NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. SC-08-1093-KwMoJu
BETTY JEAN McCARTHER-MORGAN,	Bk. No. 07-04817
Debtor.	Adv. No. 07-90654
BETTY JEAN McCARTHER-MORGAN,	
Appellant,	
v.	**M E M O R A N D U M**[1]
ASSET ACCEPTANCE, LLC,	
Appellee.	

Argued and Submitted on September 18, 2008
at San Diego, California

Filed - January 27, 2009

Appeal from the United States Bankruptcy Court
for the Southern District of California

Honorable James W. Meyers, Bankruptcy Judge, presiding

Before: KWAN,[2] MONTALI and JURY, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Robert N. Kwan, U.S. Bankruptcy Judge for the Central District of California, sitting by designation.

Plaintiff-appellant Betty McCarther-Morgan ("appellant") appeals the bankruptcy court's order granting the motion of defendant-appellee Asset Acceptance LLC ("appellee") to dismiss appellant's complaint for failure to state a claim upon which relief can be granted and dismissing the complaint under Fed. R. Civ. P. 12(b)(6), incorporated by reference by Fed. R. Bankr. P. 7012.[3]

Appellant commenced an adversary proceeding against appellee by filing a complaint alleging violations under the Fair Debt Collection Practices Act, 15 U.S.C. § 1601 et seq. ("FDCPA"), the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 et seq. ("RFDCPA"), and the discharge injunction of § 524, which allegedly arose from appellee's filing of a proof of claim in appellant's bankruptcy case based on a debt she maintains never existed. Based on this panel's recent opinion in B-Real, LLC v. Chaussee (In re Chaussee), ___ B.R. ___, BAP No. WW-08-1114-PaJuKa (9th Cir. BAP, opinion filed Dec. 18, 2008), which is directly on point, we hold that the mere act of filing a proof of claim in a bankruptcy case pursuant to the Bankruptcy Code cannot, as a matter of law, give rise to a cause of action under either the FDCPA or the RFDCPA. Accordingly, we AFFIRM the bankruptcy court's final order granting appellee's motion to dismiss and dismissing appellant's complaint.

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[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1530, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as enacted and promulgated as of the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23.

I. FACTS

On August 31, 2007, appellant filed a petition for relief under chapter 13 of the Bankruptcy Code. On September 18, 2007, appellee filed a proof of claim in the amount of $226.84 as the assignee of Bank of America. The proof of claim listed the $226.84 as an unsecured debt and cited as the basis for the debt "money loaned".

On October 29, 2007, appellant filed an objection to appellee's proof of claim on the following grounds: (1) appellee lacked standing; (2) appellee's claim was not listed in appellant's bankruptcy schedules; (3) appellee's claim was barred by the applicable statutes of limitations; (4) appellee's claim had been previously discharged in a prior bankruptcy case; (5) appellee's claim failed to attach a copy of the writing upon which it was based; (6) appellee's claim was made in violation of the FDCPA; and (7) appellee's claim was made in violation of the RFDCPA. On November 2, 2007, appellee withdrew its proof of claim in response to the objection.

On November 19, 2007, appellant initiated an adversary proceeding (Adv. No. 07-90654) by filing a complaint in the bankruptcy court. Appellant alleged in her complaint that appellee as its business practice bought stale debts, many of which had been previously discharged in prior bankruptcies or were time-barred by the applicable statutes of limitations, and then attempted to collect those debts by filing proofs of claim in bankruptcy cases without investigating whether or not the debts were legally collectable, and that appellee filed its proof of claim in her bankruptcy case for a time-barred, non-

existent and/or previously discharged debt in violation of law. Specifically, appellant's three causes of action in her complaint alleged that appellee's filing of the proof of claim in this case: (1) violated the FDCPA; (2) violated the RFDCPA; and (3) violated the discharge injunction of § 524.

On December 19, 2007, appellee filed a motion to dismiss the adversary proceeding for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). In moving to dismiss, appellee contended that the Bankruptcy Code precluded appellant's claim under the FDCPA and preempted appellant's claim under the RFDCPA and that appellant failed to plead sufficient facts to demonstrate the intent necessary to state a claim under § 524.

On February 21, 2008, the bankruptcy court conducted a hearing on appellee's motion to dismiss, granted the motion to dismiss for failure to state a claim upon which relief can be granted and dismissed the complaint without leave to amend. In dismissing the adversary proceeding, the bankruptcy court expressly relied upon the Ninth Circuit's decisions in MSR Exploration, Ltd. v . Meridian Oil, Inc., 74 F.3d 910 (9th Cir. 1996) and Walls v. Wells Fargo Bank, 276 F.3d 502 (9th Cir. 2002). This timely appeal followed.[4]

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[4] Although the order appealed by appellant dismissed three causes of action, appellant has only briefed on appeal the dismissal of her first and second causes of action. Accordingly, we deem the appeal of the bankruptcy court's dismissal of appellant's third cause of action for violation of the discharge injunction (11 U.S.C. § 524) waived. Walls, 276 F.3d at 511 (issues not discussed in appellant's brief deemed waived) (citation omitted); Golden v. Chicago Title Ins. Co. (In re

(continued...)

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. § 1334. We have jurisdiction under 28 U.S.C. § 158.

III. ISSUES PRESENTED

(1) Whether the Bankruptcy Code preempts appellant's California state law cause of action for damages under the RFDCPA based solely on the filing of an unmeritorious proof of claim in a debtor's bankruptcy case.

(2) Whether the Bankruptcy Code precludes appellant's federal law cause of action for damages under the FDCPA based solely on the filing of an unmeritorious proof of claim in a debtor's bankruptcy case.

IV. STANDARD OF REVIEW

The existence of subject matter jurisdiction is a matter of law which is reviewed de novo. MSR, 74 F.3d at 912 (citations omitted). Likewise, preemption is a question of law to be reviewed de novo. Id.

A dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is a question of law reviewed de novo. Williams v. Gerber Products Co., ___ F.3d ____, 2008 WL 5273731, slip op. at 2 (9th Cir. 2008), citing Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120 (9th Cir. 2007).

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[4](...continued)
Choo), 273 B.R. 608, 613 (9th Cir. BAP 2002) (arguments not specifically and distinctly made in an appellant's opening brief are waived).

V. DISCUSSION

A. Introduction

Appellant's first cause of action in her complaint alleged that appellee filed a proof of claim for a non-existent and/or time barred debt in her bankruptcy case in violation of provisions of the FDCPA, specifically, 15 U.S.C. §§ 1692e and 1692f, which prohibit debt collectors from collecting debts through use of false, deceptive and misleading representations or unfair or unconscionable means.[5] Appellant's second cause of action alleged that appellee filed a proof of claim for a non-existent and/or time barred debt in her bankruptcy case in violation of provisions of the RFDCPA, Cal. Civ. Code § 1788.17, which requires compliance with the FDCPA as set forth in 15 U.S.C. §§ 1692b-1692j.

On appeal, appellant argues that the bankruptcy court erred in dismissing her FDCPA and RFDCPA claims on grounds that the Bankruptcy Code was her exclusive remedy to challenge appellee's filing of the proof of claim.

In this case on appeal, the bankruptcy court's reliance on MSR and Walls is entirely consistent with our recent decision in Chaussee, which relied upon MSR and Walls to hold that a debtor may not challenge a claimant's filing of a proof of claim in a bankruptcy case as violations of the state and federal fair debt

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[5] In determining the appeal of the bankruptcy court's order dismissing the case for failure to state a claim upon which relief can be granted, we construe appellant's allegations as the non-moving party in the light most favorable to her and therefore assume on appeal that the debt on which appellee based its proof of claim truly was non-existent or time-barred. Williams v. Gerber Products Co., slip op. at 2.

collection laws, the Washington Consumer Protection Act ("WCPA") and the FDCPA. Chaussee, slip op. at 2-3.

In Chaussee, the debtor filed an adversary proceeding asserting claims alleging that the claimant's filing of two proofs of claim for debts which debtor alleged were not owing and were also untimely under the state law debt collection statute of limitations violated the WCPA, Wash. Rev. Code § 19.86 et seq., and the FDCPA, 15 U.S.C. § 1601 et seq. The bankruptcy court denied the claimant's motion to dismiss these claims for failure to state a claim and concluded that the debtor pleaded sufficient claims under the WCPA and the FDCPA. The bankruptcy court rejected the claimant's arguments that the Ninth Circuit precedent in MSR and Walls were applicable and concluded that the Bankruptcy Code neither preempted the state law claim under the WCPA nor precluded the FDCPA claim. This panel concluded that based on MSR and Walls, the Bankruptcy Code preempted the state law claim against the claimant for filing a proof of claim and precluded the FDCPA claim. The panel reversed the bankruptcy court's denial of the motion to dismiss these claims.

Because Chaussee raised precisely the issue of whether the act of filing a proof of claim in a bankruptcy case by itself gives rise to a claim for relief under the state and federal fair debt collection laws in addition to remedies under the Bankruptcy Code and rules, it is directly on point and controls the result in this case. Gaughan v. The Edward Dittlof Revocable Trust (In re Costas), 346 B.R. 198, 201 (9th Cir. BAP 2006)(absent a change in the law, we are bound by our

precedent); Ball v. Payco-General Am. Credits, Inc. (In re Ball), 185 B.R. 595, 597 (9th Cir. BAP 1995)(same).

B. The RFDCPA Claim

Although it was the second claim for relief against appellee, we first address appellant's state law claim against appellee under the RFDCPA, which the bankruptcy court dismissed under the doctrine of preemption.

In holding that the Bankruptcy Code preempted state law causes of action based on the filing of bankruptcy claims, the Chaussee panel relied heavily upon the Ninth Circuit's decision in MSR. Chaussee, slip op. at 8-17. The issue presented in MSR was whether the Bankruptcy Code preempted a debtor's cause of action against a creditor under state law for malicious prosecution based on the creditor's filing of a non-meritorious proof of claim in its bankruptcy case. The debtor filed a chapter 11 bankruptcy case, and the creditor filed proofs of claim which the bankruptcy court disallowed upon the debtor's objections. The debtor did not pursue sanctions or any other remedy in the bankruptcy court against the creditor with respect to the disallowed claims. Instead, the debtor filed an action in the federal district court asserting malicious prosecution claims arising under state law against the creditor for filing the disallowed claims in the bankruptcy case. The creditor moved to dismiss for lack of subject matter jurisdiction on grounds that the debtor's state law claims were completely preempted by the Bankruptcy Code. The district court agreed with the creditor and dismissed the action. On appeal, the Ninth Circuit affirmed, holding that the debtor's "malicious

prosecution action against the [creditor] is completely preempted by the structure and purpose of the Bankruptcy Code." 74 F.3d at 916.

