No. 23-785

IN THE

Supreme Court of the United States

PHH MORTGAGE CORPORATION,

Petitioner,

v.

MARK ANTHONY GUTHRIE,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

After a debt has been discharged in bankruptcy, is a debt collector immune from state-law claims arising from improper attempts to collect the debt no longer owed—including claims concerning false statements and improper contact with a consumer represented by counsel.

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STATEMENT OF THE CASE

Factual Background

In 2009, Respondent Mark Guthrie and his former spouse Tonia M. Guthrie purchased a home in Jacksonville, North Carolina (the "Property"). C.A.App. 727. In connection with the purchase of the Property, they executed a Note, which was secured by a lien on the Property, through the filing of a Deed of Trust (collectively the "Loan"). *Id.*

In 2011, Mr. Guthrie filed an individual voluntary petition for relief under chapter 13 of the United States Bankruptcy Code, 11 U.S.C. § 101, in the United States Bankruptcy Court for the Eastern District of North Carolina. C.A.App. 728. His petition listed Tonia Guthrie as having a Mississippi address and stated that he was going through a divorce. C.A.App. 1427, 1447, 1454-1456, 1461. After the divorce became final in June, 2011, C.A.App. 728, Mr. Guthrie filed Amended Schedules and Statements in the Bankruptcy Case which indicated his marital status as unmarried. C.A.App. 1500, 1504.

On November 30, 2011, GMAC filed a proof of claim in the Bankruptcy Case, concerning the loan on the Property. C.A.App. 728. After Mr. Guthrie and his children relocated to base housing in January 2013, C.A.App. 729, he filed a Motion to Allow Surrender of Real Property and Modification of Chapter 13 Plan (the "Motion to Surrender"), seeking an Order allowing Respondent to surrender the Property to GMAC and modify his Confirmed Plan to exclude any further payments to GMAC on account of the Loan.

Id. The court granted the motion, thus eliminating further payments by Mr. Guthrie to GMAC on the loan. *Id.*; C.A.App. 754.

Following entry of the Surrender Order, GMAC assigned the loan to Ocwen Loan Servicing, LLC, which later merged with Petitioner PHH.

Beginning in approximately November 2013, Ocwen began harassing Respondent by placing collection telephone calls to him. C.A.App. 729. On several occasions, Respondent informed Ocwen that he was no longer liable on the Loan and told them to contact his ex-wife for payment. C.A.App. 730. Respondent repeatedly asked Ocwen to cease contacting him concerning the Loan. *Id.* Respondent enlisted the aid of counsel, who sent Ocwen at least two separate letters informing it that Ocwen was not entitled to collect, or attempt to collect, amounts owed under the Loan from Respondent, even while the Bankruptcy Case remained pending. *Id.*; C.A.App. 755-756. Ocwen acknowledged receipt of these letters but did nothing to fix the problem. *Id.* Ocwen, and later PHH, persisted in contacting Respondent directly, telephonically and in writing, between 2013 and 2020, both through the continued placement of the collection calls, and through numerous pieces of written correspondence. *Id.*

Mr. Guthrie's lawyer called Ocwen in 2014 and spoke with a representative who assured him that that no further collection attempts would be made. *Id.* Notwithstanding this telephonic representation, Ocwen never "updated" its records, nor did it cease attempting to collect the Loan; instead, it continued

to call Mr. Guthrie and continued to send him correspondence attempting to collect the Loan. C.A.App. 731.

On May 18, 2016, and after successfully completing all of the payments required under his Chapter 13 Plan, as modified by the Surrender Order, Respondent received a discharge of debt pursuant to 11 U.S.C. § 1328(a). *Id.* The Discharge relieved, and discharged Respondent from any legal obligation to make any further payments on the Loan. *Id.* Ocwen received copies of the Discharge. *Id.* On July 20, 2016, Guthrie's bankruptcy was closed. C.A.App. 732.

Following entry of the Surrender Order and the Discharge in the Bankruptcy Case, Ocwen, and later PHH, consistently sought payment on the Loan from Respondent through periodic monthly mortgage statements, phone calls at least one a week, demand letters, and similar correspondence which continues to date. C.A.App. 704-707. All of the communications were made to Guthrie after he notified PHH that he was represented by counsel. C.A.App. 57, 706. Ocwen and PHH further continued to report to one or more consumer reporting agencies that Respondent was delinquent on payments to Ocwen and that the Loan was in default and subject to substantial arrears, notwithstanding that Respondent's liability concerning the Loan was discharged. C.A.App. 733.

