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CASE NOTE

BANKRUPTCY LAW—A Battle of Two Acts:
Midland Funding, LLC v. Johnson, 137 S. Ct. 1407 (2017)

*Erin Berry**

I. INTRODUCTION

Under Roman law, a debtor's body could be carved up and distributed to his creditors in proportion to the debt owed to each creditor.¹ The first bankruptcy laws of England, passed in 1542, treated debtors as quasi-criminals and favored imprisonment for lack of payment.² Only creditors could commence a bankruptcy proceeding based on conduct that indicated a debtor was attempting to prevent creditors from receiving payment on debts owed.³ Early English bankruptcy laws first introduced discharge to cooperative debtors in 1705.⁴ Discharge, or release of the debtor from personal liability for pre-bankruptcy debts,⁵ was the first progression toward debtor protection in bankruptcy. However, early English bankruptcy remained focused on assisting creditors in the collection of debts.⁶ The first bankruptcy laws in the United States mirrored those of England and retained a similar pro-creditor orientation.⁷ However, over time, bankruptcy law in the United States morphed into a collective process geared towards protecting debtors.⁸ Additionally, Congress acted to protect consumer rights by enacting the Fair Debt Collection Practices Act (FDCPA) of 1977.⁹

Consumer bankruptcies remain prevalent in the United States notwithstanding the FDCPA's protections. In 2016 alone, 793,932 debtors filed for bankruptcy in courts around the United States.¹⁰ While both the Bankruptcy

* J.D. candidate, University of Wyoming College of Law, Class of 2018. Thanks to Professor Mark Glover for his insightful feedback and suggestions and the Editorial Board of the *Wyoming Law Review* for their hard work, patience, and guidance while writing this note. Finally, special thanks to my husband, whose endless encouragement and support made this possible.

¹ Charles J. Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 7 (1995).

² *Id.* at 7–8.

³ *Id.* at 8.

⁴ *Id.* at 7–10.

⁵ *Discharge in Bankruptcy*, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁶ Tabb, *supra* note 1, at 10–11.

⁷ *Id.* at 7.

⁸ See Tabb, *supra* note 1.

⁹ 15 U.S.C. § 1692(e) (2012).

¹⁰ *June 2016 Bankruptcy Filings Down 6.9 Percent*, UNITED STATES COURTS (July 27, 2016), <http://www.uscourts.gov/news/2016/07/27/june-2016-bankruptcy-filings-down-69-percent>.

Code and the FDCPA have elements of consumer protection, courts continually struggle to determine how the two laws interact.¹¹ *Midland Funding, LLC v. Johnson* illustrates this struggle.¹² In *Midland Funding*, the United States Supreme Court held that a debt collector who files a time-barred proof of claim in a bankruptcy proceeding does not violate the FDCPA.¹³ The majority found that the broad definition of a “claim” in the Bankruptcy Code included even unenforceable claims, and therefore filing a time-barred claim is not unfair, unconscionable, deceptive, or misleading.¹⁴ Although the Court mistakenly concluded that filing a time-barred proof of claim is not a deceptive practice under the FDCPA, it correctly held that Midland had not violated the FDCPA.¹⁵ Contrary to the Court’s reasoning, Midland’s time-barred proof of claim did not violate the FDCPA because the Bankruptcy Code precludes the FDCPA when a creditor files a proof of claim in bankruptcy. Thus, the result in *Midland Funding* was correct, but the analysis was not.

This note first provides background information on the FDCPA and the Bankruptcy Code.¹⁶ It then summarizes the circuit split over whether filing a time-barred proof of claim violates the FDCPA prior to the decision in *Midland Funding*.¹⁷ Part III describes the principal case, *Midland Funding, LLC v. Johnson*.¹⁸ Finally, this note explains why the Court’s analysis of the FDCPA in bankruptcy proceedings is flawed even though it correctly held that Midland had not violated the FDCPA.¹⁹

II. BACKGROUND

A. *The Fair Debt Collection Practices Act*

United States consumers have over \$12 trillion in outstanding debt.²⁰ Typically, when creditors are unsuccessful in collecting a debt, they will sell the

¹¹ See, e.g., *Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 96 (2d Cir. 2010); *In re Claudio*, 463 B.R. 190, 194 (Bankr. D. Mass. 2012); *In re McMillen*, 440 B.R. 907, 913 (Bankr. N.D. Ga. 2010).

¹² *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017).

¹³ *Id.* at 1415–16.

¹⁴ *Id.* at 1412.

¹⁵ *Id.* at 1415–16.

¹⁶ See *infra* notes 20–67 and accompanying text.

¹⁷ See *infra* notes 68–100 and accompanying text.

¹⁸ See *infra* notes 101–40 and accompanying text.

¹⁹ See *infra* notes 141–207 and accompanying text.

²⁰ Josh Adams, *The Role of Third-Party Debt Collection in the U.S. Economy*, ACA INTERNATIONAL 2 (Jan. 2016), <https://www.acainternational.org/assets/research-statistics/aca-wp-role3rd-party.pdf>.

debt for much less than it is worth to a debt collection company.²¹ This process has created a massive debt collection industry in the United States, in which third-party debt collection agencies recovered over \$55 billion from consumers in 2013 alone.²² In contrast to creditors who typically use less force when attempting to collect debts to preserve customer relationships, third-party debt collectors have no such incentive to preserve goodwill.²³ Prior to the FDCPA, a third-party debt collection agency could use any means necessary to attempt to collect on a debt.²⁴ These practices included telephone calls at unreasonable hours, misrepresentation of consumers' rights, disclosing consumers' financial information to employers, and impersonating public officials and attorneys.²⁵

Congress enacted the FDCPA in 1977 with the intent to "eliminate abusive debt collection practices by debt collectors."²⁶ Congress found that abusive debt collection practices and inadequate laws to protect consumers contributed to "the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."²⁷ The FDCPA prohibits debt collectors from using abusive, unfair, or deceptive practices in connection with the collection of a debt.²⁸ The FDCPA covers personal, family, and household debts and establishes legal protection from abusive debt collection practices.²⁹ Additionally, the FDCPA governs debt collection businesses, affords consumers rights in debt collection practices, and provides penalties and remedies for violations of the Act.³⁰ Due to the FDCPA, third-party debt collectors can no longer engage in the abusive practices outlined above.³¹ Further, the Act imposes strict liability for any violation.³² A debtor can recover statutory damages for violations even if the debtor suffers no actual damages.³³

²¹ *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1416–17 (2017) (Sotomayor, J., dissenting).

²² *Adams*, *supra* note 20, at 2.

