. LEXIS 2457 (Bankr. N.D. Ala. Aug. 29, 2008).

23. Order Dismissing Adversary Proceeding, *supra* note 21, at 1.

24. *Crawford*, 758 F.3d at 1257.

debt barred by the statute of limitations does not qualify as a violation of the FDCPA.[25] Crawford then appealed to the Eleventh Circuit.[26] Analogizing a lawsuit filed on a time-barred debt to a proof of claim for a time-barred debt, the court held that filing a time-barred proof of claim is "an indirect means of collecting a debt" and is "unfair, unconscionable, deceptive, and misleading," rendering it a violation of the FDCPA.[27] In a unanimous decision, the court reversed the district court's dismissal of Crawford's complaint and remanded the case for further proceedings.[28]

III. LEGAL BACKGROUND

Prior to the FDCPA, consumer debtors had inadequate protective remedies under state and federal law.[29] Enacted in 1977, the FDCPA is a subsection of the Consumer Credit Protection Act (the CCPA),[30] and was Congress's response to overwhelming evidence of abusive, deceptive, and unfair practices implemented by debt collectors.[31] The FDCPA was intended to balance the interests of consumers and debt collectors.[32] In doing so, Congress sought to enact a scheme that would eliminate abusive debt collection practices, incentivize non-abusive debt collection practices, and most importantly, protect consumers.[33] Courts utilize the FDCPA, in combination with other consumer-friendly statutes, to curb rampant abuse by consumer debt collection agencies.[34]

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25. Crawford v. LVNV Funding, LLC, No. 2:12-CV-729-WKW, 2013 U.S. Dist. LEXIS 66169, at *6 (M.D. Ala. May 9, 2013).

26. *Crawford*, 758 F.3d at 1257.

27. *Id.* at 1261, 1262 (quoting 15 U.S.C. §§ 1692c-1692f) (internal quotation marks omitted).

28. *Id.* at 1262.

29. *See* 15 U.S.C. § 1692(e) (2012). "It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." *Id.*

30. 15 U.S.C. §§ 1601-1693r (2012).

31. *See* Mace v. Van Ru Credit Corp., 109 F.3d 338, 343 (7th Cir. 1997).

32. *See* 15 U.S.C. § 1692(e).

33. *See id.* It is important to note that the FDCPA applies solely to consumer debt; commercial debts are not covered by the FDCPA's protections. *See* Goldman v. Cohen, 445 F.3d 152, 153-54 (2d Cir. 2006).

34. *See* FTC, 2004 Annual Report: Fair Debt Collection Practices Act, 1 (2004), *available at* http://www.ftc.gov/sites/default/files/documents/reports/fair-debt-collection-practices-act-annual-report-congress-federal-trade-commission-enforcement/2004fdcpareport.pdf. For example, the Fair and Accurate Credit Transactions Act implements protections to victims of identity theft or fraud. *See* 15 U.S.C. §§ 1681m(g), 1681s-2 (2012).

The FDCPA applies solely to the conduct of debt collectors, as distinguished from the actions of creditors.[35] It is a strict-liability statute construed in favor of consumers to fulfill its protective purpose.[36] To recover under the FDCPA, a debtor must prove four elements: (1) the debtor is either a natural person injured by a violation of the FDCPA, or meets the definition of a consumer[37] within the meaning of the FDCPA; (2) the debt[38] arose out of a transaction that was entered into for personal, family, or household purposes; (3) the alleged violator is a debt collector; and (4) the debt collector has violated a provision of the FDCPA.[39] However, an injured consumer need not show intentional conduct on the part of the debt collector.[40] The FDCPA allows an individual who successfully proves a violation to collect his actual damages, additional damages up to one thousand dollars, the costs of the action, and reasonable attorney fees.[41]

Additionally, courts impose legal standards to determine whether the actions of a debt collector are false, deceptive, misleading, harassing or abusive, or an unfair practice.[42] The standards to determine whether a consumer collector has violated the FDCPA are the "least-sophisticated consumer standard"[43] and the unsophisticated but "reasonable consumer[]" standard.[44] Under the least-sophisticated consumer standard,

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35. *See* 15 U.S.C. § 1692(e).

36. Blair v. Sherman Acquisition, No. 04-C-4718, 2004 U.S. Dist. LEXIS 25106, at *6 (N.D. Ill. Dec. 9, 2004).

37. Consumer is defined as "any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. § 1692a(3) (2012). However, a consumer under the FDCPA is not limited to the individual debtor; the term consumer also includes the individual's spouse, executor, administrator, and, if the individual is a minor or deemed legally incompetent, the individual's parent or guardian. 15 U.S.C. § 1692c(d) (2012).

38. Under the FDCPA, "debt" refers to "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5) (2012).

39. Christy v. EOS CCA, 905 F. Supp. 2d 648, 652 (E.D. Pa. 2012); *see also* 15 U.S.C. §§ 1692a, 1692k (2012). In 1986, Congress amended the FDCPA to add attorneys to the definition of a debt collector under § 1692a(6). *See* Heintz v. Jenkins, 514 U.S. 291, 299 (1995).