After Ocwen merged with PHH on or around January 2019, *id.*, Mr. Guthrie continued to receive similar collection attempts from PHH. *Id.*

PROCEDURAL BACKGROUND

Mr. Guthrie filed this lawsuit in Superior Court of Onslow County, North Carolina, in January of 2020. C.A.App. 15. Respondent sought damages, reasonable attorneys' fees and expenses, in redress of (i) PHH's violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq*. (the "UDTPA"); (ii) PHH's violations of the North Carolina Debt Collection Act, N.C. Gen. Stat. § 75-50 *et seq*. (the "NCDCA") or, in the alternative, (iii) PHH's violations of the North Carolina Collection Agency Act, N.C. Gen. Stat. § 58-70-1 *et seq*. (the "NCCAA"); (iv) PHH's violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*. (the "FCRA"); (v) PHH's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"); (vi) PHH's violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq*. (the "RESPA"); (vii) PHH's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. (the "FDCPA"); (viii) PHH's intentional infliction of emotional distress; and, in the alternative, (ix) PHH's negligent infliction of emotional distress; and (x) PHH's negligence. PHH removed this matter to District Court on March 6, 2020. C.A.App. 245.

PHH filed its Answer on March 13, 2020, which did not list the doctrine of preemption as an affirmative defense. C.A.App. 261. The parties filed Motions for Summary Judgment and the trial court granted PHH's Motion for Summary Judgment disposing of all Respondent's claims. C.A.App. 1596 - 1620.

Respondent appealed to the Fourth Circuit. In the Briefing before the Fourth Circuit, PHH stated

that "neither express preemption nor field preemption applies in this case." 4th Cir. ECF Doc. 32, Appellee Brief, p. 22, line 1-2.

On August 18, 2023, the Fourth Circuit affirmed in part, and vacated in part, the District Court's Order Granting Summary Judgment in favor of PHH. Pet.App.42a-72a. The Fourth Circuit found (i) that Respondent's claims were not preempted by the Bankruptcy Code; (ii) that Respondent had established a genuine dispute of material fact with respect to his NCDCA and FCRA claims; and (iii) that Respondent's TCPA claim was properly dismissed. Pet.App.34a.

The only type of preemption argued by PHH in the Fourth Circuit was implied conflict preemption. *See* Pet. App. 11a n.9 (noting that PHH did not argue field preemption). Thus, the court asked "whether Guthrie's state law claims 'stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Pet.App.10a. The court held that the claims present no such obstacle. The court noted that Mr. "Guthrie's claims are almost exclusively based on events which took place after the bankruptcy case was closed. And they are not inconsistent with, nor do they have any impact on, any order issued during the case. So, we cannot see how they detract from the ease or centrality with which the federal bankruptcy system operates." Pet.App.13a. PHH filed a Petition for Rehearing, and a Petition for Rehearing En Banc on September 1, 2023. Those Petitions were denied by the Fourth Circuit on September 18, 2023, where it was specifically stated that "no judge" requested a poll under

Fed. R. App. P. 35 on the petition for rehearing en banc. 4th Cir. ECF Doc. 53. Petitioner PHH filed a motion to stay issuance of the Fourth Circuit's mandate which was denied. 4th Cir. ECF Doc. 56.

REASONS FOR DENYING THE WRIT

I. THERE IS NO REAL CONFLICT BETWEEN THE CIRCUIT COURT'S DECISION IN THIS CASE AND OTHER CIRCUITS, AND PETITIONER FAILED TO MAKE ITS FIELD PREEMPTION ARGUMENT IN THE TRIAL COURT AND THE FOURTH CIRCUIT

In an effort to have this Court hear this matter, Petitioner has manufactured a purported split amongst Circuit Courts on preemption which does not exist in this case. Petitioner cites three cases from the Seventh, Sixth, and First Circuits: *Cox v. Zale Del., Inc.*, 239 F.3d 910, 912 (7th Cir. 2001); *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 447 (1st Cir. 2000) and *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 426 (6th Cir. 2000).