As noted in MSR and Chaussee, the preemption doctrine is "rooted" in the Supremacy Clause of the United States Constitution, Art. VI, cl. 2, and is implicated only when there is a conflict between federal and state regulations. MSR, 74 F.3d at 913 (citation omitted); Chaussee, slip op. at 8 and n. 8. "Pre-emption may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." 74 F.3d at 913 (internal quotation marks omitted). As to implied preemption, the Ninth Circuit in MSR observed:

> Absent explicit pre-emptive language, Congress' intent to supersede state law altogether may be inferred because "[t]he scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," because "the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or because "the object sought to be obtained by federal law and the character of the obligations imposed by it may reveal the same purpose."

Id. (citation omitted). As this panel observed in Chaussee, under the preemption doctrine, "state laws interfering with, or contrary to, federal law are preempted." Chaussee, slip op. at 8, citing, Perez v. Campbell, 402 U.S. 637, 652 (1971). It is "[o]ur task in resolving the preemption issue here [] to determine whether the [RFDCPA], as a state regulation, is consistent with the structure, purpose, and operation of the Code as a whole." See Chaussee, slip op. at 8, citing, Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992). Based

on MSR and Chaussee, we conclude that it is not.

In MSR, the Ninth Circuit articulated three reasons for holding that the Bankruptcy Code preempted state law malicious prosecution claims for filing bankruptcy claims: (1) Congress intended that bankruptcy matters be handled in a federal forum by vesting bankruptcy jurisdiction in the federal district courts exclusively under 28 U.S.C. 1334; (2) the "complex, detailed and comprehensive provisions" of the Bankruptcy Code demonstrated Congress's intent for a complete federal bankruptcy system to adjust the rights and duties of debtors and creditors; and (3) the preemption of state law assured the uniformity of the federal bankruptcy laws required by the bankruptcy clause of the Constitution, Art. I, § 8., cl. 4. 74 F.3d at 913-915; accord, Chaussee, slip op. at 9-10.

The Bankruptcy Code and the rules promulgated thereunder specify comprehensive and detailed procedures for filing and consideration of creditors' claims and resolution of disputes over claims, which are core functions of the bankruptcy system. 11 U.S.C. §§ 157(a)(2)(B) and 501-502; Fed. R. Bankr. P. 3001, 3002 and 3007; see also, Campbell v. Countrywide Home Loans, Inc., 545 F.3d 348, 353 (5th Cir. 2008); In re Varona, 388 B.R. 705, 712-713 (Bankr. E.D. Va. 2008); Pariseau v. Asset Acceptance, LLC (In re Pariseau), 395 B.R. 492, 495-496 (M.D. Fla. 2008). The Code "allows creditors to assert any claim, even if that claim is contingent, unmatured, or disputed." Campbell, 545 F.3d at 356, citing, §§ 101(5) and 501(a); Chaussee, slip op. at 14. Under § 501, a creditor may file a proof of claim in the bankruptcy case. See also, Varona, 388

B.R. at 712. Under Rule 3002(a), an unsecured creditor must file a proof of claim in order for the claim to be allowed (with exceptions not applicable here). See also, Chaussee, slip op. at 15-16 ("In a very pragmatic sense, then, the act of filing a claim constitutes the foundation for creditor participation in this [bankruptcy] case."). The requirements of a proof of claim are set forth in Rule 3001, including that the proof of claim be in writing and substantially conform to the official form, be executed by the creditor or an authorized representative, and be accompanied by an original or a duplicate of a writing if based on that writing. See also, Varona, 388 B.R. at 712. Under Rule 3001(f), a proof of claim executed and filed in accordance with the applicable rules constitutes prima facie evidence of the validity and amount of the claim. Id. Under § 502, a proof of claim is deemed allowed, unless a party in interest objects based on nine circumstances set forth in § 502(b). Id.

Filing an objection to claim "join[s] issue in a contested matter, thereby placing the parties on notice that litigation is required to resolve an actual dispute between the parties." Campbell, 545 F.3d at 356 (citation omitted). If an objection to a claim is interposed, the bankruptcy court is required to determine the amount and validity of the claim. 11 U.S.C. § 502(b) and (c); see also, Campbell, 545 F.3d at 356. Pursuant to Rule 3007, an objection to a claim must be in writing and filed and served at least 30 days before the hearing. Because a properly executed and filed proof of claim is prima facie evidence of its validity and correctness in amount under Rule 3001(f), the objecting party has the initial burden of producing

sufficient evidence to overcome the prima facie correctness of the claim, and if this is accomplished, the burden of proof shifts to the creditor to prove the validity and amount of the claim. See Varona, 388 B.R. at 713-714. A creditor may withdraw a claim as of right, but if an objection is filed, only on order of the court after notice and hearing to the trustee and the debtor-in-possession. Id. at 725-726.

The courts have recognized that the claims filing and resolution process is an efficient and effective manner of resolving disputes between debtors and creditors, which is essential to the federal bankruptcy system as aptly described by the court in Pariseau:

> One of the core fundamentals in bankruptcy is a creditor's right to file a proof of claim, which is presumed to be prima facie valid until an objection is filed. It is an efficient process that gives all sides an opportunity to assert their position. Typically, the majority of objections to claims are either worked out amongst the parties themselves, or if a hearing is necessary, the objection can usually be resolved within 5-10 minutes of the Court's time. Therefore, given the thousands of cases filed annually, coupled with the high volume of claims filed in each case, it is essential that practitioners appearing before this Court respect the claims process so that significant judicial resources are not squandered on matters that can be so very easily resolved.

395 B.R. at 495-496 (footnotes omitted).

The result in MSR that state law malicious prosecution claims against a creditor for filing claims in a bankruptcy case were preempted by the Bankruptcy Code was an extension of the Ninth Circuit's prior holding in Gonzales v. Parks, 830 F.2d 1033 (9th Cir. 1987) that state law malicious prosecution claims against a debtor for filing a bankruptcy petition were preempted by the Code. In Gonzales, the Ninth Circuit stated: "Congress'

authorization of certain sanctions for the filing of frivolous bankruptcy petitions should be read as an implicit rejection of other penalties, including the substantial damage awards that might be available in state court tort suits." Id. at 1036, quoted in MSR, 74 F.3d at 915-916. In so holding, the Ninth Circuit in Gonzales expressed concern about the chilling effect that outside remedies would have on the functioning of the federal bankruptcy system for acts taken within the system. Id. ("Even the mere possibility of being sued in tort in state court could in some instances deter persons from exercising their rights in bankruptcy."); accord, Chaussee, slip op. at 16 (citing MSR, the panel stated: "Allowing debtors to recover under the [WCPA] solely because a creditor filed a proof of claim may skew the incentive structure of the Code and its remedial scheme and could discourage creditors from filing a claim."). In reaching this conclusion, the Ninth Circuit in MSR and the panel in Chaussee recognized that in the federal bankruptcy system, parties are subject to good faith requirements in filing bankruptcy petitions and proofs of claim, and the federal courts have authority to impose sanctions for violating these requirements. MSR, 74 F.3d at 915-916; Chaussee, slip op. at 16-17; see also, Rules 3007 and 9011.

The Bankruptcy Code and Rules contain a panoply of remedies to enforce compliance as the Ninth Circuit in MSR noted: "Of course, Congress did provide a number of remedies designed to preclude the misuse of the bankruptcy process. *See, e.g.,* Fed. Bankr. R. 9011 (frivolous and harassing filings); § 105(a) (authority to prevent abuse of process); § 303(i)(2) (bad faith

filing of involuntary petitions); § 362(h) (willful violation of stays); § 707(b) (dismissal for substantial abuse); § 930 (dismissal under chapter 9); 11 U.S.C. § 1112 (dismissal under chapter 11)." 74 F.3d at 915-916; see also, Chaussee, slip op. at 16 ("Bankruptcy courts require full control of the remedies available for addressing improprieties occurring in the cases on their dockets.").

In discussing complete preemption of state law remedies to protect the exclusive jurisdiction of the federal courts over bankruptcy and uniformity of the bankruptcy laws under the Constitution, the Ninth Circuit in MSR applied what it said about filing bankruptcy petitions in Gonzales to filing claims:

> Here, too, there is the threat that the exclusive jurisdiction of the bankruptcy court will be invaded and that uniformity will be undercut. A creditor's claim may be unmeritorious, but then so too might a debtor's petition. In fact, a creditor may have less flexibility than a debtor. The debtor initiates the process and, as here, can obtain a cutoff date for the filing of claims. The creditor may have less time to ruminate on the merits of the claim before filing it. A failure to appear in a timely fashion may well forfeit whatever rights the creditor may have. Thus, while a creditor's claim cannot be said to be solely defensive in nature, it does have that flavor to some extent. The threat of later state litigation may well interfere with the filings of claims by creditors and with other necessary actions that they and others, must or might take within the confines of the bankruptcy process. Whether creditors should be deterred, and when, is a matter unique to the flow of the bankruptcy process itself - a matter solely within the hands of the federal courts. Nor can we be insouciant about creditors' rights on the theory that the law is designed to help debtors. To so decide would be shortsighted, even purblind. Bankruptcy law does not exist solely for debtors. It is also for the benefit of creditors; it gives them a single forum where debts and priorities can be determined in an orderly manner, a forum where those debts can be collected in whole or (more likely) in part.

Id. at 916. The same concerns over the interference of state law on the effective and efficient administration of claims in

the bankruptcy process under the Bankruptcy Code which led the Ninth Circuit in MSR to hold that state law claims for malicious prosecution arising out of the act of filing a bankruptcy claim were preempted apply to this case regarding state law debt collection practice claims.