²³ S. REP. NO. 95-382, at 1–2 (1977).

²⁴ *Id.* at 2–3.

²⁵ *Id.* at 4.

²⁶ 15 U.S.C. § 1692(e) (2012).

²⁷ *Id.* § 1692.

²⁸ *Id.* § 1692e–f.

²⁹ *Id.*

³⁰ *Id.* § 1692a(6), k.

³¹ *Id.* § 1692a–k.

³² *Id.* § 1692k(a).

³³ *Id.* (providing actual damages, attorney's fees, and up to \$1000 as additional damages at the court's discretion for failing to comply with the FDCPA).

The FDCPA does not apply broadly to creditors; rather, the Act applies only to those who meet the definition of debt collectors.³⁴ A debt collector is defined by the FDCPA as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.”³⁵ The term “debt collector” includes “any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.”³⁶ The broad definition of debt collectors includes third-party industries whose sole business is to purchase stale debts from creditors at a steep discount in attempts to collect.³⁷ Additionally, the definition of debt collectors includes any business that regularly attempts to collect on debts.³⁸ This broad definition also includes those businesses that are not typically thought of as creditors but regularly attempt to collect debts owed, such as attorneys.³⁹

Under the FDCPA, “[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”⁴⁰ Additionally, “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.”⁴¹ To determine whether a debt collector is using false, deceptive, or misleading means to collect a debt, courts consider the “legal sophistication of the audience.”⁴² This is not a subjective inquiry as to whether the particular plaintiff would have been misled.⁴³ Instead, the inquiry is whether the least sophisticated consumer would have been deceived by the debt collector’s conduct.⁴⁴ The standard intends to protect naïve consumers in accordance with the legislative intent behind the FDCPA.⁴⁵

³⁴ *Id.* § 1692a(6).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See id.*

³⁸ *Id.*

³⁹ *See, e.g.,* *Goins v. JBC & Assocs., P.C.*, 352 F. Supp. 2d 262, 268 (D.C. Conn. 2005) (holding that an attorney was a debt collector within the meaning of the FDCPA when he was involved in the collection of consumer debts and had control over debt collection letters).

⁴⁰ 15 U.S.C. § 1692e.

⁴¹ *Id.* § 1692f.

⁴² *Bates v. State Bar of Ariz.*, 433 U.S. 350, 383, n.37 (1977).

⁴³ *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1258 (11th Cir. 2014) (internal quotation marks omitted) (quoting *Jeter v. Credit Bureau*, 760 F.2d 1168, 1177 n.11 (11th Cir. 2014)).

⁴⁴ *Id.*

⁴⁵ *Id.* at 1259.

B. The Bankruptcy Code and Its Definition of a Claim

Congress first exercised its constitutional authority to establish laws on bankruptcy in 1898,⁴⁶ when it enacted the Bankruptcy Act.⁴⁷ Congress repealed the 1898 Act when it enacted the Bankruptcy Code in 1978, which aimed to make bankruptcy more efficient while balancing the interests of debtors and creditors.⁴⁸ Despite bankruptcy's transformations in the United States, it has been clear that one of the primary purposes of bankruptcy law is to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh."⁴⁹ Bankruptcy allows a debtor to surrender property for distribution to creditors in exchange for discharge of debt.⁵⁰ Commonly referred to as the debtor's "fresh start," the discharge of debt allows a debtor to start over, debt free.⁵¹

While the purpose of the Bankruptcy Code is not to protect consumers, it does afford protections to consumers during bankruptcy.⁵² A primary protection of the Bankruptcy Code is the automatic stay, which acts as an instant freeze on any attempts to collect a debt from a debtor in bankruptcy.⁵³ Debtors may enter into bankruptcy for "breathing room," and the automatic stay immediately halts all collection efforts to allow the debtor time to determine debts owed and property owned that the debtor can forfeit for distribution to creditors.⁵⁴ The Bankruptcy Code provides for "actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages," giving debtors a remedy for violations of the automatic stay.⁵⁵

Commencing a bankruptcy case automatically creates an estate comprised of all property in which the debtor has a legal or equitable interest.⁵⁶ In a Chapter

⁴⁶ U.S. CONST. art. I § 8.

⁴⁷ The Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898) (repealed 1978).

⁴⁸ U.S. GOV'T ACCOUNTABILITY OFF., GAO/GGD-83-54, BANKRUPTCY ACT OF 1978—A BEFORE AND AFTER LOOK (1983), <http://www.gao.gov/assets/150/140407.pdf>.

⁴⁹ *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (quoting *Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549, 544–555 (1915)).

⁵⁰ *Id.*

⁵¹ *See id.* at 245.

⁵² *E.g.*, 11 U.S.C. § 362 (2012).

⁵³ *Id.*

⁵⁴ *In re Dennen*, 539 B.R. 182, 187 (Bankr. D. Colo. 2015).

⁵⁵ 11 U.S.C. § 362(k)(1).

⁵⁶ *Id.* § 541.

7 bankruptcy, a trustee⁵⁷ liquidates all of the debtor's nonexempt assets from the estate and distributes payments from the proceeds of the liquidation to creditors.⁵⁸ In a Chapter 13 bankruptcy, after the estate is created, a consumer debtor with regular income is permitted to retain his or her assets over the course of a repayment plan period.⁵⁹

When a debtor files for bankruptcy, he or she must file a list of creditors with the bankruptcy court, which notifies the creditors of the bankruptcy.⁶⁰ Upon notification that a bankruptcy has been filed in which a creditor has an interest, a creditor must file a proof of claim form to recover from the bankruptcy estate.⁶¹ This proof of claim indicates the interest that the creditor has in repayment.⁶² A proof of claim constitutes prima facie evidence of validity of a creditor's claim, which shifts the burden to the debtor or trustee to object to a filed proof of claim.⁶³ Under the Bankruptcy Code, a "claim" is a "right to payment."⁶⁴ State law determines whether a person has a right to payment and is also determinative of the statute of limitations on a debt.⁶⁵ Statutes of limitations set time limits on when a creditor can collect on a debt and, if a debt exceeds the state's statute of limitations on collection, that debt is considered time-barred.⁶⁶ Upon objection to a proof of claim, the bankruptcy court may impose sanctions against parties who file frivolous or bad faith proof of claims.⁶⁷

C. *Circuit Split Prior to Midland Funding*

Prior to *Midland Funding*, circuits disagreed as to whether filing a time-barred proof of claim in a bankruptcy proceeding violates the FDCPA.⁶⁸ The

⁵⁷ A trustee in bankruptcy is a person appointed by United States Trustee Program who manages and oversees the bankruptcy proceeding. *Id.* §§ 323, 704, 1302. In a Chapter 7 bankruptcy, the trustee gathers the debtor's non-exempt property, liquidates the property, and then distributes the balance to creditors. *Id.* § 704. In a Chapter 13 bankruptcy, the trustee oversees the debtor's monthly payments and distributes the funds to the creditors. *Id.* § 1302.