To start, *Pertuso* and *Bessette* address field preemption. Petitioner, however, has waived that argument by not advancing it at the District Court or the Fourth Circuit. Pet. App. 11a n.9. This Court "normally decline[s] to entertain" arguments that the parties "failed to raise ... in the courts below." *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1978 (2016); *see, e.g.*, *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002).

Irrespective of the waiver, all three cases dealt with the preemption of claims raised by debtors regarding "reaffirmation agreements," reaffirmation agreements being a creation of the Bankruptcy Code, with specific statutory requirements, pursuant to 11 U.S.C.S. § 524(c). Most importantly, reaffirmation agreements are only formed prior to a bankruptcy discharge and only after numerous statutory requirements have been met. 11 U.S.C. § 524(c)(1)-(6)(requiring disclosures to the debtor; requiring approval by the bankruptcy court, if the debtor is unrepresented, or counsel for the debtor). None of the three purported conflict cases deal with the assertion of state law consumer protection claims after receiving a discharge in bankruptcy, and after the bankruptcy case has been closed. Accordingly, these purported conflict cases, discussed further below, are readily distinguishable.

In *Cox v. Zale Del., Inc.*, 239 F.3d 910, 912 (7th Cir. 2001), a debtor sought to rescind a reaffirmation agreement and recover the amounts he paid a creditor after the bankruptcy court had entered its order discharging his listed debts. *Id.* at p. 913. The Seventh Circuit held that a suit for violation of section 524(c) can be brought only as a contempt action under section 524(a)(2) and that section 524(c) does not contain a private right of action. *Id.* at p. 917 (7th Cir. 2001). Notably in *Cox* no claims were raised by the debtor for the creditor attempting to collect debts post-bankruptcy that were not owed.

More on point is *Randolph v. IMBS, Inc.*, 368 F.3d 726 (7th Cir. 2004), issued three years after *Cox*. There, the Seventh Circuit addressed claims

that debt collectors violated the FDCPA by sending collection letters after the debtors had filed for bankruptcy protection. The court held that the Bankruptcy Code did not preempt a consumer's claim under the Fair Debt Collection Practices Act (FDCPA). "Overlapping statutes do not repeal one another by implication; as long as people can comply with both, then courts can enforce both." *Id.* at 731. Although a case about a federal debt collection statute, not a state debt collection statute, *Randolph* is consistent with the Fourth Circuit's ruling in this case and belies PHH's claim of conflict.

The case of *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 420, 426 (6th Cir. 2000), likewise poses no conflict with the decision in this case. In *Pertuso,* the complaint alleged violations of 11 U.S.C. §§ 524(a)(2), 524(c), and 362, asserted a state law claim of unjust enrichment, and sought an accounting concerning a creditor soliciting a reaffirmation agreement while bankruptcy proceedings were pending. *Id.* at 420. No consumer protection claims were asserted, nor any state tort claims brought. The Sixth Circuit held that the automatic stay provisions of the Bankruptcy Code preempted state law claims that presupposed violations of those same provisions, based on field preemption. *Id.* at 426 ("because Congress has preempted the field, the Pertusos may not assert these claims under state law"). Although the court held that the discharge injunction of 11 U.S.C. §§ 524 does not create a private right of action, *id.* at 422-423—a point undisputed here—*Pertuso* did not discuss preemption of state consumer protection law claims.

Finally, Petitioner cites *Bessette v. Avco Fin. Servs.*, 230 F.3d 439 (1st Cir. 2000). *Bessette* found that state claims for unjust enrichment were preempted based on field preemption, an argument waived by Petitioner. *Id.* *Bessette* involved a claim for unjust enrichment based on allegations that financial services companies wrongfully secured reaffirmation agreements of pre-petition debt that had been successfully discharged in bankruptcy. No consumer protection claims were asserted, nor any state tort claims brought. Moreover, district court opinions in the First Circuit would appear to support the Fourth Circuit's Opinion in this case *Holland v. EMC Mortg. Corp. (In re Holland)*, 374 B.R. 409, 442-443 (Bankr. D. Mass. 2007)(RESPA claims not preempted by Bankruptcy Code); *McGlynn v. The Credit Store, Inc.*, 234 B.R. 576, 584 (D.R.I. 1999) (Court lacked jurisdiction over Respondent's FDCPA and state law claim post-discharge as claims had no effect on the bankruptcy estate).

