

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:15-bk-350-PMG

Dylan Cadwalader
Geraldine Cadwalder,

Debtors.

Chapter 13

ORDER ON DEBTORS' OBJECTION TO CLAIM 7

THIS CASE came before the Court for hearing to consider the Debtors' Objection to Claim Seven (7) of Resurgent Capital Services, L.P., as servicer for LVNV Funding, LLC (LVNV). (Doc. 27).

Under the Full Faith and Credit statute, federal courts are directed to accord a state court judgment the same preclusive effect that it would receive in the state in which the judgment was rendered. 28 U.S.C. §1738.

In this case, LVNV's Proof of Claim is based on a Judgment that was entered against the Debtor, Dylan Cadwalader, by a state court in Massachusetts. Nothing in the record indicates that the Judgment is time-barred or otherwise unenforceable under the laws of Massachusetts. Consequently, the Debtors' Objection to LVNV's Claim should be overruled, and Claim Number 7 should be allowed.

Background

The Debtor, Dylan Cadwalader, is self-employed as a hotel manager consultant. (Doc. 12). On January 29, 2015, the Debtor and his spouse filed a petition under Chapter 13 of the Bankruptcy Code.

On June 1, 2015, LVNV filed Proof of Claim Number 7 in the Debtors' bankruptcy case. The Claim is filed as an unsecured claim in the amount of \$12,423.68, and states that it is based on a credit card obligation. An "Account Detail" is attached to the Claim, which includes certain borrower information, creditor information, and account information.

On June 10, 2015, the Debtors filed an Objection to the Claim. In the Objection, the Debtors assert that the debt is unenforceable because it is barred by the applicable statute of limitations, as shown in the Account Detail attached to the Claim. (Doc. 27).

On March 18, 2016, LVNV filed a Response to the Debtors' Objection. (Doc. 55). In its Response, LVNV contends that (1) the Claim is based on a Massachusetts state court Judgment that was entered against the Debtor on February 24, 2011, and that (2) Massachusetts law provides that "a creditor has 20 years to pursue collection on a judgment." According to LVNV, therefore, the Claim is not time-barred, because the underlying Judgment is enforceable under Massachusetts law.

A copy of the Judgment is attached to LVNV's Response. (Doc. 55). The Judgment was entered against the Debtor, Dylan Cadwalader, on February 24, 2011, in the amount of \$12,423.68, which is the amount asserted by LVNV as an unsecured debt in Claim Number 7.

Discussion

The "Full Faith and Credit Act directs federal courts to accord state court judgments the same preclusive effect that they would receive in the state in which the judgment was rendered." In re DeMasi, 2015 WL 3956135, at 5 (Bankr. M.D. Fla.). Specifically, the Act provides:

§1738. State and Territorial statutes and judicial proceedings; full faith and credit

...

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. §1738(Emphasis supplied). Under this provision, bankruptcy courts are required “to look to the law of the state in which the judgment was rendered and to give the judgment the same level of preclusive effect that it would receive from that state.” In re Russell, 2011 WL 6736353, at 2 (Bankr. N.D. Ala.)(Emphasis supplied).

In In re LeRoux, 216 B.R. 459 (Bankr. D. Mass. 1997), for example, the debtor in a Chapter 11 case in Massachusetts objected to a proof of claim that arose out of default judgments that the creditor had obtained in New Jersey. Under the full faith and credit provision of §1738, the Massachusetts Bankruptcy Court found that it was required to “give the New Jersey judgments the same preclusive effect in this Court that New Jersey would provide.” In re LeRoux, 216 B.R. at 467. In LeRoux, therefore, the Court overruled the debtor’s objection to the judgment creditor’s claim, because it found that New Jersey would give the judgments full faith and credit, and because no other grounds indicated that the judgments were unenforceable. Id. at 470.

In this case, LVNV’s Claim is based on a Judgment that was obtained against Dylan Cadwalader in Massachusetts in 2011. The Judgment inadvertently was not attached to the original Proof of

Claim, but was filed with LVNV's Response to the Debtor's Objection to the Claim. (Doc. 55, ¶ 5, n. 1). The Debtor does not dispute the entry of the Judgment, and the amount asserted by LVNV as an unsecured claim is exactly the same as the Judgment amount. (Doc. 55, ¶ 10).

In opposing the Claim, the Debtors primarily contend that the applicable date of the debt for limitations purposes is the default date under the original credit card agreement, and not the Judgment date, because the Judgment was not domesticated in Florida pursuant to §55.503 of the Florida Statutes. According to the Debtors, therefore, the claim is time-barred in their Chapter 13 case, because the "last transaction" under the credit card agreement occurred more than seven years before the bankruptcy petition was filed. (March 16, 2016, Hearing on Objection to Claim).

LVNV appears to acknowledge that the Massachusetts Judgment was not recorded in Florida under the Florida Enforcement of Foreign Judgments Act. The absence of recordation under §55.503, however, does not result in the disallowance of LVNV's claim in the Debtor's bankruptcy case.

The mere fact that a judgment creditor, who holds a valid judgment issued by a court in another state, does not register the judgment in the bankruptcy forum does not render the claim invalid or subject to disallowance. Although Missouri law, V.A.M.S. §551.760, and federal law, 28 U.S.C. §1963, provide for a judgment holder to register a judgment, there is no requirement under the law that a judgment be registered in order for it to constitute a valid, allowable claim under the Bankruptcy Code. Although section 502(b) provides for disallowance of a claim if the claim is unenforceable, the fact that it is not registered in the forum where the bankruptcy court is located does not render it unenforceable. Rather, registering a judgment simply gives a judgment creditor more collection options in the foreign jurisdiction, including imposition of a lien in the jurisdiction.

In re Moss, 267 B.R. 839, 843 (8th Cir. BAP. 2001). Under the Florida Act, for example, the recordation of a foreign judgment serves to trigger Florida's twenty-year statute of limitations for purposes of its enforceability in Florida. But the statute does not impair the limitations period that is applicable to the judgment in the rendering state. Hess v. Patrick, 164 F.3d 19 (Fla. 2d DCA 2015);

Fla. Stat. §55.02. If the Judgment is valid and enforceable in the state in which it was entered, it is entitled to full faith and credit under 28 U.S.C. §1738, and the Florida statute has no effect on the Judgment's allowance as an unsecured claim in bankruptcy.

Conclusion

Under the Full Faith and Credit statute, federal courts are directed to accord a state court judgment the same preclusive effect that it would receive in the state in which the judgment was rendered. 28 U.S.C. §1738.

In this case, LVNV's Proof of Claim is based on a Judgment that was entered against the Debtor, Dylan Cadwalader, by a state court in Massachusetts. Nothing in the record indicates that the Judgment is time-barred or otherwise unenforceable under the laws of Massachusetts. Consequently, the Debtors' Objection to LVNV's Claim should be overruled, and Claim Number 7 should be allowed.

Accordingly:

IT IS ORDERED that the Debtors' Objection to Claim Seven (7) of Resurgent Capital Services, L.P., as servicer for LVNV Funding, LLC, is overruled, and Claim Number 7 of Resurgent Capital Services, L.P., as servicer for LVNV Funding, LLC, is allowed as an unsecured claim in the amount of \$12,423.68.

DATED this 31 day of May, 2016.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge