Seattle Journal for Social Justice

Volume 14
Issue 3 *Spring 2016*

Article 11

9-5-2016

For the Bankrupt Elder, There Is No "Fresh Start": Resisting the Vulture Effect

Meelad Hanna

For the Bankrupt Elder, There Is No "Fresh Start": Resisting the Vulture Effect

Meelad Hanna*

I. INTRODUCTION

Recent studies indicate that the elderly are increasingly being pushed into bankruptcy.[1] Generally, the main causes of bankruptcy are job loss, medical expenses, and/or divorce or separation.[2] Considering that the elderly are more susceptible to health problems than the general population and are less likely to be employed than the general population, they are more likely to be financially affected by those causes.[3] Even worse, interest and fees from credit cards, illnesses and injuries, lack of a sufficient income, aggressive debt collectors, and housing problems are *additional* leading causes for elder bankruptcy filings.[4] Largely hidden from the public are the individuals

---

* Attorney, Marr, Malone & Hanna Law Offices; J.D., The University of Memphis—Cecil C. Humphreys School of Law, May 2015; *The University of Memphis Law Review,* Articles Editor, Volume 45; B.A., Political Science, B.A., Sociology, The University of Tennessee, May 2011. I want to sincerely thank Professor Ralph C. Brashier for his guidance in preparing this article. I would also like to thank my wife, Brooke, for her loving support throughout this process.

1 *See generally* Deborah Thorne, Elizabeth Warren & Teresa A. Sullivan, *The Increasing Vulnerability of Older Americans: Evidence from the Bankruptcy Court*, 3 HARV. L. & POL'Y REV. 87 (2009) (studying data reports from the 1991, 2001, and 2007 Consumer Bankruptcy Projects (CBPs), which are three major studies collecting data related to age, gender, and causes of bankruptcy filings); *see also* John A. E. Pottow, *The Rise in Elder Bankruptcy Filings and the Failure of U.S. Bankruptcy Law*, 19 ELDER L.J. 119 (2011) (further evaluating the findings in the CBPs).

2 Deborah Thorne, *The (Interconnected) Reasons that Elder Americans File Consumer Bankruptcy*, 22 J. AGING & SOC. POL'Y 188, 190 (2010).

3 Theresa J. Pulley Radwan & Rebecca C. Morgan, *Today's Elderly in Bankruptcy and Predictions for the Elderly of Tomorrow*, 6 NAELA J. 1, 3 (2010). While lack of income, health needs, medical expenses, and divorce are major factors, each requires an article or articles of its own. For the purposes of this article, I examine several scenarios in which other individuals or business are the underlying cause for an elder's financial distress.

4 Thorne, *supra* note 2, at 190.

behind these additional causes for bankruptcy filings. These individuals come in many shapes and sizes—as telemarketers, credit card company solicitors, mortgage company loan officers, and even family members. These individuals, or "vultures," contribute to an elder's bankruptcy through their predatory actions focused on exploiting elders.[5]

This article seeks to offer a practical and cost-effective solution to deter the vultures after the elder files the bankruptcy petition. Part II discusses the causes that lead elders into bankruptcy and why the "fresh start" is not realistic. Part III evaluates the "vulture effect" and predatory acts that further augment elders' financial troubles. Part IV discusses attempts to protect consumers and regulate creditors through state consumer protection statutes and the Fair Debt Collection Practices Act. Finally, Part V gives a practical and more vulture-deterring alternative to protect bankrupt elders.

II. NO "FRESH START"

Debtors file for bankruptcies seeking the possibility of receiving a discharge of some or all of his or her debt under the United States Bankruptcy Code.[6] Discharge occurs upon the successful completion of bankruptcy proceedings and prevents a creditor from collecting the debt once the bankruptcy concludes.[7] Several exceptions exist regarding the dischargeability of debt, but the ability to discharge debt is a key motivation for a debtor filing for bankruptcy protection.[8] Other incentives, frankly, are

---

[5] *See infra* Part II.
[6] 11 U.S.C. § 524 (2015); *Discharge in Bankruptcy*, U.S. CTS., http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/DischargeInBankruptcy.aspx (last visited Apr. 15, 2015). "The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts." *Id*.
[7] *See id*.
[8] 11 U.S.C. § 523(a) (2015). The most common types of nondischargeable debts are certain types of tax claims, debts not set forth by the debtor on the lists and schedules the debtor must file with the court, debts for spousal or child support or alimony, debts for willful and malicious injuries to person or property, debts to governmental units for fines

for debtors to get some breathing space away from ambitious, collecting creditors.[9] Upon the filing of a bankruptcy petition, the debtor receives the protection of the automatic stay.[10] During the automatic stay, creditors may not institute or continue litigation, harass, contact, or take any other action against the debtor that may appear as a collection effort.[11] For the debtor who knows that he or she will never likely be able to fully pay back the debt, the ability to avoid contact from the creditor or debt collectors on behalf of that creditor is invaluable.