40. *See* Hess v. Cohen & Slamowitz LLP, 637 F.3d 117, 125 (2d Cir. 2011).

41. 15 U.S.C. § 1692k(a)(1)-(3).

42. *See generally* LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1193-94 (11th Cir. 2010); Jeter v. Credit Bureau, 760 F.2d 1168, 1172-73 (11th Cir. 1985).

43. *See LeBlanc*, 601 F.3d at 1193-94 (internal quotation marks omitted) (holding that the "least-sophisticated consumer standard" applied to evaluating claims under § 1692e and § 1692f of FDCPA).

44. *See Jeter*, 760 F.2d at 1172. The unsophisticated but reasonable consumer standard assumed "that the debtor is 'uninformed, naive, or trusting,' and that statements are not

which is the most commonly used,[45] the court asks whether the least-sophisticated consumer would have been deceived by the debt collector's conduct.[46]

Sections 1692e[47] and 1692f[48] of the FDCPA effect the purpose of protecting consumer debtors through several prohibitions on the behavior of consumer debt collectors.[49] First, § 1692e prohibits a debt collector from using "any false, deceptive, or misleading representation or means" in connection with the collection of debts.[50] Section 1692e also includes a non-exclusive list of sixteen ways a debt collector may violate the statute.[51] Second, § 1692f prohibits a debt collector from using unfair or unconscionable means to collect a debt.[52] These sections are central to serving the key purpose of the FDCPA and the CCPA, which is to eliminate practices that contribute to the number of personal bankruptcies.[53]

In contrast, the purpose behind the Bankruptcy Code is to place the debtor's property under the control of the court in order to distribute it equally among creditors.[54] To do so, the Bankruptcy Code must "reconcil[e] competing claims of creditors to property of the debtor's bankruptcy estate."[55] Courts have repeatedly found that the principal function of the Bankruptcy Code is to determine creditor's rights and distribute shares of property in a single collective proceeding.[56]

Under the Bankruptcy Code, a "claim" is the right to payment or the right to an equitable remedy for a breach of performance, if the breach

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confusing or misleading unless a significant fraction of the population would be similarly misled." Veach v. Sheeks, 316 F.3d 690, 692-93 (7th Cir. 2003) (quoting Pettit v. Retrieval Masters Creditors Bureau, Inc., 211 F.3d 1057, 1060 (7th Cir. 2000)).

45. *See* Clomon v. Jackson, 988 F.2d 1314, 1318 (2d Cir. 1993).

46. *Jeter*, 760 F.2d at 1177.

47. 15 U.S.C. § 1692e (2012).

48. 15 U.S.C. § 1692f (2012).

49. *See id.* §§ 1692e-1692f.

50. 15 U.S.C. § 1692e.

51. *See id.* § 1692e(1)–(16). While the list is not exclusive, it includes false representations that the debt collector is affiliated with the United States or any state, false representations about the amount or status of the debt, and any false representations regarding the debt collector's identity. *See id.* § 1692e(1)-(2), (14).

52. 15 U.S.C. § 1692f.

53. 15 U.S.C. § 1692(a), (c) (2012); *see also* Kokoszka v. Belford, 417 U.S. 642, 651 (1974) ("In short, the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place.").

54. *See* Straton v. New, 283 U.S. 318, 320-21 (1931).

55. City of Joliet v. Bank One, N.A. (*In re* Green), 210 B.R. 556, 558 (Bankr. N.D. Ill. 1997).

56. *See In re* American Reserve Corp., 840 F.2d 487, 489 (7th Cir. 1988).

gives rise to a right to payment.[57] For a creditor to recover from a debtor's bankruptcy estate, the creditor must file a proof of claim.[58] If a proof of claim is filed in accordance with the bankruptcy rules, it constitutes prima facie evidence of the validity and the amount of the creditor's claim.[59] Once prima facie evidence of the creditor's claim is established, the burden shifts to the debtor to produce evidence sufficient to rebut the validity of the proof of claim.[60] A proof of claim is deemed to be allowed unless a party in interest objects to the proof.[61] After an objection to a claim is made, the bankruptcy court will determine the amount and enforceability of the claim.[62]

A debtor is deemed to have a consumer debt under the Bankruptcy Code if the debt in question resulted from the actions of an individual for the purpose of providing for that person, that person's family, or household.[63] A debtor with consumer debt may apply for relief under Chapter 13 of the Bankruptcy Code,[64] which allows an individual with a regular, steady income, whose debts do not exceed the statutory limits, to pay her debts and keep some or all of her property through a bankruptcy plan.[65] A consumer debtor may also find relief under Chapters 7,[66] 11,[67] and 12[68] of the Bankruptcy Code. Once a debtor seeks relief under the Bankruptcy Code, the provisions of the Code protect and implement the bankruptcy court's exclusive jurisdiction over the debtor's property, estate, and bankruptcy case.[69] Damages are recoverable by a debtor under the Bankruptcy Code, but only in certain situations.[70]

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57. 11 U.S.C. § 101(5)(A)–(B) (2012).

