N O T E S O N

DEBTOR/CREDITOR

R E L A T I O N S

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Time-Barred Claim not FDCPA Violation

The Fair Debt Collection Practices Act (FDCPA) prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." Courts have held that filing or threatening to file a lawsuit to collect a debt time-barred by the statute of limitations is a violation of the FDCPA, because unsophisticated consumers might be coerced into paying when they did not have to.

Atlas Acquisitions LLC buys time-barred debt after the filing of a Chapter 13 case for the purpose of filing a claim in the bankruptcy case. Even though the age of the claim results in disallowance of the claim if an objection is filed, Atlas hopes that no one will notice and that it will receive some payment on the time-barred claim.

A federal appeals court in Richmond recently decided that Atlas's practice of filing proofs of claim for time-barred debt did not violate the FDCPA. A contrary ruling would have subjected Atlas to sanctions. The court reasoned that the greater protections of the bankruptcy process made it unlikely that a debtor would be coerced into paying the stale debt.

In Ray Dubois, 834 F.3d 522 (4th Cir. 2016).

Tenancy by Entireties Survives Death

Under Maryland law, a creditor of one spouse cannot collect a debt from property owned jointly by the married couple. This joint ownership is called "tenancy by the entireties". On the death of one spouse, the property becomes wholly owned by the surviving spouse and is no longer protected from creditors of the surviving spouse.

A Maryland bankruptcy judge recently reached a different result where a spouse died during a bankruptcy case. The court ruled that tenancy by the entireties status is determined at the commencement of the bankruptcy case, and the protection remains even if one spouse dies during the case.

In re Buckley, 2016 Bankr. LEXIS 4502 (Bankr. D. Md. Dec. 29, 2016).

Non-Compete Survives Bankruptcy

The federal bankruptcy statute defines broadly the "claims" that may be discharged. Bankruptcy courts have been divided over whether an agreement not to compete may be discharged in bankruptcy and rendered unenforceable.

A Massachusetts bankruptcy judge last year joined those courts which allow non-competition agreements to be enforced against a debtor who has received a bankruptcy discharge. A franchisor sought to enjoin a bankrupt former franchisee from opening a competing business, based on a clause in the franchise agreement. The former franchisee argued that the breach of the non-competition clause could be compensated with money, which was a claim discharged in the bankruptcy. The court disagreed, reasoning that the clause's essential goal was the injunction, and any monetary damages were incidental.

In re Hurvitz, 554B. R. 35 (Bankr. D. Mass. 2016).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528. If you wish to receive Notes on Debtor/Creditor Relations *by email, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".*

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