⁵⁸ *Id.* § 704.

⁵⁹ *Id.* § 1306(b).

⁶⁰ *Id.* § 521(a)(1).

⁶¹ FED. R. BANKR. P. 3001(f), 3002(a).

⁶² 11 U.S.C. § 502.

⁶³ *See id.* § 502(a).

⁶⁴ *Id.* § 101(5)(A).

⁶⁵ *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 450–51 (2007).

⁶⁶ *See Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1411 (2017).

⁶⁷ FED. R. BANKR. P. 9011.

⁶⁸ *Johnson v. Midland Funding, LLC*, 823 F.3d 1334, 1342 (11th Cir. 2016) (finding the FDCPA applicable); *see also In re Dubois*, 834 F.3d 522, 533 (4th Cir. 2016); *Owens v. LVNV Funding, LLC*, 832 F.3d 726, 737 (7th Cir. 2016); *Nelson v. Midland Credit Management, Inc.*, 828 F.3d 749, 752 (8th Cir. 2016).

Eleventh Circuit held in a 2008 decision that knowingly filing a time-barred proof of claim violates the FDCPA.⁶⁹ The court determined that, when assessing whether a debt collector has violated the FDCPA by using misleading conduct, the least-sophisticated consumer standard⁷⁰ applies.⁷¹ The inquiry is whether the least sophisticated consumer would have been deceived by the debt collector's conduct.⁷² The court found that "a debt collector's filing of a time-barred proof of claim creates the misleading impression to the debtor that the debt collector can legally enforce the debt."⁷³ The *Crawford* court concluded that this misleading impression under the least sophisticated consumer standard was a violation of the FDCPA.⁷⁴

The Second, Fourth, Seventh, and Eighth Circuits have reached contrary results, holding that filing a time-barred proof of claim form is not a violation of the FDCPA.⁷⁵ In *Simmons v. Roundup Funding, LLC*, the court held that filing even an invalid proof of claim in bankruptcy does not constitute misleading or abusive debt collection practices proscribed by the FDCPA.⁷⁶ The Second Circuit reasoned that the FDCPA is designed to protect against abusive debt collection practices likely to disrupt a debtor's life.⁷⁷ In contrast, debtors in bankruptcy do not need protection from abusive collection practices because bankruptcy is a court-controlled process in which debtors are protected by the court.⁷⁸ Additionally, the *Simmons* court found that the Bankruptcy Code provides remedies for wrongfully filed proofs of claim and nothing in either the Bankruptcy Code or the FDCPA indicates "[c]ongress intended to allow debtors to bypass the Code's remedial scheme when it enacted the FDCPA."⁷⁹ Though the court did not determine whether the FDCPA is ever applicable in a bankruptcy proceeding, the court concluded that filing a proof of claim in a bankruptcy proceeding cannot form the basis for an FDCPA claim.⁸⁰

⁶⁹ *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1261 (11th Cir. 2014).

⁷⁰ See *supra* notes 42–45 and accompanying text.

⁷¹ *Crawford*, 758 F.3d at 1259.

⁷² *Id.*

⁷³ *Id.* at 1261.

⁷⁴ *Id.*

⁷⁵ *Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 97 (2d Cir. 2010); *In re Dubois*, 834 F.3d 522, 532 (4th Cir. 2016); *Owens v. LVNV Funding, LLC*, 832 F.3d 726, 737 (7th Cir. 2016); *Nelson v. Midland Credit Mgmt.*, 828 F.3d 749, 752 (8th Cir. 2016).

⁷⁶ *Simmons*, 622 F.3d at 95–96.

⁷⁷ *Id.* at 96 (citing *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 343 (7th Cir. 1997)).

⁷⁸ *Id.*

⁷⁹ *Id.* (citing *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 510 (9th Cir. 2002)).

⁸⁰ *Id.* at n.2 ("Some courts have ruled more broadly that no FDCPA action can be based on an act that violates any provision of the Bankruptcy Code, because such violations are dealt with exclusively by the Bankruptcy Code. This broader rule has not been universally accepted, and we are not compelled to consider it in this case." (internal citations omitted)).

The Fourth Circuit Court of Appeals rejected the *Crawford* holding in *In re Dubois*.⁸¹ In *In re Dubois*, the court held that while filing a proof of claim is a debt collection activity regulated by the FDCPA, a time-barred claim is still a claim within the meaning of the term as defined by the Bankruptcy Code.⁸² Though the claim is not enforceable, the Bankruptcy Code does not speak to whether an unenforceable claim can be filed.⁸³ Rather, the Bankruptcy Code provides for time-barred claims to be *disallowed* upon objection to the proof of claim by an interested party.⁸⁴ The court also noted that, though harm can be caused by time-barred proof of claims that go unnoticed in a bankruptcy proceeding, the consumer does not feel harm.⁸⁵ A Chapter 13 debtor pays the same amount into their bankruptcy plan regardless of the number of unsecured claims that are filed.⁸⁶ Thus, other unsecured creditors feel the harm by receiving a smaller share of available funds.⁸⁷ The court rationalized that the reasons why it is “unfair” or “misleading” for a creditor to sue on a time-barred debt are diminished in the bankruptcy context, where the debtor has other protections and benefits from having debts reconciled in a court regulated process.⁸⁸ The court concluded that filing a time-barred proof of claim in bankruptcy does not violate the FDCPA, but did not go so far as to articulate that the FDCPA is inapplicable in a bankruptcy context.⁸⁹

The Seventh Circuit Court of Appeals similarly addressed the issue in *Owens v. LVNV Funding, LLC*.⁹⁰ The court held that a claim is a right to payment and, under state law, the expiration of the statute of limitations does not extinguish the underlying debt.⁹¹ A creditor with a debt that is subject to a statute of limitations defense retains a right to payment, “even if the recourse is only grounded in the debtor’s moral obligation to pay.”⁹² The court held that because the Bankruptcy Code has a procedure for disallowing time-barred proof of claims, the Bankruptcy Code “contemplates that creditors will file proofs of claim for unenforceable debts—including stale debts—and that the bankruptcy

⁸¹ *In re Dubois*, 834 F.3d 522, 533 (4th Cir. 2016).