58. *See* FED. R. BANKR. P. 3001(f).

59. *Id.*; *see also In re* Sunnybrook Adult Mobile Home Park, Inc., 64 B.R. 365, 367 (Bankr. M.D. Fla. 1986) (noting the debtor has the burden to rebut the presumption of validity to a properly filed proof of claim).

60. *See* Lampe v. Lampe, 665 F.3d 506, 514 (3d Cir. 2011).

61. 11 U.S.C. § 502(a).

62. 11 U.S.C. § 502(b).

63. 11 U.S.C. § 101(8) (2012).

64. 11 U.S.C. ch. 13 (2012); *see* 11 U.S.C. § 1325 (2012).

65. 11 U.S.C. § 1325.

66. 11 U.S.C. ch. 7 (2012).

67. 11 U.S.C. ch. 11 (2012).

68. 11 U.S.C. ch. 12 (2012).

69. *See* Brown v. Fox Broad. Co. Kathy Cox (*In re* Cox), 433 B.R. 911, 920 (Bankr. N.D. Ga. 2010).

70. *See e.g.*, 11 U.S.C. § 362(k)(1)-(2) (2012); 11 U.S.C. § 105(a) (2012).

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determina-

Prior to the Eleventh Circuit's decision in *Crawford v. LVNV Funding, LLC*, the case law was clear that the FDCPA did not apply to proofs of claims in bankruptcy.[71] Several courts have also considered the applicability of the FDCPA to bankruptcy cases in contexts other than the filing of proofs of claims.[72] There are three circuit court cases, discussed below, that chronicle the battle courts face in determining what implications, if any, the FDCPA has in consumer bankruptcy cases.[73] While not all of the cases dealt with proofs of claims, the decisions set the stage for the holding in *Crawford*.

In *Walls v. Wells Fargo Bank, N.A.*,[74] Donna Walls brought a class action lawsuit against Wells Fargo for attempting to collect her debt after the debt had been discharged in bankruptcy, in violation of the discharge injunction under the Bankruptcy Code. Walls alleged a discharged debtor could pursue claims for recovery simultaneously under both the Bankruptcy Code and the FDCPA. Walls contended that Wells Fargo engaged in unfair and unconscionable practices, bringing its conduct within the ambit of the FDCPA.[75] The United States Court of Appeals for the Ninth Circuit held that the Bankruptcy Code provided its own remedy for violations of the discharge injunction.[76] If the court were to allow a simultaneous claim under the FDCPA, it would permit Walls to side-step the Bankruptcy Code and achieve a favorable result

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tion necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). Under § 105(a), courts have the power to impose sanctions and award debtors damages in actions under the Bankruptcy Code. *Id.* However, the Bankruptcy Code itself also provides for the collection of certain damages. *See* 11 U.S.C. § 362(k)(1). For example, if a creditor violates the automatic stay, a debtor is entitled to recover actual damages, costs of litigation, attorney fees, and, under some circumstances, punitive damages. *Id.*

71. *E.g.*, Baldwin v. McCalla, Raymer, Padrick, Cobb, Nichols & Clark, L.L.C., No. 98-C-4280, 1999 U.S. Dist. LEXIS 6933, at *11-12 (N.D. Ill. Apr. 29, 1999); B-Real, LLC v. Rogers, 405 B.R. 428, 432 (M.D. La. 2009).

72. *See* Kline v. Mortgage Elec. Sec. Sys., 659 F. Supp. 2d 940, 946 (S.D. Ohio 2009) (determining whether a debt collector violated the FDCPA by, among other allegations, filing a claim for attorney fees in accordance with a fee-shifting provision in a mortgage); Gunter v. Columbus Check Cashiers, Inc. (*In re* Gunter), 334 B.R. 900, 906 (Bankr. S.D. Ohio 2005) (considering the applicability of the FDCPA to debts discharged under the Bankruptcy Code); *see also* Necci v. Universal Fid. Corp., 297 B.R. 376, 377-78 (E.D. N.Y. 2003) (deciding whether violations of the discharge injunction of the Bankruptcy Code support a claim for damages under the FDCPA).

73. *See infra* notes 74-103 and accompanying text.

74. 276 F.3d 502 (9th Cir. 2002).

75. *Id.* at 504, 505, 510.