In the second cause of action in appellant's complaint, she alleges that appellee filed a proof of claim for a non-existent and/or time-barred debt in violation of the RFDCPA, Cal. Civ. Code § 1788.17. Although appellant's state law claim under the RFDCPA tracks her federal law claim under the FDCPA because a violation of the FDCPA is a violation of the RFDCPA, she seeks a separate award of statutory damages of $1,000 and costs of litigation, including attorneys' fees, under state law. Cal. Civ. Code, §§ 1788.17 (RFDCPA provision requiring compliance with the FDCPA as set forth in 15 U.S.C. §§ 1692b-1692j)[6] and 1788.30(b) and (c) (RFDCPA provision for statutory damages and litigation costs, including attorneys' fees). We conclude that MSR and Chaussee are controlling as to appellant's RFDCPA claim because these decisions held that the Bankruptcy Code completely preempted state law claims based on the filing of a proof of claim in a bankruptcy case and that her state law claim is

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[6] Cal. Civ. Code § 1788.17 states: "Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code. However, subsection (11) of Section 1692e and Section 1692g shall not apply to any person specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code or that person's principal. The references to federal codes in this section refer to those codes as they read January 1, 2001."

preempted by the Bankruptcy Code.

Appellant argues on appeal that MSR should not be followed because it was impliedly overruled by the recent Supreme Court decision in Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co., 549 U.S. 443 (2007). In Travelers, the Supreme Court explicitly overruled the Ninth Circuit's "Fobian Rule"[7] by holding that nothing in § 502 prohibits a party from seeking contractual attorneys' fees based on a state law contractual agreement. 549 U.S. at 453-454. The Supreme Court so held by reasoning that because the substance of claims filed pursuant to § 501 are rightly governed primarily by state law,[8] a creditor is not precluded from filing a claim for contractual attorneys' fees even though the attorneys' fees in question were incurred primarily in litigating issues of federal bankruptcy law. Id. at 452-453. Travelers dealt with the substance of claims, a point the Bankruptcy Code explicitly delegates to state law. 549 S.Ct. at 456; see also, § 502. This appeal, however, requires us to decide whether the remedy for the filing of an improper proof of claim under § 502 (whether the underlying claim is based on state law or not) is found exclusively within

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[7] The "Fobian rule" as articulated by the Ninth Circuit in Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149 (9th Cir. 1991) held that where the parties' dispute involved issues peculiar to federal bankruptcy law, contractual attorney's fees would not be awarded absent bad faith or harassment by the losing party.

[8] The Supreme Court in Travelers observed: "Creditor's entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code." 549 U.S. at 450 (citation omitted).

the Bankruptcy Code. These two issues are distinct, and nothing in Travelers calls into question the validity of MSR.

The cases in the circuit after MSR indicate that its primary holding that the Bankruptcy Code preempts state law claims with respect to acts arising in the bankruptcy process remains good law. In Bassett, this panel affirmed the bankruptcy court's dismissal of a state law cause of action based upon an alleged misuse of a reaffirmation agreement in a bankruptcy case. Bassett v. American General Finance (In re Bassett), 255 B.R. 747, 750 (9th Cir. BAP 2000), overruled in part, but affirmed in relevant part, by American General Finance v. Bassett (In re Bassett), 285 F.3d 882 (9th Cir. 2002). In so ruling, this panel followed MSR to hold that Congress intended bankruptcy-specific remedies to occupy the field of bankruptcy and therefore concluded that state law remedies for the misuse of a reaffirmation agreement, a specific type of contract authorized by § 524 of the Bankruptcy Code, were preempted by the remedies provided in the Bankruptcy Code. 255 B.R. at 758-759. In Sherwood Partners, the Ninth Circuit held that the Bankruptcy Code preempted state law claims to set aside preferential transfers by an assignee for the benefit of creditors, concluding that such claims would interfere with the incentives of creditors to file subsequent involuntary bankruptcy petitions and to set aside preferential transfers under federal bankruptcy law. Sherwood Partners, Inc. V. Lycos, Inc., 394 F.3d 1198, 1204-1205 (9th Cir. 2005).

In Miles, the Ninth Circuit again addressed the issue of preemption of state law by the Bankruptcy Code. Miles v. Okun

(In re Miles), 430 F.3d 1083 (9th Cir. 2005). Relying upon MSR, the Ninth Circuit in Miles held that state law claims for an alleged bad faith filing of an involuntary petition under the Bankruptcy Code were entirely preempted by remedies under the Bankruptcy Code. Id. at 1089-1090.

Appellant seeks to distinguish MSR by arguing that appellant never owed any pre-petition debt whatsoever to appellee and, thus, unlike in MSR, no debtor/creditor relationship ever existed between the parties under the Bankruptcy Code. According to appellant, the Bankruptcy Code may have been designed to "bring together and adjust all of the rights and duties of creditors and . . . debtors", MSR, 74 F.3d at 914, but it cannot be the exclusive remedy for a debtor seeking relief against a non-creditor third party. Appellant argues that because appellee was never a "creditor" of appellant, appellee has no standing to invoke the Bankruptcy Code to preclude or preempt appellant's non-bankruptcy federal and state law remedies. The only case relied upon by appellant in making this argument was the bankruptcy court's unpublished opinion in Chaussee v. B-Real (In re Chaussee), 2008 Bankr. LEXIS 1026 (Bankr. W.D. Wash. 2008), which was reversed by this panel. Chaussee, slip op. at 13-15.