Because there is no circuit conflict, the Petition should be denied.

II. THIS CASE IS NOT THE PROPER VEHICLE FOR DETERMINING WHETHER THE BANKRUPTCY CODE PREEMPTS STATE LAW FOR POST-DISCHARGE CLAIMS

Beyond the lack of a conflict, several aspects of this case make it a poor vehicle to address the question presented. PHH filed it Answer on March 13, 2020, which did not list preemption as an affirmative defense. C.A.App. 261. In the briefing before the

Fourth Circuit, PHH stated that "the parties agree that neither express preemption nor field preemption applies in this case." Doc. 32. Appellee Brief, p. 22, l 1-2. Having not only failed to argue the issue below but in fact to have conceded it, it is too late for Petitioner to first argue now that field preemption applies.

Instead, the issue raised and decided below was implied conflict preemption. Given the lack of a conflict and, indeed, paucity of cases addressing preemption in the face of harassing conduct in connection with wrongful debt collection, this case does not warrant review. *See also Kansas v. Garcia*, 140 S. Ct. 791, 808 (2020) (Thomas, J. concurring) (stating that "[t]he doctrine of purposes and objectives preemption impermissibly rests on judicial guesswork about broad federal policy objectives, legislative history, or generalized notions of congressional purposes that are not contained within the text of federal law" and is "contrary to the Supremacy Clause").

III. THE FOURTH CIRCUIT'S OPINION IS CORRECT

"[T]he purpose of Congress is the ultimate touchstone in every preemption case," because there is a "basic assumption that Congress did not intend to displace state law." *Wyeth v. Levine*, 129 S.Ct. 1187, 1193 (2009). Congress has only expressed a desire for the Bankruptcy Code to preempt a state or federal law in one section of the code, making its intent obvious. 11 U.S.C. § 544(b)(2) clearly states a case of preemption by the commencement of a bankruptcy case. Congress plainly uses the word

"preempted" in the Bankruptcy Code. Congress could have stated preemption in any other part of the code and yet chose not to, even during the sweeping changes of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), effective October 17, 2005, for most sections. Since "statutes should not be read as a series of unrelated and isolated provisions," *Gonzales v. Oregon*, 126 S.Ct. 904, 924 (2006) (citing *Gustafson v. Alloyd Co.*, 115 S.Ct. 1061, 1068 (1995) (internal quotations omitted), the Fourth Circuit concluded that if Congress had wanted preemption language in any other section of the code, it knew how to draft the statute accordingly. *United States v. Davis*, 720 F.3d 215, 220 (4th Cir. 2013); *United States v. Ron Pair Enters.*, 109 S. Ct. 1026, 1032 (1989).

To say that the plain meaning should be ignored to imply preemption is to graft a Congressional intent onto the Bankruptcy Code that is simply not there. *See RCI Tech. Corp. v. Sunterra Corp. (In re Sunterra Corp.)*, 361 F.3d 257, 269 (4th Cir. 2004)(internal citations omitted).

Consumer protection laws, including the NCDCA, "have historically fallen into the purview of the states' broad police powers, to which the courts have afforded special solemnity." *Pryor v. Bank of Am., N.A. (In re Pryor)*, 479 B.R. 694, 698 (Bankr. E.D.N.C. 2012) (citations omitted); *accord Sacco v. Bank of Am., N.A.,* No. 5:12-CV-00006-RLV-DCK, 2012 WL 6566681, at *4 (W.D.N.C. Dec. 17, 2012); *see, e.g., California v. ARC Am. Corp.*, 109 S.Ct. 1661, 1665 (1989) (emphasizing that unfair and/or deceptive business practices as "an area traditionally

regulated by the States"); *Aguanyo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011).

None of the state law claims asserted by Respondent in the Complaint are preempted by the Bankruptcy Code because, in this case, there is no conflict—express or implied—between the traditional authority of a State to protect and provide tort remedies to their consumers and citizens, *Silkwood v. Kerr–McGee Corp.*, 104 S.Ct. 615, 621 (1984), and Congress' express Constitutional authority to establish "uniform Laws on the subject of Bankruptcies throughout the United States," U.S. Const. art. I, § 8, cl. 4.