76. *Id.* at 510.

by going through the back door.[77] The Ninth Circuit, therefore, determined that the Bankruptcy Code's remedial scheme provided the exclusive remedy and could not be bypassed through the use of the FDCPA.[78] The court reasoned that, although the purpose of the FDCPA is for consumer debtors to avoid bankruptcy, if bankruptcy does occur, the debtor's remedies and protections fall under the Bankruptcy Code.[79]

Two years later, the United States Court of Appeals for the Seventh Circuit answered the question of whether the Bankruptcy Code preempts the FDCPA when creditors violate provisions of the Bankruptcy Code.[80] In *Randolph v. IMBS Inc.*,[81] the Seventh Circuit held that one federal statute cannot preempt another as this would allow one statute to impliedly repeal the other, and repeal by implication is rare.[82] The court held that § 362(h) of the Bankruptcy Code,[83] the automatic stay provision, may overlap with the FDCPA but it was possible to enforce and comply with both statutes simultaneously.[84] Therefore, the Bankruptcy Code does not impliedly repeal the FDCPA.[85]

In *Simmons v. Roundup Funding LLC*,[86] the United States Court of Appeals for the Second Circuit was forced to answer the question of whether the FDCPA applied in the case of a consumer debt collector's filing a proof of claim.[87] In 2007, the Simmons filed for bankruptcy. Roundup Funding, LLC (Roundup) filed a proof of claim in the bankruptcy proceeding for $2,039.21. The Simmons filed an objection to the claim, and subsequently, the bankruptcy court reduced the claim to $1,100. In response, the Simmons filed an action against Roundup, alleging that Roundup had filed an inflated proof of claim. The Simmons claimed filing the inflated proof of claim constituted a violation of the FDCPA by misrepresenting the Simmons' debt.[88]

Although the question had yet to be answered on appeal, the Second Circuit noted the weight of authority from the district courts that supported Roundup's claim that the FDCPA did not apply in bankruptcy

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77. *Id.*
78. *Id.* at 510-11.
79. *Id.* at 510.
80. *See* Randolph v. IMBS Inc., 368 F.3d 726, 728 (7th Cir. 2004).
81. 368 F.3d 726 (7th Cir. 2004).
82. *Id.* at 730.
83. 11 U.S.C. § 362(h) (2012).
84. *Randolph*, 368 F.3d at 730.
85. *Id.* at 732-33.
86. 622 F.3d 93 (2d Cir. 2010).
87. *Id.* at 94.
88. *Id.* at 94-95.

cases.[89] The court agreed with the decisions of the district courts, holding that the FDCPA was designed to protect debtors through supplying remedies against abusive creditors.[90] As such, in cases where debtors are already protected by the Bankruptcy Code, there is no need to supplement a debtor's remedies by allowing claims under the FDCPA.[91] Furthermore, the Bankruptcy Code has remedies in place for wrongfully filed proofs of claim, including the revocation of fraudulent claims and placing creditors in contempt.[92] The court held that the FDCPA did not apply to proofs of claim as doing so would allow debtors to bypass the provisions of the Bankruptcy Code in favor of more "lucrative" claims under the FDCPA.[93]

Four years later, the Eleventh Circuit was tasked with answering the same question in *Crawford v. LVNV Funding, LLC*; in responding, the court would ignore the overwhelming majority of case law, unsteadying what had been a solid body of law.

IV. COURT'S RATIONALE

Writing for the court in *Crawford v. LVNV Funding, LLC*, Judge Goldberg noted a growing concern in bankruptcy cases: creditors selling past-due accounts to consumer debt agencies for the purpose of filing proofs of claim on those debts if and when the debtor filed for bankruptcy.[94] Often, these claims are filed well after the end of the enforceable statute of limitations period to collect on such debts.[95] As Crawford's issue fell into this category, the court posed the question of whether such actions would pass scrutiny under the FDCPA.[96] In its answer, the court determined those actions would fail under the FDCPA.[97]

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89. *Id.* at 95-96 ("The Bankruptcy Code itself contemplates a creditor filing a proof of claim on a time-barred debt and the Bankruptcy Court disallowing such claim after objection from the debtor. It is difficult for this Court to understand how a procedure outlined by the Bankruptcy Code could possibly form the basis of a violation under the FDCPA.") (quoting *B-Real, LLC*, 405 B.R. at 431)).

90. *Id.* at 96.

91. *See id.*

92. *Id.*

93. *Id.* The FDCPA entitles an individual to actual damages, additional damages up to one thousand dollars, the costs of the action, and reasonable attorney fees. 15 U.S.C. § 1692k(a)(1)-(3).

94. 758 F.3d at 1256-57.

95. *Id.* at 1256.

96. *Id.* at 1256-57.

97. *Id.* at 1257.

The court began its analysis by looking to the purpose and language of the FDCPA.[98] The court discussed the advent of the FDCPA as an attempt by Congress to prohibit the abusive, deceptive, and unfair tactics employed by consumer debt collectors.[99] In an effort to enforce the protection of debtors, the FDCPA created a private right of action against debt collectors for actual and statutory damages, as well as attorney fees and expenses.[100] The court focused on § 1692e and § 1692f of the FDCPA.[101] Section 1692e prohibits the use of "false, deceptive, or misleading representation[s] or means" to collect a debt; while § 1692f is intended to keep a debt collector from using unfair and unconscionable methods of debt collection.[102] However, the words false, deceptive, and misleading are not defined in the FDCPA.[103] The court explained the use of the least-sophisticated consumer standard in analyzing cases under the FDCPA as a remedy for the ambiguous language of § 1692e and § 1692f.[104] In explanation, the court acknowledged that the FDCPA was enacted to protect the typical consumer; as such, the question determining the scope of the FDCPA is whether the deceptive actions of the debt collector would have deceived the least-sophisticated consumer.[105]

