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Creditors, Beware: Asserting Stale Bankruptcy Claims May Have Repercussions

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Date Created: Mon, 2021-06-21 15:39

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In a recent decision from the U.S. Bankruptcy Court for the District of Nevada, three proofs of claim filed on behalf of LVNV Funding, LLC — a creditor assignee in the chapter 13 bankruptcy

case commenced by Antonia Andrade-Garcia — were disallowed because the statute of limitations on the underlying claims had long ago expired. While such a result in and of itself is not noteworthy, what is noteworthy was the Nevada Bankruptcy Court’s decision to grant the debtor’s request for attorney’s fees and expenses incurred in successfully prosecuting objections to LVNV’s claims.^[1] In so doing, the Nevada Bankruptcy Court distinguished the U.S. Supreme Court’s decision in *Midland Funding LLC v. Johnson*^[2] and relied on a state law fee-shifting statute to award attorney’s fees to the prevailing party.

Since fee-shifting statutes differ from state to state, it is unclear how useful this decision will be to debtors in other jurisdictions across the country. What is clear, however, is that the Nevada Bankruptcy Court in this chapter 13 case was obviously troubled by a creditor asserting a patently unenforceable claim against a debtor, and believed there needed to be some ramifications for such unabashed conduct. Whether other bankruptcy courts will follow suit remains to be seen.

Background

The debtor filed for bankruptcy relief in September 2017. LVNV filed three proofs of claim in the case, each as the assignee of three separate creditors. Notably, the account detail attached to each of the three proofs of claim showed that both the charge-off date by the original credit provider, and the last transaction on the relevant account, occurred over a decade prior to the commencement of the debtor’s bankruptcy case.

After the chapter 13 trustee failed to object, the debtor objected to each of LVNV’s claims, asserting that they were all time-barred by the applicable Nevada statute of limitations. Specifically, pursuant to the underlying statute, (1) claims based on a written contract must be commenced within six years, and (2) claims based on an open account for goods sold and delivered must be commenced within four years. LVNV responded to each of the debtor’s objections by conceding that each of its claims was time-barred pursuant to the applicable statute of limitations. Nevertheless, it asserted that it was justified in filing the proofs of claim based on the Supreme Court’s decision in *Midland Funding*, which held that the filing of a stale bankruptcy claim does not violate the Fair Debt Collection Practices Act (FDCPA). The debtor replied, noting that LVNV had conceded that the claims were time-barred, and requesting attorney’s fees and expenses — not under the FDCPA, but as the prevailing party under a Nevada state law fee-shifting statute.

The Nevada Bankruptcy Court's Analysis

In sustaining the debtor's objections to LVNV's claims, the Nevada Bankruptcy Court held that LVNV "did not offer even a scintilla of evidence to persuade th[e] Court that the stale [c]laims it filed ... should be allowed."^[3] Indeed, LVNV had conceded that its claims were time-barred. On this record, the LVNV claims were disallowed — not a controversial result.

However, the decision on attorney's fees was not as predictable, given that (1) there is no right to recover attorney's fees under the Bankruptcy Code, and (2) under what is commonly referred to as the "American Rule," parties are responsible for their own respective attorney's fees unless otherwise provided for under contract or applicable statute.

The Nevada fee-shifting statute that was found applicable by the Nevada Bankruptcy Court provides, in relevant part, as follows:

[W]hen the court finds that the claim ... of the opposing party was brought or maintained without reasonable ground ..., [t]he court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph in all appropriate situations to punish for and deter frivolous or vexatious claims ... because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the cost of engaging in business and providing professional services to the public.

Nevada Revised Statute 11.190(1)-(2).

The Nevada Bankruptcy Court held that the facts and circumstances of the underlying case clearly satisfied the Nevada legislature's intent in favor of awarding attorney's fees under the fee-shifting statute. It also found that such an outcome was not contrary to the majority opinion in *Midland Funding* and was clearly aligned with Justice Sotomayor's dissenting opinion in that case.

First, the Nevada Bankruptcy Court distinguished *Midland Funding* in that the request for attorney's fees was not made under the FDCPA, but was made under the Nevada fee-shifting statute. *Second*, the Nevada Bankruptcy Court focused on Justice Sotomayor's dissenting opinion in *Midland Funding*, which highlighted the practice of debt collectors filing obviously time-barred claims as a "systemic abuse of the bankruptcy system that overburdens the

limited judicial resources available to debtors and creditors alike.”^[4] The Nevada Bankruptcy Court found that the facts of the underlying case embodied the exact same concerns expressed by Justice Sotomayor:

[M]ost debtors who fail to object to a stale claim will end up worse off than had they never entered bankruptcy at all: They will make payments on the stale debts, thereby resuscitating them, ... and may thus walk out of bankruptcy court owing more to their creditors than they did when they entered it. There is no benefit to anyone in such a proceeding — except the debt collectors.^[5]

In light of such concerns, and given LVNV’s conduct in knowingly filing time-barred claims, the Nevada Bankruptcy Court awarded the debtor attorney’s fees and expenses under Nevada’s fee-shifting statute.

Conclusion

As Justice Sotomayor found in her dissenting opinion in *Midland Funding*, “[p]rofessional debt collectors have built a business out of buying stale debt, filing claims in bankruptcy proceedings to collect it, and hoping that no one notices that the debt is too old to be enforced by the courts. This practice is both ‘unfair’ and ‘unconscionable.’”^[6] While it may be tempting for a creditor to file time-barred claims relying on the majority opinion in *Midland Funding*, such creditors should be mindful of Justice Sotomayor’s dissent and recognize that such conduct might not be without its repercussions.

^[1] *In re Antonia Andrade-Garcia*, Case No. 17-15277 (ABL), 2021 WL 1246754 (Bankr. D. Nev. March 31, 2021).

^[2] *Midland Funding LLC v. Johnson (Midland Funding)*, 137 S. Ct. 1407 (2017).

^[3] *Antonia Andrade-Garcia*, 2021 WL 1246754, at *6.

^[4] *Antonia Andrade-Garcia*, 2021 WL 1246754, at *8.

^[5] *Id.* (quoting *Midland Funding*, 137 S. Ct. at 1421 (Sotomayor, J., dissenting)).

[5] *Id.* (quoting *Midland Funding*, 137 S. Ct. at 1421 (Sotomayor, J., dissenting)).

[6] *Midland Funding*, 137 S. Ct. at 1416 (Sotomayor, J., dissenting).

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