⁸² *Id.* at 529–30.

⁸³ *Id.* at 530.

⁸⁴ *Id.* at 531.

⁸⁵ *Id.* at 532.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 532–33.

⁸⁹ *Id.* at 533.

⁹⁰ *Owens v. LVNV Funding, LLC*, 832 F.3d 726, 730 (7th Cir. 2016).

⁹¹ *Id.* at 730–31.

⁹² *Id.* at 731 (citing *McMahon v. LVNV Funding*, 744 F.3d 1010, 1020 (7th Cir. 2014) (“[S]ome people might consider full debt re-payment a moral obligation, even though the legal remedy for the debt has been extinguished”).

court will disallow those claims upon the debtor's objection."⁹³ Additionally, the court cited Supreme Court decisions recognizing that Congress intended for the term "claim" to have the "broadest possible definition."⁹⁴ Similar to the Fourth Circuit Court of Appeals, the Seventh Circuit Court of Appeals found that the concerns of misleading a consumer are diminished in bankruptcy proceedings where attorneys typically represent debtors.⁹⁵ Analogous to other Circuit Courts that have addressed this issue, the Seventh Circuit Court of Appeals held that filing a time-barred proof of claim is not a violation of the FDCPA, but failed to address whether the FDCPA is applicable at all in a bankruptcy proceeding.⁹⁶

Finally, the Eighth Circuit Court of Appeals also rejected *Crawford* in *Nelson v. Midland Credit Mgmt.*⁹⁷ In a short opinion, the court found that *Crawford* "ignores the differences between a bankruptcy claim and actual or threatened litigation."⁹⁸ Unlike debtors in civil actions, debtors in bankruptcy are protected by trustees with fiduciary duties to both the debtor and other creditors to object to unenforceable claims.⁹⁹ The court concluded that "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."¹⁰⁰

III. PRINCIPAL CASE

Prior to the Supreme Court addressing the issue of whether filing a time-barred proof of claim in a bankruptcy proceeding violates the FDCPA, the Eleventh Circuit remained the only circuit to have concluded that such actions were a violation of the FDCPA.¹⁰¹ To resolve the split, the Supreme Court granted certiorari in *Midland Funding, LLC v. Johnson*.¹⁰²

In March 2014, Aleida Johnson filed for bankruptcy under Chapter 13 of the Bankruptcy Code in the Federal District Court for the Southern District of Alabama.¹⁰³ Two months later, Midland Funding, LLC, one of the nation's

⁹³ *Id.* at 732.

⁹⁴ *Id.* at 733 (citing *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 522, 563–64 (1990) (internal quotation marks omitted); *see also* *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 302 (2003); *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991); *Ohio v. Kovacs*, 469 U.S. 274, 279 (1985).

⁹⁵ *Owens*, 832 F.3d at 736.

⁹⁶ *Id.* at 737.

⁹⁷ *Nelson v. Midland Credit Mgmt., Inc.*, 828 F.3d 749, 752 (8th Cir. 2016).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* (citing *Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 96 (2d Cir. 2010)).

¹⁰¹ *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1262 (11th Cir. 2014).

¹⁰² *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017).

¹⁰³ *Id.* at 1411.

largest buyers of unpaid debt, filed a proof of claim asserting that Johnson owed Midland \$1,879.71 on a credit-card debt.¹⁰⁴ The last charge that appeared on the account that Midland filed the proof of claim for was in May of 2003, 10 years prior to Johnson's bankruptcy filing.¹⁰⁵ Alabama has a six-year statute of limitation on actions to recover money lent by a creditor.¹⁰⁶ Johnson objected to the claim in the bankruptcy forum because it was time-barred, and the Bankruptcy Court disallowed the claim.¹⁰⁷

Johnson then filed the instant action against Midland for a violation of the FDCPA.¹⁰⁸ The District Court decided that the FDCPA did not apply, holding that an irreconcilable conflict existed between the Bankruptcy Code and the FDCPA such that the Bankruptcy Code precluded the FDCPA.¹⁰⁹ The Court of Appeals for the Eleventh Circuit reversed, holding that the Bankruptcy Code does not preclude the FDCPA, and a creditor who files a time-barred proof of claim violates the FDCPA.¹¹⁰ The United States Supreme Court granted Midland's petition for a writ of certiorari, noting the split in circuits concerning whether filing a time-barred proof of claim in bankruptcy is false, deceptive, misleading, unconscionable, or unfair within the meaning of the FDCPA.¹¹¹

First, the majority found that it was "reasonably clear" that Midland's proof of claim was not "false, deceptive, or misleading."¹¹² Under the Bankruptcy Code, a "claim" is a "right to payment," and state law determines whether someone has a right to payment.¹¹³ The Court held that under Alabama state law, a right to payment continues after the limitations period has expired.¹¹⁴ Johnson argued that a "claim," as used in the Bankruptcy Code, means only an *enforceable* claim.¹¹⁵ The Court did not find this argument persuasive, noting that the word "enforceable" does not appear within the Bankruptcy Code's definition of a claim, nor does the interpretation comply with other provisions of the Bankruptcy Code.¹¹⁶ In determining whether a statement is misleading, courts take the

¹⁰⁴ *Id.*; *Frequently Asked Questions*, MIDLAND FUNDING, <https://www.midlandfunding.com/faqs/> (last visited Nov. 19, 2017).

¹⁰⁵ *Midland Funding*, 137 S. Ct. at 1411.

¹⁰⁶ ALA. CODE § 6-2-34 (2014); *Midland Funding*, 137 S. Ct. at 1411.

¹⁰⁷ *Midland Funding*, 137 S. Ct. at 1411.

¹⁰⁸ *Id.*

¹⁰⁹ *Johnson v. Midland Funding, LLC*, 528 B.R. 462, 473 (S.D. Ala. 2015).

¹¹⁰ *Johnson v. Midland Funding, LLC*, 823 F.3d 1334, 1342 (11th Cir. 2016).

¹¹¹ *Midland Funding*, 137 S. Ct. at 1411–12.

¹¹² *Id.* at 1411.

¹¹³ *Id.* at 1411; 11 U.S.C. § 101(5)(A) (2012).

¹¹⁴ *Midland Funding*, 137 S. Ct. at 1411.

¹¹⁵ *Id.* at 1412.