Next, the court shifted to determine whether LVNV's actions would have deceived the least-sophisticated consumer, subjecting it to liability under the FDCPA.[106] Stepping into LVNV's shoes, the court discussed the purpose behind LVNV's filing of the time-barred proof of claim.[107] Section 502 of the Bankruptcy Code allows proofs of claim, even those that are time-barred, to be automatically allowed against a debtor so long as the debtor fails to object to the proof of claim.[108] LVNV filed its proof of claim anticipating Crawford's failure to object to the claim, an anticipation that was fruitful.[109]

The court then looked to the vast amount of case law that held debt collectors' threats to initiate actions, and the filing of actions in state

98. *Id.* at 1257-58.
99. *Id.* at 1257.
100. *Id.* at 1258.
101. *Id.*
102. *Id.* (quoting 15 U.S.C. § 1692e).
103. *Id.*; *see also* 15 U.S.C. § 1692a.
104. *Crawford*, 758 F.3d at 1258.
105. *Id.* at 1258-59.
106. *Id.* at 1259.
107. *Id.*
108. *Id.*; *see also* 11 U.S.C. § 501(a).
109. *Crawford*, 758 F.3d at 1259.

court to collect a time-barred debt, constituted violations of the FDCPA.[110] The court relied specifically on the Seventh Circuit's rationale in *Phillips v. Asset Acceptance, LLC*,[111] where the court highlighted that stale (or time-barred) actions to collect consumer debts were unfair under the FDCPA.[112]

Applying the rationale behind the statute of limitations and the reasoning in *Phillips* to the bankruptcy context, the court analogized filing a time-barred suit in state court to the filing of a time-barred proof of claim in bankruptcy.[113] Filing a time-barred proof of claim gives the debtor the false impression that the debt collector may legally collect the debt, just as filing a time-barred suit in state court misleads the debtor into believing the debt is actually enforceable.[114] The court found the least-sophisticated debtor would not be aware that the debt is time-barred and would consequently fail to object to the proof of claim, entitling an undeserving debt collector to funds from the Chapter 13 estate.[115] Not only would the distribution reduce the amount of the estate for deserving creditors, but filing an objection to a time-barred proof of claim would unnecessarily consume resources in a debtor's bankruptcy case just as a limitations defense would do in state court.[116] Therefore, the court held there was virtually no difference between filing a time-barred proof of claim in a Chapter 13 bankruptcy and filing a suit to collect a time-barred debt in state court.[117] Both actions are unfair, unconscionable, deceptive, and misleading to the least-sophisticated consumer, and thus, violations of the FDCPA.[118]

The court quickly dismissed LVNV's other arguments.[119] The court stated that contrary to LVNV's belief, the proof of claim was a "collection activity" regulated by the FDCPA because the claim was an effort to

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110. *Id.* at 1259-60.

111. 736 F.3d 1076 (7th Cir. 2013).

112. *Crawford*, 758 F.3d at 1260. The court in *Phillips* reasoned that stale actions to collect consumer debts were unfair under the FDCPA for the following reasons: the least-sophisticated consumer would not be aware that it could defend against the stale suit by using the statute of limitations; without the statute of limitations defense the consumer would submit to such suits; the consumer's memory would be dulled due to the passage of time; and the time lapse would lessen the likelihood that the consumer maintained records of the debt. *Id.* at 1260-61; *Phillips*, 736 F.3d at 1079.

113. *Crawford*, 758 F.3d at 1260-61.

114. *Id.* at 1261.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

obtain payment from Crawford in a legal proceeding.[120] Such an effort to collect payment placed LVNV within the definition of a debt collector under the FDCPA.[121] The court also declined to find that the automatic stay provision of the Bankruptcy Code would be violated if the court considered the filing of a proof of claim as a "means used in connection with the collection of [a] debt."[122] The court recognized that the automatic stay provision disallows actions to be filed against the debtor outside the bankruptcy proceeding.[123] Filing a proof of claim is the initial step in collecting from a debtor in bankruptcy and, as such, is a means to collect a debt in bankruptcy under the FDCPA; however, the automatic stay does not prohibit the filing of a proof of claim because the action is within the bankruptcy proceeding.[124]

The court ultimately concluded that LVNV violated the FDCPA with its time-barred claim.[125] Holding that the filing of a time-barred claim subjects a consumer debt collector to liability under the FDCPA, the court of appeals reversed the district court.[126] In so doing, the Eleventh Circuit became the first circuit court to apply the FDCPA to the filing of a proof of claim in a consumer bankruptcy proceeding.[127]

V. IMPLICATIONS

The implications from the Eleventh Circuit's decision in *Crawford v. LVNV Funding, LLC* are not yet clear, but the case could have major ramifications throughout the field of bankruptcy law. The ruling in *Crawford* went against the "elephantine body of persuasive authority" that weighed against the finding that the FDCPA applied to proofs of claim.[128] However, the case has already received favorable treatment, and from outside the Eleventh Circuit no less.[129] The United States District Court for the Southern District of Indiana relied heavily on the