In another case cited by the Petitioner, the Ninth Circuit appears to have confusingly found field preemption of the FDCPA by the Bankruptcy Code. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 504 (9th Cir. 2002). *Walls* is distinguishable from this case as it dealt with whether FDCPA claims, not state consumer protection law claims, were preempted by the Bankruptcy Code. In *Walls,* the Ninth Circuit found that a debtor's claims for violation of the FDCPA based on a creditor's attempts to collect a discharged debt were preempted based on field / complete preemption. Again, Petitioner has stated that field preemption does not apply. The Seventh and Third Circuits have declined to find preemption of FDCPA claims by the Bankruptcy Code. *Randolph v. IMBS, Inc.*, 368 F.3d 726 (7th Cir., 2004)(no implied repeal of the FDCPA by the Bankruptcy Code); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 274 (3d Cir. 2013).

Although distinguishable, the *Walls* case is also misguided as it contends that the Bankruptcy Code preempts the FDCPA, but one federal statute can not preempt another. When two federal statutes address the same subject in different ways, the right question is whether one implicitly repeals the other--and repeal by implication is a rare bird indeed. *See, e.g., Branch v. Smith,* 123 S.Ct. 1429, 1441 (2003); J.*E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.,* 122 S.Ct. 593, 603-605 (2001) (collecting authority); *see also Carter v. Richland Holdings, Inc.*, No. 2:16-cv-02967-RFB-VCF, 2019 U.S. Dist. LEXIS 168010, at *11 (D. Nev. Sep. 30, 2019) (finding that the district court, not the bankruptcy court, had jurisdiction to hear FCDPA claims post-discharge as all other Circuit Court of Appeals that have addressed the issue have rejected the finding in *Walls).*

Petitioner also cites *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank*, 236 F.3d 117, 119 (2d Cir. 2001) where the Second Circuit found that state tort claims based on violation of the automatic stay were preempted by the Bankruptcy Code. Again, *Eastern Equipment* is distinguishable because it was based on claims regarding a violation of the automatic stay, and accordingly, actions taken by the creditor during the course of the bankruptcy. Respondent does not dispute that claims based on violation of the automatic stay, for which there are statutory damages available under the Bankruptcy Code, would likely be field preempted. No claims were brought in *Eastern Equipment* for a creditor's attempt to collect on a debt post-discharge.

Federal courts have adopted the view that the Bankruptcy Code does not preempt, or otherwise

preclude, state claims for relief based upon the same allegations that would also constitute a violation of the Bankruptcy Code. *See, e.g., Dougherty v. Wells Fargo Home Loans, Inc.*, 425 F. Supp. 2d 599, 608-09 (E.D. Pa. 2006)(holding that claims for relief under the Pennsylvania consumer protection statute were not preempted by the Bankruptcy Code); *Evans v. Midland Funding, LLC*, 574 F. Supp. 2d 808, 817 (S.D. Ohio 2008)(no preemption of state or federal law claims); *Gunter v. Columbus Check Cashiers, Inc. (In re Gunter),* 334 B.R. 900, 904-05 (Bankr. S.D. Ohio 2005) (no preemption of state or federal law claims); *see also Sears, Roebuck & Co. v. Siverly (In re Siverly),* 1997 Bankr. LEXIS 2438, at *10-19 (Bankr. S.D. Iowa June 30, 1997)(no preemption of Iowa consumer protection statute); *Graber v. Fuqua*, 279 S.W.3d 608, 610 (Tex. 2009)(state law claim not preempted); *Wynne v. Aurora Loan Servs., LLC (In re Wynne)*, 422 B.R. 763, 771-772 (Bankr. M.D. Fla. 2010)(bankruptcy court lacks subject matter jurisdiction over post-petition state law claims); *Santander Consumer, USA, Inc. v. Houlik (In re Houlik)*, 481 B.R. 661, 673, 674 (B.A.P. 10th Cir. 2012) (state collection laws are not preempted by § 362); *Goldstein v. Marine Midland Bank, N.A. (In re Goldstein),* 201 B.R. 1, 5 (Bankr. D. Me. 1996)(finding the bankruptcy court did not have jurisdiction over state tort or FDCPA claims of debtor); *Lambert v. Schwab (In re Lambert)*, 438 B.R. 523 (Bankr. M.D. Pa. 2010) (no bankruptcy court jurisdiction over post-petition claims under FDCPA); *Waggett v. Select Portfolio Servicing, Inc. (In re Waggett),* No. 09-4152-8-SWH, 2015 WL 1384087 (Bankr. E.D.N.C. 2015)(no preemption of state law claims); *Winter v. Suddenlink (In re Winter),* 2015 Bankr. LEXIS 2839