In addressing this argument, it is instructive to consider the terms "debt," "creditor" and "claim" as defined in the Bankruptcy Code. 11 U.S.C. § 101(4)(A) and 101(10)(A); see also, Pennsylvania Dept. of Pub. Welfare v. Davenport, 495 U.S. 552, 557-558 (1990); see also, Chaussee, slip op. at 13-14. The Bankruptcy Code defines the term "debt" as a "liability on a

claim," and Congress intended that the meanings of "debt" and "claim" be coextensive. 11 U.S.C. § 101(11); Davenport, 495 U.S. at 558, citing S. Rep. No. 95-595 at 310 (1977) and S. Rep. No. 95-989 at 23 (1978), reprinted at 1978 U.S. Code Cong. & Ad. News at 5787. The Bankruptcy Code defines "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, secured, or unsecured." 11 U.S.C. § 101(4)(A). The Supreme Court in Davenport noted: "As is apparent, Congress chose expansive language in both definitions [for 'debt' and 'claim']." 495 U.S. at 558. The breadth of the language defining these terms is also shown in the language modifying "the right to payment" in the definition of "claim" as discussed by the Supreme Court in Davenport:

> For example, to the extent the phrase "right to payment" is modified in the statute, the modifying language ("whether or not such right is . . .") reflects Congress' broad rather than restrictive view of the class of obligations that qualify as a "claim" giving rise to a "debt." See also H.R. Rep. No. 95-595, supra at 309, U.S. Code Cong. & Admin. News 1978, p. 6266 (describing definition of "claim" as "broadest possible" and noting that Code "contemplates that all legal obligations of the debtor . . . will be able to be dealt with in the bankruptcy case"); accord, S. Rep. No. 95-989, supra, at 22, U.S. Code Cong. & Admin. News 1978, p. 5808.

495 U.S. at 558. The Bankruptcy Code, in turn, defines "creditor" as any "entity that has a claim against the debtor at the time of or before the order for relief." 11 U.S.C. § 101(10)(A).

Although appellant couches the issue as though much hinges on whether appellee is a "creditor" or not, appellant's argument is really that filing a proof of claim for an allegedly non-

existent and/or time-barred debt falls outside the federal bankruptcy system governed by the Bankruptcy Code. In other words, appellant is arguing that a distinction should be drawn between those with meritorious claims and those with non-meritorious claims for the purpose of recognizing a claimant as a "creditor" under the Bankruptcy Code. As the panel rejecting this argument in Chaussee concluded, given the broad construction given the terms "claim" and "creditor" under the Bankruptcy Code, the argument that a claimant holding a disputed claim was not a "creditor" places "an undue limitation on these deliberatively broad definitions." Chaussee, slip op. at 13-14. Moreover, the Ninth Circuit in MSR squarely addressed this distinction and stated that the Bankruptcy Code occupies the field as to both meritorious and non-meritorious bankruptcy claims:

> A creditor's claim may be unmeritorious, but then so too might a debtor's petition.... Whether creditors should be deterred, and when is a matter unique to the flow of the bankruptcy process itself. . . .

74 F.3d at 916. Appellant's allegedly non-existent and/or time-barred claim was a "disputed" right to payment amenable to resolution of a claims dispute in the bankruptcy case under the "broadest possible" construction of "claim" under the Bankruptcy Code, and thus, appellee should be properly treated as a "creditor" for the purposes of the Code. 11 U.S.C. §§ 101(5)(A), 101(10)(A) and 101(11); see also, Davenport, 495 U.S. at 558 (citations omitted); Chaussee, slip op. at 13-14.

For the foregoing reasons, we conclude that appellant's state law claim under the RFDCPA was completely preempted by the

Bankruptcy Code, and, therefore, the court lacked subject matter jurisdiction over such claim. MSR, 74 F.3d at 912-913 (citations omitted). Accordingly, the bankruptcy court was correct in dismissing the RFDCPA claim.

C. The FDCPA Claim

We now address appellant's appeal of the bankruptcy court's dismissal of her federal law claim under the FDCPA. The bankruptcy court expressly relied upon the Ninth Circuit's decisions in MSR and Walls. The doctrine of preemption applies to appellant's state law claim under the RFDCPA involving a conflict between state and federal statutes, which was the situation presented in MSR. However, the doctrine of preemption based on the Supremacy Clause of the Constitution does not apply to potential conflicts between two federal statutes (presumably having equal stature at least under the Supremacy Clause). Randolph v. IMBS, Inc., 368 F.3d 726, 730 (7th Cir. 2004) ("One federal statute does not preempt another.") (citation omitted). As discussed below, the issue before us with respect to appellant's federal claim under the FDCPA is not whether the Bankruptcy Code preempts such a claim under the FDCPA, but whether the Code precludes it. Walls, 276 F.3d at 511; see also, Randolph, 368 F.3d at 730 (stating "when two federal statutes address the same subject in different ways, the right question is whether one implicitly repeals the other").

In dismissing appellant's claims in this case, the bankruptcy court expressly relied upon the Ninth Circuit's decision in Walls. As the panel concluded in Chaussee, Walls controls the outcome of this case, and the Bankruptcy Code

precludes the application of the FDCPA to the facts of this case seeking to impose liability for the sole act of filing a proof of claim in a bankruptcy case. Chaussee, slip op. at 18-32.