120. *Id.*
121. *Id.*
122. *Id.* (quoting 15 U.S.C. § 1692c (internal quotation marks omitted).
123. *Id.* at 1261-62.
124. *Id.* at 1262.
125. *Id.*
126. *Id.*
127. *See id.*; *Simmons*, 622 F.3d at 96.
128. *11th Circuit: Proof of Claim May Violate FDCPA*, BANKRUPTCY COURT DECISIONS, July 30, 2014, at 5-6 (quoting Crawford v. LVNV Funding, LLC, Nos. 2:12-CV-701-WKW, 2:12-CV-729-WKW, 2012 U.S. Dist. LEXIS 66169, at *4 (M.D. Ala. May 9, 2013)).
129. *See, e.g.*, Patrick v. PYOD, LLC, No. 1:14-CV-00539-RYL-TAB, 2014 U.S. Dist. LEXIS 116092, at *7 (S.D. Ind. Aug. 20, 2014).

holding of *Crawford* in *Patrick v. PYOD, LLC*[130] to find that a debtor stated a valid claim under § 1692e when a consumer debt collector filed two proofs of claim on time-barred debts in the debtor's Chapter 13 bankruptcy.[131] Although the court in *Patrick* declared the decision in *Crawford* to be factually on point to the debtor's situation, there was one major factual distinction the district court failed to recognize—the debtor's bankruptcy attorney objected to the time-barred proofs of claim and the claims were disallowed.[132] Neither Crawford nor the Chapter 13 trustee had objected to LVNV's proofs of claim.[133]

The Bankruptcy Code provides for situations like *Crawford* where a creditor or debt collector files an invalid proof of claim.[134] In that situation, § 502 of the Bankruptcy Code allows debtors to object to proofs of claim as unenforceable.[135] The bankruptcy court will then determine the validity of those claims and enforce only those that are valid.[136] However, when a debtor, or the bankruptcy trustee, fails to object to unenforceable proofs of claim, the claims are allowed and deemed valid.[137] Being able to object to unenforceable proofs of claim gives a debtor a remedy for the exact situation faced in *Crawford*.[138] If either Crawford or the Chapter 13 trustee had done their homework and researched the background behind the proofs of claim that were filed, Crawford could have objected to LVNV's claims and, more likely than not, the claims would have been disallowed.[139]

When Crawford failed to object, the claims were allowed.[140] After discovering he had been cheated, Crawford sought a way to recover for a mistake caused by his own lack of due diligence by using the FDCPA.[141] The FDCPA was not meant to apply to such situations.[142] The FDCPA was enacted to curb abuses by consumer debt collectors;[143] however, its main purpose is to protect consumer debtors

130. No. 1:14-CV-00539-RYL-TAB, 2014 U.S. Dist. LEXIS 116092 (S.D. Ind. Aug. 20, 2014).

131. *Id.* at *2, *6-9.

132. *Id.* at *2.

133. *Crawford*, 758 F.3d at 1259 & n.5.

134. *See* 11 U.S.C. § 502.

135. *Id.* § 502(a).

136. *Id.* § 502(a)-(b).

137. *See Lampe*, 665 F.3d at 514.

138. *See Simmons*, 622 F.3d at 96.

139. *See* 11 U.S.C. § 502(a)-(b).

140. *Crawford*, 758 F.3d at 1259.

141. *See id.*

142. *See Simmons*, 622 F.3d at 96; *B-Real*, 405 B.R. at 432; *see also* Middlebrooks v. Interstate Credit Control, Inc., 391 B.R. 434, 437 (D. Minn. 2008).

143. *See* 15 U.S.C. § 1692(e).

from abusive practices as an attempt to keep consumer debtors out of personal bankruptcy.[144] When the Eleventh Circuit applied the FDCPA to Crawford's proof of claim, it did so to remedy an unfair situation.[145] LVNV's filing of a proof of claim was indeed an abusive practice in the collection of a debt, but it was not an abusive practice the FDCPA was meant to remedy.[146]

Stated another way, the ruling in *Crawford* contradicts the legal rule that where there is an adequate remedy at law, equitable relief is unavailable.[147] The Bankruptcy Code and the Federal Rules of Bankruptcy Procedure offer a remedy at law for debtors in bankruptcy by providing sanctions and non-monetary remedies for debtors when creditors violate provisions of the Bankruptcy Code.[148] For instance, the Federal Rules of Bankruptcy Procedure explicitly permit the recovery of monetary and non-monetary sanctions, including reasonable attorney fees and other expenses, for filing a petition, pleading, or other paper with the court that is frivolous or presented for an improper purpose.[149] On the other hand, Crawford relied on the FDCPA for a monetary remedy because the FDCPA allows a cause of action for actual damages, statutory damages, and reasonable attorney fees.[150] However, the Bankruptcy Code expressly provided Crawford with an adequate

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144. *See* 15 U.S.C. § 1692(a); *see also Kokoszka*, 417 U.S. at 651.