(Bankr. E.D.N.C. 2015)(no preemption of state law identity theft claims); *In re P.K.R. Convalescent Centers, Inc.,* 189 B.R. 90, 93 (Bankr. E.D. Va. 1995)(no preemption of Virginia consumer protection statute); *Barnhill v. FirstPoint, Inc.*, No. 1:15-cv-892, 2017 U.S. Dist. LEXIS 74979, at *11-13 (M.D.N.C. May 17, 2017)(no preemption of North Carolina statute); *Gunter v. Columbus Check Cashiers, Inc. (In re Gunter)*, 334 B.R. 900, 903-05 (Bankr. S.D. Ohio 2005) (no preemption of invasion of privacy claim); *Clark v. Brumbaugh & Quandahl, P.C.*, 731 F. Supp. 2d 915, 920-921 (D. Neb. 2010)(no bankruptcy court jurisdiction for state consumer protection claim); *Atwood v. GE Money Bank (In re Atwood)*, 452 B.R. 249, 254-255 (Bankr. D.N.M. 2011)(bankruptcy court lacked jurisdiction to hear state law and FDCPA claims); *King v. 1062 LLP (In re King)*, 2010 Bankr. LEXIS 3415, 2010 WL 3851434 (Bankr. D. Colo. 2010)(bankruptcy court lacked jurisdiction of state law and FDCPA claims); *Vogt v. Dynamic Recovery Services (In re Vogt)*, 257 B.R. 65 (Bankr. D. Colo. 2000) (bankruptcy court did not have jurisdiction to hear or adjudicate debtor's FDCPA claim).

Based on sound logic, the Fourth Circuit found that the Bankruptcy Code does not preempt Respondent's claims. This Court has explained that "[t]he principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 127 S. Ct. 1105, 1107 (2007). Finding preemption would prevent someone who has filed bankruptcy, and received a discharge, from ever proceeding against a creditor for violations of numerous consumer protection laws, even if that bankruptcy were closed years

or decades ago. Moreover, a finding of preemption would eliminate Respondent's right to a jury trial and limit recovery against a creditor to (i) whatever a bankruptcy judge decided, (ii) at a hearing in the place where the debtor filed bankruptcy regardless of the current location of the debtor, (iii) in a Motion for Contempt and Sanctions, (iv) only after the bankruptcy court had allowed the bankruptcy case to be opened, and (v) only after the Respondent was required to file a quarterly fee during the pendency of the Motion for Sanctions. In this case debtor's bankruptcy counsel and the bankruptcy judge are deceased. Quite simply, after Respondent was discharged from his bankruptcy in 2016, he should be given the same rights as any other consumer.

Upon completion of the payments under the Confirmed Plan, as modified by the Surrender Order, Respondent's Discharge was entered, pursuant to 11 U.S.C. § 1328(a), relieving and absolving Respondent of any personal liability on the Loan. 11 U.S.C. § 1328(a); In re Sharak, 571 B.R. 13, 20 (Bankr. N.D.N.Y. 2017). In the instant case, Respondent's claims for relief are premised on the continuous, negligent, deceptive and unlawful debt collection activities of Petitioner, after Respondent received his Discharge and the Bankruptcy Case was closed. Petitioner, through its actions, exposed itself to liability under federal and North Carolina law for its unlawful, deceptive, unfair and/or negligent collection practices. Accordingly, Respondent's state law claims are not preempted by the Bankruptcy Code as they do not conflict, directly or indirectly, with the purposes or objectives of the Bankruptcy Code.

IV. THIS CASE WILL PROCEED TO TRIAL ON RESPONDENT'S FCRA AND STATE LAW CLAIMS REGARDLESS OF THE PREEMPTION ISSUE

The Fourth Circuit correctly determined that Respondent's Fair Credit Reporting Act ("FCRA") claims are for a jury. Pet.App.34a. In addition, Respondent's claims regarding his being contacted by Petitioner directly, despite being represented by counsel, are also for a jury. It would be more prudent for this matter to be heard by this Court, if necessary, after a jury trial on all of Respondent's claims.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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