¹¹⁶ *Id.*

legal sophistication of the audience into consideration.¹¹⁷ The Court determined that the trustee in bankruptcy, who examines the proof of claim forms, is the audience and has the sophistication to determine that a proof of claim is subject to disallowance.¹¹⁸ Therefore, filing a time-barred proof of claim is not misleading.¹¹⁹

Next, the majority held that an obviously time-barred proof of claim is not unfair or unconscionable within the meaning of the FDCPA.¹²⁰ Though many courts have held in ordinary civil actions that a debt collector's assertion of a time-barred claim is unfair, the Court found this standard inapplicable in the bankruptcy setting.¹²¹ The Court again relied on the difference between the unsophisticated consumer in ordinary civil suits and the knowledgeable trustee in a bankruptcy proceeding.¹²² The Court suggested that consumers who initiate bankruptcy proceedings are more knowledgeable and less likely to pay a stale claim.¹²³ Johnson argued that there was not "a single legitimate reason" for allowing this kind of behavior," thus it must be unfair to allow a debt collector to buy stale claims, assert them in bankruptcy, and hope the trustee doesn't catch the statute of limitations defense.¹²⁴ The Court was not persuaded by this argument, noting that timeliness is an affirmative defense in bankruptcy and it is the duty of the trustee to investigate claims and determine if the claims are stale.¹²⁵ The Court also held that Congress did not intend for the FDCPA to "determine answers to these bankruptcy-related questions."¹²⁶ Rather, the FDCPA and the Bankruptcy Code were intended to have two distinct purposes.¹²⁷ The Court concluded that holding the FDCPA applicable to time-barred proof of claim forms filed in bankruptcy proceedings would "upset [the] 'delicate balance'" between debtors' protections and obligations that the Bankruptcy Code seeks to maintain.¹²⁸

Writing for the dissent, Justice Sotomayor, joined by Justices Ginsburg and Kagan, argued that allowing debt collectors to buy stale debts, "fil[e] claims in bankruptcy proceedings to collect it, and hop[e] that no one notices

¹¹⁷ *Id.* at 1413.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1411–13.

¹²⁰ *Id.* at 1414–15.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 1413.

¹²⁴ *Id.* at 1414.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 1415.

that the debt is too old to be enforced,” is both unfair and unconscionable.¹²⁹ Justice Sotomayor noted that the Nation’s debt collection agencies earned over \$13 billion in revenue last year on debts that they purchased for pennies on the dollar.¹³⁰ The dissent argued that, because the FDCPA has largely blocked debt collectors from attempting to collect stale debts in state courts, debt collectors have turned to the bankruptcy forum to attempt to continue their practice of collecting stale, time-barred debts.¹³¹ The very company in this suit, Midland Funding, entered into a consent decree with the government in 2015 prohibiting it from filing civil actions to collect time-barred debts and ordering it to pay \$34 million in restitution.¹³² The dissent noted the similarities between a civil action to recover a time-barred debt (which every court to consider the matter has held to be a violation of the FDCPA) and an attempt to recover the debt in a bankruptcy proceeding.¹³³ In both situations, the statute of limitations is an affirmative defense to be raised either by the debtor or the trustee.¹³⁴ In both situations, debt collectors file claims and “hope that no one notices that they are too old to be enforced.”¹³⁵ The dissent noted that the distinctions that the majority made between bankruptcy and civil actions bear no weight.¹³⁶ The structural features of a bankruptcy process do not reduce the risk of a stale debt going unnoticed because trustees “cannot realistically be expected to identify every time-barred . . . claim filed in every bankruptcy.”¹³⁷ A consumer who files for bankruptcy is not more sophisticated than the average consumer debtor because “after all, [he] has just declared that he is unable to meet his financial obligations.”¹³⁸ Finally, consumers do not benefit from a time-barred proof of claim being filed because many debtors do not end up fully paying off their debts in Chapter 13 proceedings.¹³⁹ The dissent concluded that “[i]t takes only the common sense to conclude that one should not be able to profit on the inadvertent inattention of others” and requested Congress amend the FDCPA to explicitly prohibit debt collectors from engaging in this form of conduct.¹⁴⁰

¹²⁹ *Id.* at 1416 (Sotomayor, J., dissenting).

¹³⁰ *Id.* (citing CONSUMER FIN. PROT. BUREAU, FAIR DEBT COLLECTION PRACTICES ACT: ANNUAL REPORT 8 (2016)).

¹³¹ *Midland Funding*, 137 S. Ct. at 1417 (Sotomayor, J., dissenting).

¹³² *Id.*; see Consent Order in *In re Encore Capital Group, Inc.*, 2015-CFPB-0022 38, 46 (Sept. 9, 2015).

¹³³ *Midland Funding*, 137 S. Ct. at 1417 (Sotomayor, J., dissenting).

¹³⁴ *Id.*

¹³⁵ *Id.* at 1418.

¹³⁶ *Id.* at 1420.

¹³⁷ *Id.* (citing Brief of United States as Amicus Curiae at 25–26, *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017) (No. 16-348)).

¹³⁸ *Id.* at 1420.

¹³⁹ *Id.* at 1421.

¹⁴⁰ *Id.*

IV. ANALYSIS

The Court in *Midland Funding* reached the correct result; however, its reasoning is incorrect. The majority's analysis missed the mark because it truncated an important issue: whether the FDCPA is precluded by the Bankruptcy Code in the context of filing a proof of claim in a bankruptcy proceeding. The FDCPA seeks to prevent bankruptcies, rather than to protect debtors who have already entered bankruptcy.¹⁴¹ The protections afforded by the FDCPA are directed at consumers in a non-bankruptcy proceeding and are inapplicable in the court controlled context of a bankruptcy proceeding.¹⁴² Additionally, consumers do not feel the harm of an allowed time-barred proof of claim, further evidencing the inapplicability of the FDCPA in the proof of claim context.¹⁴³ Finally, and perhaps most importantly, a creditor cannot simultaneously comply with the FDCPA while engaging in a right that the Bankruptcy Code provides for—filing a time-barred proof of claim.¹⁴⁴ This irreconcilable conflict results in the Bankruptcy Code precluding the FDCPA in the proof of claim context. Rather than analyzing whether a time-barred proof of claim is false, deceptive, or misleading under the FDCPA, the Court should have analyzed whether the FDCPA applies at all to a time-barred proof of claim filed in a bankruptcy proceeding.

Notably, the majority referenced the above analysis in its decision in *Midland Funding*.¹⁴⁵ The majority discussed the protections offered by the Bankruptcy Code and the diminished risk of harm to consumers in a bankruptcy proceeding.¹⁴⁶ The majority stated:

The Act and the Code have different purposes and structural features. The Act seeks to help consumers, not necessarily by closing what Johnson and the United States characterize as a loophole in the Bankruptcy Code, but by preventing consumer bankruptcies in the first place. The Bankruptcy Code, by way of contrast, creates and maintains what we have called 'the delicate balance of a debtor's protections and obligations.'¹⁴⁷

While the majority alluded to the inapplicability of the FDCPA, the majority did not decide whether the Bankruptcy Code precludes the FDCPA in this context. This analysis is essential to a full understanding of *Midland Funding*.