145. *See generally Crawford*, 758 F.3d at 1256-57.

> A deluge has swept through U.S. bankruptcy courts of late. Consumer debt buyers—armed with hundreds of delinquent accounts purchased from creditors—are filing proofs of claim on debts deemed unenforceable under state statutes of limitations. This appeal considers whether a proof of claim to collect a stale debt in Chapter 13 bankruptcy violates the Fair Debt Collection Practices Act . . . .

Id.

146. *See* Jacques v. U.S. Bank N.A. (*In re* Jacques), 416 B.R. 63, 80 (Bankr. E.D. N.Y. 2009).

> Here, the Plaintiff's FDCPA claim, as alleged in the Complaint, arises from the Defendants' filing of a proof of claim and the contents of that claim, and not from the kind of postpetition wrongful conduct upon which courts have relied to find that an FDCPA claim may be asserted in a bankruptcy case. Each of the Plaintiff's particularized allegations relates to the proof of claim, and each can be addressed by the claims adjudication process of the Bankruptcy Code.

Id. (footnote omitted).

147. *See* Mitsubishi Int'l Corp. v. Cardinal Textile Sales, 14 F.3d 1507, 1518 (11th Cir. 1994).

148. *See* 11 U.S.C. § 105(a); FED. R. BANKR. P. 9011(c). Under § 105, bankruptcy courts have the power to issue orders and judgments that the court deems necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a).

149. FED. R. BANKR. 9011(b)-(c).

150. *Crawford*, 758 F.3d at 1258.

remedy at law—the right to object to the invalid proof of claim.[151] Nevertheless, instead of relying on this remedy, Crawford relied on the FDCPA to achieve a remedy he could not attain under the Bankruptcy Code.[152] In holding that the FDCPA applies to a time-barred proof of claim, the Eleventh Circuit did precisely what the court in *Walls v. Wells Fargo Bank, N.A.* cautioned against when it stated, "To permit a simultaneous claim under the FDCPA would allow through the back door what [a debtor] cannot accomplish through the front door . . . ."[153] In essence, the Eleventh Circuit's decision allowed Crawford to reach around the provisions of the Bankruptcy Code through the use of the FDCPA. That is not the kind of remedy the FDCPA was intended to produce.[154]

Aside from allowing Crawford to side-step the Bankruptcy Code, the Eleventh Circuit's ruling poses additional issues that the court failed to address. If debtors are entitled to recover under the FDCPA for a consumer debt collector's filing of a proof of claim, does that force the other provisions of the FDCPA to apply in bankruptcy proceedings as well? If a debtor is allowed to recover under the FDCPA for filing of a proof of claim, must a creditor, who is also a consumer debt collector, file its proof of claim in accordance with the more in depth notice provisions of § 1692g[155] of the FDCPA?[156] The bottom line is that allowing debtors to recover under the FDCPA could cause added procedural hardships on creditors in bankruptcy and open creditors to liability under the FDCPA for actions that meet the requirements of the Bankruptcy Code. Such a result stands in opposition to the Congressional intent behind the enactment of the FDCPA.[157] The FDCPA was meant to apply outside the context of bankruptcy, not as an addition to

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151. *Id.* at 1262; *see* 11 U.S.C. § 502(a)-(b).

152. *See Crawford*, 758 F.3d at 1256.

153. 267 F.3d at 510.

154. *See* 15 U.S.C. §§ 1692(a), (e). The remedies under the FDCPA were intended to protect consumers from consumer debt collectors in attempts to keep consumer debtors from filing for personal bankruptcies. *See generally Kokoszka*, 417 U.S. at 651.

155. 15 U.S.C. § 1692g (2012).

156. Under § 1692g(a), a consumer debt collector seeking to recover a debt is required to send the consumer a written notice containing the following: the amount of the debt; the name of the creditor owed the debt; a statement that unless the consumer, within thirty days of the receipt of notice, "disputes the validity of the debt, or any portion thereof," the debt is assumed to be valid; a statement informing the debtor that in response to disputed debts, the debt collector will provide verification of the debt or a copy of a judgment against the debtor; and a statement that the debt collector will provide the consumer with the name and address of the original creditor, if the consumer requests the information in writing. 15 U.S.C. 1692g(a).

157. *See* 15 U.S.C. § 1692(a).

those provisions currently laid out in the Bankruptcy Code.[158] As such, the holding of *Crawford* poses more questions than it answers, begging the additional question of whether *Crawford* was truly a good ruling.

The backdrop of the decision in *Crawford* pits two quandaries against each other. On one hand, there is the nature of consumer debt collectors buying invalid debts to file a proof of claim on the debt in bankruptcy and collect the invalid debt amount from the bankruptcy estate. On the other, there stands the issue of debtors side-stepping the Bankruptcy Code to collect damages unavailable under the Bankruptcy Code. Finally, there is the issue of courts using equitable powers to stop what they view as unfair practices.