In Walls, the issue presented was whether debtor could assert a FDCPA claim based on an alleged violation by a creditor of the discharge injunction under § 524. The debtor in a chapter 7 bankruptcy case had continued to make payments to the creditor holding the mortgage on her house after receiving a discharge in her bankruptcy case to enable her to keep her house under the so-called "ride-through doctrine." 276 F.3d at 505, citing, In re Parker, 139 F.3d 668, 672-673 (9th Cir. 1998); see also, Chaussee, slip op. at 19. The mortgage creditor foreclosed on the mortgage after the debtor defaulted on the payments. The debtor then filed an action in the federal district court alleging among other things that the creditor's collection of a discharged debt was an unfair and unconscionable means of collecting a debt under the FDCPA, 15 U.S.C. § 1692f. The debtor argued that the FDCPA and the Bankruptcy Code should be read jointly to imply a private cause of action under the FDCPA for violating the discharge injunction under § 524. 276 F.3d at 505. The Ninth Circuit, however, concluded that implying a private cause of action under the FDCPA based on a violation of the Bankruptcy Code would "circumvent the remedial scheme of the [Bankruptcy] Code under which Congress struck a balance between the interests of debtors and creditors by permitting (and limiting) debtors' remedies for violating the discharge injunction to contempt." Id. at 510. In so concluding, the Ninth Circuit in Walls relied upon and quoted

its earlier opinion in MSR: "[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 the rights and duties of creditors and embarrassed debtors alike." Id., quoting MSR, 74 F.3d at 914. This quote led the court in Walls to observe: "Nothing in either Act persuades us that Congress intended to allow debtors to bypass the [Bankruptcy] Code's remedial scheme when it enacted the FDCPA." Id. Citing the Supreme Court's decision in Kokoszka v. Belford, 417 U.S. 642, 651 (1974), the Ninth Circuit observed: "While the FDCPA's purpose is to avoid bankruptcy, if bankruptcy nevertheless occurs, the debtor's protection and remedy remain under the Bankruptcy Code." Id. Accordingly, the Ninth Circuit held: "Because Walls's remedy for violation of § 524 no matter how cast lies in the Bankruptcy Code, her simultaneous FDCPA claim is precluded." Id. at 511; accord, Wan v. Discover Financial Services, Inc. (In re Wan), 324 B.R. 124, 126 (N.D. Cal. 2005).

In Walls, the Ninth Circuit extended its prior holding in MSR that the complexity, detail and comprehensiveness of the Bankruptcy Code constituted a "whole system" and therefore superseded another competing statutory scheme, but this time, another federal statute, the FDCPA, as opposed to MSR involving a state statute. See also, Chaussee, slip op. at 21-22. As this panel observed in Chaussee, "MSR Exploration carefully explained the reasons for holding that a state law claim based on wrongful conduct occurring in a bankruptcy case was preempted

by the Code; the Code represents a 'whole system' designed to comprehensively define all rights and remedies of debtors and creditors. That reasoning is, we believe, also applicable in analyzing whether Debtor's FDCPA claim is precluded under these facts." Id., quoting Walls, 276 F.3d at 510.

Appellant in her brief and at oral argument urges this panel to follow the Seventh Circuit's 2004 decision in Randolph, which held that the Bankruptcy Code does not preclude FDCPA claims of bankruptcy debtors against creditors for a negligent attempt to collect a debt from debtors during and after bankruptcy. 368 F.3d at 728, 732-733. In Randolph, the Seventh Circuit acknowledged that its holding conflicted with the Ninth Circuit's decision in Walls that such claims under the FDCPA are precluded under the Bankruptcy Code. Id. Appellant argues that we are not bound to follow MSR and Walls in light of the intervening decision of the Supreme Court in Travelers, but as previously discussed, Travelers does not provide any basis for us to conclude that MSR and Walls are not still good law. We are obligated to follow controlling precedent of this circuit rather than conflicting precedent of another circuit. Chaussee, slip op. at 23, citing, McDonald v. Checks-N-Advance, Inc. (In re Ferrell), 358 B.R. 777, 791 (9th Cir. BAP 2006). Because we conclude that Walls controls our decision, we do not follow Randolph.

While we are not in a position to overrule circuit precedent, we do not see why Walls should be overruled and Randolph should be followed in any event. Chaussee, slip op. at 23. As the panel in Chaussee aptly observed, "Unlike in

Randolph, where the debtor's claim against the creditor was based upon the creditor's actions taken after the conclusion of the bankruptcy case, the purported FDCPA violation targets [the claimant's] act of filing a proof of claim in the pending bankruptcy case. Application of the FDCPA to this conduct would certainly conflict with the Code." Chaussee, slip op. at 23.

Appellant is right to note the general rule regarding potentially conflicting federal statutes that "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." Morton v. Mancari, 417 U.S. 535, 551 (1974); see also, Randolph, 368 F.3d at 730-732. However, in our view, the instant case is not one where the competing statutes, the FDCPA and the Bankruptcy Code, are capable of peaceful co-existence with respect to whether a FDCPA claim lies as to filing a proof of claim in a bankruptcy case. Chaussee, slip op. at 18-32.