¹⁴¹ See 15 U.S.C. § 1692(a) (2012).

¹⁴² See *infra* notes 166–73 and accompanying text.

¹⁴³ See *infra* notes 174–86 and accompanying text.

¹⁴⁴ See *infra* notes 186–207 and accompanying text.

¹⁴⁵ *Midland Funding*, 137 S. Ct. at 1415.

¹⁴⁶ *Id.* at 1413–14.

¹⁴⁷ *Id.* at 1414.

A. *Filing a Time-Barred Proof of Claim is Misleading within the Definition of the FDCPA*

In finding that filing a time-barred proof of claim form is not “false, deceptive, or misleading,” as proscribed by the FDCPA, the Supreme Court looked to the legal sophistication of its audience.¹⁴⁸ However, the Court incorrectly concluded that the audience in a Chapter 13 bankruptcy is the trustee.¹⁴⁹ The Court found that in a Chapter 13 bankruptcy, the audience includes a trustee, who is knowledgeable about the process and is trained to spot time-barred claims which can be defeated by the statute of limitations affirmative defense.¹⁵⁰ The Court failed to acknowledge that the majority of federal circuits have employed some form of the “least sophisticated consumer” standard when determining whether a creditor’s conduct is false, deceptive, or misleading.¹⁵¹ This standard should not change because there is an additional member of the audience, the trustee, in a bankruptcy proceeding. The trustee is not the only person who can object to a proof of claim; any party in interest can object to a proof of claim filed in bankruptcy.¹⁵² Congress determined that the term “a party in interest” was to be defined by case law.¹⁵³ Courts have found that the term “party in interest” includes the debtor and other creditors.¹⁵⁴ Other creditors, and certainly the debtor, could be members of the public with no legal experience.¹⁵⁵ The majority suggested that a debtor who files for bankruptcy is more knowledgeable than the average consumer.¹⁵⁶ The dissent quickly rebutted this notion: “A person who has filed for bankruptcy will rarely be in such a superior position; he has, after all, just declared that he is unable to meet his financial obligations and in need of the assistance of the courts.”¹⁵⁷ Courts have determined that Congress intended courts to view FDCPA claims “from the perspective of the least sophisticated

¹⁴⁸ *Id.* at 1413.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See, e.g., *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 103 (1st Cir. 2014); *McMurray v. ProCollect, Inc.*, 687 F.3d 665, 669 (5th Cir. 2012); *Wahl v. Midland Credit Mgmt., Inc.*, 556 F.3d 643, 645–46 (7th Cir. 2009); *Strand v. Diversified Collection Serv., Inc.*, 380 F.3d 316, 317 (8th Cir. 2004); *Terran v. Kaplan*, 109 F.3d 1428, 1431–32 (9th Cir. 1997); *United States v. Nat’l Fin. Serv., Inc.*, 98 F.3d 131, 136 (4th Cir. 1996); *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993); *Smith v. Transworld Sys.*, 953 F.2d 1025, 1028–30 (6th Cir. 1992); *Jeter v. Credit Bureau*, 760 F.2d 1168, 1175 (11th Cir. 1985).

¹⁵² 11 U.S.C. § 502 (2012).

¹⁵³ S. REP. NO. 95-989, at 62 (1978).

¹⁵⁴ 11 U.S.C. § 502; *In re Sims*, 278 B.R. 457, 484 (Bankr. E.D. Tenn. 2002).

¹⁵⁵ See *Midland Funding*, 137 S. Ct. at 1420–22 (Sotomayor, J., dissenting).

¹⁵⁶ *Id.* at 1413 (majority opinion).

¹⁵⁷ *Id.* at 1420 (Sotomayor, J., dissenting).

debtor.”¹⁵⁸ Through filing a time-barred proof of claim form, creditors deceive debtors *and* bankruptcy courts. Such an action is false, deceptive, or misleading, as contemplated by the FDCPA.

Further, as noted by the dissent in *Midland Funding*, the trustee in a bankruptcy proceeding does not create the level of protection suggested by the majority.¹⁵⁹ The United States Government stated in its Amicus Curiae Brief that trustees “cannot realistically be expected to identify every time-barred . . . claim filed in every bankruptcy.”¹⁶⁰ In some districts, due to the large-scale submission of claims, trustees typically only object to claims filed after the claims bar date or to claims seeking priority treatment.¹⁶¹

Additionally, every court that has considered this question in the context of a civil suit has found that a debt collector who knowingly files suit to collect a time-barred debt violates the FDCPA.¹⁶² The Court in *Midland Funding* distinguished civil actions from bankruptcy proceedings due to the possibility that unsophisticated consumers would not be aware of the statute of limitations and may pay a stale debt to avoid the cost and embarrassment of a lawsuit.¹⁶³ However, as noted by the dissent, the distinguishing factors relied on by the majority are not significant.¹⁶⁴ The dissent noted that “[i]t does not take a sophisticated attorney to understand why the practice . . . is unfair.”¹⁶⁵ The actions of debt collectors in attempting to deceive the bankruptcy court and the trustee are false, deceptive, misleading, and unfair as completed by the FDCPA.

B. Though This Conduct is Misleading, the FDCPA Does not Apply in Bankruptcy

Regardless of the Court’s incorrect determination that filing a time-barred claim is not a deceptive practice, the Court reached the correct conclusion because the FDCPA does not apply to filing a proof of claim in a bankruptcy proceeding.

¹⁵⁸ *E.g.*, *Jensen v. Pressler & Pressler*, 791 F.3d 413, 420 (3d Cir. 2015).

¹⁵⁹ *See Midland Funding*, 137 S. Ct. at 1420 (Sotomayor, J., dissenting).

¹⁶⁰ Brief for the United States as Amicus Curiae at 25–26, *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017) (No. 16-348).

¹⁶¹ *Id.* at 26.

¹⁶² *Midland Funding*, 137 S. Ct. at 1417 (Sotomayor, J., dissenting).

¹⁶³ *Id.* at 1413 (majority opinion).

¹⁶⁴ *Id.* at 1420–21 (Sotomayor, J., dissenting); *see supra* notes 129–40 and accompanying text.

¹⁶⁵ *Midland Funding*, 137 S. Ct. at 1421 (Sotomayor, J., dissenting).