As noted in the first sentence of *Crawford*, the practices of consumer debt collectors are, to some extent, abusive practices that are unfair to debtors.[159] Ethically, it is unjust to use the provisions of the Bankruptcy Code to collect debts that are invalid under state law. However, the court in *Crawford* allowed the debtor an equitable remedy when a remedy at law was available.[160] That is not to say that a debtor should be devoid of a remedy for abusive practices in the collection of a debt, but it is unclear whether the court's decision in *Crawford* is the best way to discourage the unjust collection practices of consumer debt collection agencies. Did the court overstep its authority and err in issuing an equitable remedy under the FDCPA to right a wrong committed under the Bankruptcy Code? Perhaps the court in *Crawford* is correct in its rationale to allow debtors to collect under the FDCPA in hopes that debt collectors will stop filing proofs of claims on invalid debts. It is possible that the continued claims under the FDCPA by individuals in bankruptcy cases point to the conclusion that the remedies under the FDCPA better meet the needs of debtors. Perhaps the answer lies in courts better policing the provisions of the Bankruptcy Code to

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158. *See Simmons*, 622 F.3d at 96.

> The FDCPA is designed to protect defenseless debtors and to give them remedies against abuse by creditors. There is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself.
>
> . . . Debtors in bankruptcy proceedings do not need protection from abusive collection methods that are covered under the FDCPA because the claims process is highly regulated and court controlled. While the FDCPA's purpose is to protect unsophisticated consumers from unscrupulous debt collectors, that purpose is not implicated when a debtor is instead protected by the court system and its officers.

Id. (quoting *B-Real*, 405 B.R. at 432).

159. *See generally Crawford*, 758 F.3d at 1256.

160. *Id.* at 1262.

halt the unjust and abusive practices of consumer debt collectors. Or the answer may lie in allowing Congress to pass new provisions of the Bankruptcy Code to stop these abusive tactics or amend the available remedies under the Bankruptcy Code to resemble those available under the FDCPA.

Whatever the answer, the court's decision in *Crawford* makes one thing clear: it is necessary to take action that will avoid a partial dismantling of the Bankruptcy Code. If consumer debtors are allowed to bypass the provisions of the Bankruptcy Code, certain provisions could be rendered ineffective and obsolete.[161] If debtors who fail to object to unenforceable or invalid proofs of claim are allowed to recover under the FDCPA, then there will be no need or incentive for debtors to object to proofs of claim under § 502 of the Bankruptcy Code; such a result would render § 502 virtually obsolete.[162] That result cannot have been what the court in *Crawford* had in mind when its decision was written. However, there may be a way to reconcile the FDCPA with the Bankruptcy Code that will avoid such a result. The court in *Randolph*, found that where provisions of the Bankruptcy Code and the FDCPA overlap, and it is possible to comply with both, courts can enforce both statutes.[163] If it were found that the FDCPA and the Bankruptcy Code overlap in the context of filing proofs of claim, and the court enforces both statutes, courts could potentially grant remedies under the FDCPA without damaging the Bankruptcy Code. However, in making such rulings, bankruptcy courts must not ignore the applicability of the Bankruptcy Code in its entirety like the court did in *Crawford*.

At its heart, the decision in *Crawford* comes down to a single issue: the Eleventh Circuit was blinded by Crawford's inequitable situation, which resulted from unfair practices. Nevertheless, Crawford's unfortunate situation was of his own making. If the decision in *Crawford* is allowed to stand, it will promote courts to legislate in equity

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161. *See Middlebrooks*, 391 B.R. at 437 (noting that allowing debtors to allege violations of the FDCPA in bankruptcy proceedings could "potentially undermine" certain provisions of the Bankruptcy Code (quoting Molloy v. Primus Auto. Fin. Servs., 247 B.R. 804, 820 (C.D. Cal. 2000)).

162. *See id.*

> In other words, permitting an FDCPA action based on a bankruptcy proof of claim could discourage creditors from filing claims . . . and encourage debtors to ignore the procedural safeguards within the Bankruptcy Code, such as the right to object to proofs of claim and to seek sanctions against creditors who violate provisions within the Bankruptcy Code, in favor of the FDCPA.

Id. (alteration in original) (quoting Rice–Etherly v. Bank One (*In re* Rice-Etherly), 336 B.R. 308, 312 (Bankr. E.D. Mich. 2006)) (internal quotation marks omitted).

163. *Randolph*, 368 F.3d at 731.

when remedies at law are available. Furthermore, by allowing Crawford to reach around the Bankruptcy Code for a favorable ruling, the Eleventh Circuit has set the stage for a massive slippery slope that could take the debate over bankruptcy law and the FDCPA further down the rabbit hole to unknown consequences. The Bankruptcy Code provides remedies for abused and deceived debtors and was intended to provide a debtor's sole remedies. Without a ruling that both the FDCPA and the Bankruptcy Code apply, allowing a debtor to collect under the FDCPA while simultaneously ignoring the Bankruptcy Code should not be allowed. In the wake of *Crawford*, debtors should be required to exhaust those remedies laid out in the Bankruptcy Code, and courts must stay strong even when the debtor's circumstances pull at heart-strings.

BRITTANY M. DANT

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