Under the Bankruptcy Code, in order to share in distributions in a bankruptcy case, the creditor is permitted under § 501 to file a proof of claim. Chaussee, slip op. at 23. A properly executed and filed proof of claim under the bankruptcy rules "shall constitute prima facie evidence of the validity and amount of the claim." Id. at 23-24, quoting Rule 3001(f). Pursuant to § 502(a), the filed claim is "deemed allowed, unless a party in interest . . . objects." Id. at 24, quoting § 502(a). Under Rule 3007, a party in interest may object to a claim by filing a written objection with the bankruptcy court, and the claimant must be provided with at

least 30 days notice of hearing on the objection. Id. The Bankruptcy Code "allows creditors to assert any claim, even if that claim is contingent, unmatured, or disputed." Campbell, 545 F.3d at 356, citing, §§ 101(5) and 501(a). That is, under the Bankruptcy Code, a creditor is expressly permitted to file any claim in a bankruptcy case that may be contingent, unmatured or disputed, and may be determined by the bankruptcy court to be unmeritorious in the claims objection proceedings. Id.

As explained by this panel in Chaussee, the FDCPA requires different procedures for debt validation, which clearly conflict with the claim processing procedures of the Bankruptcy Code and cannot compatibly operate. Chaussee, slip op. at 24-28. Under the Bankruptcy Code and Rules, a proof of claim filed in a bankruptcy case is prima facie evidence of the validity and amount of the claim, which is deemed allowed unless a debtor objects to it. Id. at 25-26. Once an objection to a bankruptcy claim is filed, the bankruptcy court determines the objection after notice and hearing. Id.

In contrast, the FDCPA provides that a debt is valid if the debtor does not dispute the debt within thirty days of receiving an "initial communication" from the debt collector and the debtor's failure to dispute the debt may not be construed by any court as an admission of the debtor of liability for the debt. Id. at 25-26, citing 15 U.S.C. § 1692g(c). A "communication in the form of a formal pleading," which would apparently include a proof of claim filed in a bankruptcy case, may not be treated as the initial communication for purposes of the FDCPA. Id. Thus, under the FDCPA, a debt collector must send another

communication to constitute proper notice to the debtor, which would probably constitute a violation of the automatic stay if the debtor is in a bankruptcy case. Id., citing, Maloy v. Philips, 197 B.R. 721, 723 (M.D. Ga. 1996); see also, § 362(a)(6) (the automatic stay in bankruptcy stays any act to collect a prepetition debt). As the panel in Chaussee observed, "[w]e are therefore puzzled as to how creditors can comply with both statutory schemes when the [Bankruptcy] Code dictates they cease all collection actions, whereas FDCPA requires them to communicate with the debtor in connection with the collection of a debt." Chaussee, slip op. at 26.

Moreover, the writing and timing requirements for objecting to a claim under the Bankruptcy Code and the FDCPA are incompatible. Id. at 27. Under the bankruptcy rules, an objection to a claim must be in writing, but under the FDCPA, this is unclear because the courts are in disagreement whether a consumer must dispute a debt in writing or can dispute it orally. Id. at 26-27, citing Rule 3007; 15 U.S.C. § 1692g; Graziano v. Harrison, 950 F.2d 107 (3d Cir. 1991)(dispute of debt under FDCPA must be in writing); Sanchez v. Robert E. Weiss, Inc. (In re Sanchez), 173 F. Supp. 2d 1029 (N.D. Cal. 2001) (no writing required to dispute a debt under FDCPA). Because of these incompatible requirements on creditors/debt collectors, we follow the panel in Chaussee in respectfully disagreeing with the court in Randolph that the debtor's FDCPA claim based solely on the act of filing a proof of claim in a bankruptcy case was not precluded by the Bankruptcy Code on grounds that the creditor could have complied with the

requirements of both the Bankruptcy Code and the FDCPA because here it is not possible to reconcile both the Bankruptcy Code which authorizes the filing of proofs of claim, and the FDCPA which, appellant argues, prohibits the filing of certain proofs of claim. Chaussee, slip op. at 22-28; see also, Randolph, 368 F.3d at 730-731.

We also agree with the observation of the court in Williams v. Asset Acceptance, LLC, 392 B.R. 882 (Bankr. M.D. Fla. 2008), which declined to follow Randolph and held that a debtor's FDCPA claims based on wrongful filing of bankruptcy claims were precluded by the Bankruptcy Code because allowing suits asserting FDCPA claims based on filing bankruptcy claims would undermine the efficacy and efficiency of the claims filing and resolution process in bankruptcy:

> To accept the proposition that the statutes [i.e., FDCPA] created an alternative method to challenge a proof of claim in bankruptcy would open up the floodgate for unnecessary and expensive litigation, replacing the simple procedure for dealing with an objection to the allowance of a claim. This cause of action would be totally contrary to the entire scheme established by Congress to deal with creditor and debtor relationships.

392 B.R. at 888.

Accordingly, following Walls and Chaussee, we conclude that appellant's claim under the FDCPA based on appellee's filing of a claim in the bankruptcy case is precluded by the Bankruptcy Code.

VI. CONCLUSION

For the foregoing reasons, we AFFIRM the final order of the bankruptcy court dismissing appellant's claims under the FDCPA and the RFDCPA.