1. *FDCPA Protections are Directed at Consumers*

“The FDCPA is a consumer protection statute that prohibits certain abusive, deceptive, and unfair debt collection practices.”¹⁶⁶ The statutory provisions of the FDCPA in addition to the legislative history make it clear that Congress intended the FDCPA to prohibit actions that “burden or injure consumers.”¹⁶⁷

The FDCPA begins with congressional findings and a declaration of purpose.¹⁶⁸ Congress found that the “existing laws and procedures” for redressing injuries caused by “abusive, deceptive, and unfair debt collection practices” were “inadequate to protect *consumers*.”¹⁶⁹ Congress passed the FDCPA with the goal of “eliminat[ing] abusive debt collection practices by debt collectors, insur[ing] that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and promot[ing] consistent State action to *protect consumers* against debt collection abuses.”¹⁷⁰ The intent of the FDCPA to protect consumers is also evident in the legislative history of the FDCPA: “The Act’s purpose is to *protect consumers* from a host of unfair, harassing, and deceptive, debt collection practices without imposing unnecessary restrictions on ethical debt collectors.”¹⁷¹

Further, FDCPA prohibitions and protections only apply to attempts to collect consumer debts. The FDCPA prohibits making a “false, deceptive, or misleading representation” or using “unfair or unconscionable means” in connection with the collection of the debt.¹⁷² “Debt” is narrowly defined by the FDCPA as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the [goods or services] which are the subject of the transaction are primarily for personal, family, or household purposes.”¹⁷³ The definitions within the FDCPA indicate that the purpose of the Act is only to protect actions against consumers.

2. *Consumers Do not Feel the Harm of Time-Barred Proofs of Claim*

The commencement of a bankruptcy case creates an estate comprised of all legal or equitable interests of the debtor in non-exempt property as of the

¹⁶⁶ *Marx v. Gen. Revenue Corp.*, 133 S. Ct. 1166, 1171 n.1 (2013).

¹⁶⁷ Brief for Resurgent Capital Servs., L.P. as Amicus Curiae in Support of Petitioner at 4, *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017) (No. 16-348).

¹⁶⁸ 15 U.S.C. § 1692 (2012).

¹⁶⁹ *Id.* § 1692(a)–(b) (emphasis added).

¹⁷⁰ *Id.* § 1692(e) (emphasis added).

¹⁷¹ S. REP. NO. 95-382, at 1 (1977) (emphasis added).

¹⁷² 15 U.S.C. § 1692(e)–(f).

¹⁷³ *Id.* § 1692(a)(5).

date of the commencement of the case.¹⁷⁴ The newly created bankruptcy estate is a legal entity separate and distinct from the debtor.¹⁷⁵ A trustee administers the bankruptcy estate and oversees the process of collecting the debtor's assets, liquidating those assets, and distributing the proceeds to creditors with allowed claims.¹⁷⁶ The distinction between the debtor and the bankruptcy estate is also evident in the provisions of the automatic stay. Filing a bankruptcy petition automatically precludes creditors from commencing or continuing attempts to collect pre-petition debts from the debtor.¹⁷⁷ However, the automatic stay does not prevent creditors from attempting to collect from the bankruptcy estate.¹⁷⁸ The proof of claim process permits creditors to attempt to collect from the bankruptcy estate, and the notion that filing a proof of claim violates the automatic stay is "absurd."¹⁷⁹

When a creditor files a proof of claim in bankruptcy, that claim is against the bankruptcy estate, not the debtor.¹⁸⁰ The trustee's allowance of a claim does not affect the debtor or the debtor's assets; allowance of a claim only affects how the assets in the estate will be divided among the creditors.¹⁸¹ In a Chapter 7 case, the estate is comprised of all nonexempt property in which the debtor has a legal or equitable interest.¹⁸² The trustee liquidates the property in the estate, and the proceeds from the liquidation are distributed to creditors.¹⁸³ The debtor surrenders all nonexempt property to the estate to be distributed to creditors regardless of the amount of claims filed by creditors.¹⁸⁴ Similarly, in a Chapter 13 case, the debtor proposes a plan to pay creditors with future income and retains pre-bankruptcy assets.¹⁸⁵ The bankruptcy estate in a Chapter 13 case is comprised of the debtor's legal and equitable interests as of the commencement of the case and also future earnings from the time the case is commenced until the case is closed, dismissed, or converted to another chapter.¹⁸⁶ The claim allowance process serves not to protect debtors; rather, this process serves the purpose of ensuring fairness amongst creditors.

¹⁷⁴ 11 U.S.C. § 541(a) (2012).

¹⁷⁵ *United States v. Mitchell*, 476 F.3d 539, 544 (8th Cir. 2007).

¹⁷⁶ 11 U.S.C. §§ 321–323, 701–705, 1302.

¹⁷⁷ 11 U.S.C. § 362(a).

¹⁷⁸ *In re Layne*, No. 98-13017, 2000 Bankr. LEXIS 2030 at *6 (Bankr. S.D. Ga. 2000).

¹⁷⁹ 11 U.S.C. § 501; *In re Layne*, 2000 Bankr. LEXIS 2030 at *7.

¹⁸⁰ *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 449 (2007).

¹⁸¹ *In re Dubois*, 834 F.3d 522, 532 (4th Cir. 2016).

¹⁸² 11 U.S.C. § 541(a)(1).

¹⁸³ *Id.* § 726.

¹⁸⁴ See Brief for Resurgent Capital Servs., L.P. as Amicus Curiae in Support of Petitioner at 11–16, *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017) (No. 16-348).

¹⁸⁵ 11 U.S.C. §§ 1321–1330.

¹⁸⁶ *Id.* §§ 541(a)(1), 1306(a).

3. *Applying the FDCPA in Bankruptcy Upsets the “Delicate Balance”—the Bankruptcy Code Precludes the FDCPA*

While the majority acknowledged that application of the FDCPA in a bankruptcy proceeding would upset the “delicate balance” between the two acts, the court did not determine whether there is an irreconcilable conflict between the FDCPA and the Bankruptcy Code.¹⁸⁷ However, to determine whether the Bankruptcy Code precludes the FDCPA in the proof of claim context, an analysis of this conflict is essential. Determining whether the Bankruptcy Code precludes the FDCPA completes a full analysis of *Midland Funding*.

To determine whether one federal statute precludes or impliedly repeals another federal statute, “the legislature’s demonstration of intent” is key.¹⁸⁸ Courts may not reach the conclusion that two statutes conflict lightly and, if an interpretation permits both statutes to stand, a court must adopt that interpretation.¹⁸⁹ However, “[c]ongress’s intent to effect an implied repeal can be inferred when a later statute conflicts with or is repugnant to an earlier-enacted statute.”¹⁹⁰ In the case of the FDCPA and the Bankruptcy Code, “[t]he proper inquiry . . . is whether the FDCPA claim raises a direct conflict between the Code or Rules and the FDCPA, or whether both can be enforced.”¹⁹¹

As found by the majority in *Midland Funding*, the Bankruptcy Code permits filing of a time-barred proof of claim in a bankruptcy proceeding.¹⁹² A creditor may file a proof of claim, which constitutes prima facie evidence of the validity of the claim.¹⁹³ A claim is “deemed allowed, unless a party in interest . . . objects.”¹⁹⁴ The Bankruptcy Code further provides for situations when a creditor files a time-barred proof of claim form. Section 502 of the Bankruptcy Code provides that debtors or trustees can object to a proof of claim as unenforceable.¹⁹⁵ The bankruptcy court then determines whether the claim filed by the creditor is valid, and only valid claims are enforceable.¹⁹⁶ In addition to the procedural mechanisms provided by the Bankruptcy Code, the Bankruptcy Code offers remedies for wrongfully filed proof of claims.¹⁹⁷ Not only does the Bankruptcy

¹⁸⁷ *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1415 (2017).

¹⁸⁸ *Micosukee Tribe of Indians of Fla. v. United States*, 619 F.3d 1286, 1299 (11th Cir. 2010).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 274 (3d Cir. 2013).

¹⁹² *Midland Funding*, 137 S. Ct. at 1411–12.

¹⁹³ 11 U.S.C. § 501(a) (2012); FED. R. BANKR. P. 3001(f).

¹⁹⁴ 11 U.S.C. § 502(a).

¹⁹⁵ *Id.* § 502.

¹⁹⁶ *Id.*

¹⁹⁷ FED. R. BANKR. P. 9011(b)–(c).

Code disallow unenforceable claims, a bankruptcy court also has the power to issue sanctions for any representation to the court that is determined to have been presented for an improper purpose.¹⁹⁸

In contrast, the FDCPA proscribes a debt collector from filing a proof of claim in bankruptcy that the debt collector knows to be time-barred.¹⁹⁹ Thus, the Bankruptcy Code permits an action by a creditor which the FDCPA prohibits, creating an irreconcilable conflict between the two acts. The district court in *Midland Funding* similarly concluded that an irreconcilable conflict exists between an FDCPA claim based on a creditor's proof of claim for a time-barred debt and a creditor's right to payment (which exists even after the statute of limitations has expired) and entitlement to file a proof of claim for such right to payment.²⁰⁰ The contradictory provisions of the Bankruptcy Code and the FDCPA "cannot possibly be given effect simultaneously, the provisions are positively repugnant and cannot mutually coexist."²⁰¹ A creditor cannot simultaneously engage in an action that the Bankruptcy Code provides a right in which to engage (filing a time-barred proof of claim) while complying with the FDCPA. In the face of an irreconcilable conflict, the "later-enacted statute controls."²⁰² The Bankruptcy Code, enacted in 1978, is the later-enacted statute, as Congress enacted the FDCPA in 1977.²⁰³ The FDCPA "must give way to the [Bankruptcy] Code only to the extent that the two statutes irreconcilably conflict."²⁰⁴

The irreconcilable conflict between the FDCPA and the Bankruptcy Code results in the Bankruptcy Code controlling. The Bankruptcy Code provides for situations in which a creditor files a time-barred proof of claim, and cannot form the basis for FDCPA liability. "[A] mere browse through the complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code . . . demonstrates Congress's intent to create a whole system under federal control which is designed to bring together and adjust all of the rights and duties of creditors and embarrassed debtors alike."²⁰⁵ The Bankruptcy Code provides its own remedies for situations in which a creditor files a time-barred proof of claim form through disallowance of unenforceable claims and court ordered sanctions against a creditor who makes a false representation to the court.²⁰⁶ Allowing a debtor to

¹⁹⁸ *Id.* 9011(c).

¹⁹⁹ See *supra* notes 148–65 and accompanying text.

²⁰⁰ Johnson v. Midland Funding, LLC, 528 B.R. 462, 473 (Bankr. S.D. Ala. 2016).

²⁰¹ *Id.* at 473.

²⁰² Nat'l Ass'n of Home Builders v. Defs. of Wildlife, 551 U.S. 644, 662–63 (2007).

²⁰³ Miccosukee Tribe of Indians of Fla. v. United States, 619 F.3d 1286, 1289 (11th Cir. 2010).

²⁰⁴ *Midland Funding*, 528 B.R. at 473.

²⁰⁵ MSR Expl. Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 914 (9th Cir. 1996).

²⁰⁶ 11 U.S.C. § 502 (2012); FED. R. BANKR. P. 9011.

pursue “a simultaneous claim under the FDCPA would allow through the back door what [a debtor] cannot accomplish through the front door—a private right of action. This would circumvent the remedial scheme of the Code under which Congress struck a balance between the interests of debtors and creditors.”²⁰⁷

V. CONCLUSION

The FDCPA was intended to prevent bankruptcy, not to regulate it.²⁰⁸ When a creditor files a proof of claim in a bankruptcy proceeding, the protections afforded by the FDCPA are not applicable. Consumers, whom the FDCPA intends to protect, do not feel the harm of a time-barred proof of claim.²⁰⁹ The legislative intent behind the FDCPA is no longer applicable in light of the more recently enacted Bankruptcy Code, and, further, the two acts create an irreconcilable conflict. “[W]here the Code and Rules provide a remedy for acts taken in violation of their terms, debtors may not resort to other state and federal remedies to redress their claims lest the congressional scheme behind the bankruptcy laws and their enforcement be frustrated.”²¹⁰ *Midland Funding* presented the Supreme Court with an opportunity to rule on this irreconcilable conflict; however, the Court did not weigh in. Without guidance from the Supreme Court on the interaction between the FDCPA and the Bankruptcy Code, courts and practitioners alike are left with questions regarding how to simultaneously comply with both acts. Until the Supreme Court expands on how to “delicately balance” the FDCPA and the Bankruptcy Code, the question remains unanswered.

²⁰⁷ *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 510 (9th Cir. 2002).

²⁰⁸ 15 U.S.C. § 1692(a)–(b) (2012).

²⁰⁹ See *supra* notes 166–86 and accompanying text.

²¹⁰ *In re Chaussee*, 399 B.R. 225, 236–37 (B.A.P. 9th Cir. 2013).