In order for a person to take advantage of the "fresh start" after a bankruptcy discharge (or really, to avoid bankruptcy altogether), that person needs to find financial stability through consistent and adequate income.[12] Ideally, this requires a person to gain or maintain future employment at a decent salary that will allow that person to move on from their bankruptcy

---

and penalties, debts for most government funded or guaranteed educational loans or benefit overpayments, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, debts owed to certain tax-advantaged retirement plans, and debts for certain condominium or cooperative housing fees. Further debts related to fraudulent types of property transfers are excepted from discharges, but must be proved against the debtor through hearings. *See id*.

[9] *How Bankruptcy Stops Your Creditors: The Automatic Stay*, NOLO, http://www.nolo.com/legal-encyclopedia/how-bankruptcy-stops-creditors-automatic-29723.html (last visited Apr. 15, 2015). The automatic stay immediately stops any lawsuit filed against the debtor and most actions against a debtor's property by a creditor, collection agency, or government entity. *Id*. The automatic stay may provide powerful reasons for a debtor to file for bankruptcy, especially in cases of eviction, foreclosure, contempt, or losing basic resources, such as utility services, welfare, unemployment benefits, or essentially employment due to wage garnishments. *Id*.

[10] 11 U.S.C. § 362 (2015).

[11] *See id*. Creditors who violate the stay, for example with a repossession of foreclosure, may have their actions voided by the bankruptcy court and the property returned to the debtor. *Automatic Stay: Violations and Creditor Consequences,* LAWYERS.COM, http://bankruptcy.lawyers.com/consumer-bankruptcy/automatic-stay-violations-and-creditor-consequences.html (last visited Apr. 17, 2015). Debtors may also be able to seek actual damages, punitive damages, and attorney's fees. *Id.* Creditors may also face contempt charges for violating the court's order—also possibly leading to sanctions like damages. *Id.*

[12] TERESA SULLIVAN, ELIZABETH WARREN & JAY WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 105–06 (2000).

woes.[13] As one author notes, "Younger people may well have another thirty years or more in the workforce after their bankruptcy filings, years in which they can rebuild retirement accounts, pay off mortgages, set aside some savings, and otherwise reestablish their financial security."[14] For the elderly, however, employment may not be feasible or desirable.[15] Discussions related to age-based discrimination aside, it may be impossible for even the most able of elders to find a well-paying job, particularly if the elder would need additional education to qualify for certain positions in the workforce.[16] Instead, the elderly by and large rely to their detriment on social security income, pension income, and whatever savings they may have.[17] Together, this lack of a sufficient income, along with the inability to significantly increase income in the future, can create a spiral of debt from which bankrupt elders may never recover. Further, as elders spend more of the income that they do have on the repayment of their debts, they inevitably budget less on their savings to preserve their financial security and independence.

III. THE VULTURE EFFECT

I have referred to certain creditors who seek to take advantage of an older person's financial situation as vultures. Of course, not all creditors fall under this derogatory category. In fact, many creditors make it possible for Americans to live in homes, make their payments, attend universities, and pursue business ventures. They play a large part in growing the economy

---

[13] *Id*.
[14] Thorne et al., *supra* note 1, at 88.
[15] Robyn L. Meadows, *Bankruptcy Reform and the Elderly: The Effect of Means-Testing on Older Debtors*, 36 IDAHO L. REV. 227, 237 (2000). "Elderly Americans have less ability to recover from financial setbacks because of shorter remaining life spans, and more importantly, fewer working years." *Id*.
[16] *Id*.
[17] Elder reliance on Social Security and pension plans are troubling in light of the nearing future reductions. These changes will further debilitate elders who substantially rely on them.

and helping people achieve certain lifestyles. This article uses "vulture" to describe creditors that are aware of the person's age, target them for reasons of supposed wealth, carelessness, or unsophistication, and swindle them into services the vulture knows that person does not need and cannot afford.

A few facts about vultures: vultures are known to eat dead animals, but they are capable of attacking and often do prey on extremely sick, wounded, or weak prey.[18] Vultures are such efficient feeders that they can pick an animal's carcass clean in less than thirty minutes.[19] Once on the carcass, vultures plant their feet in the remains for stability and pull at the flesh with their beaks.[20] Some vultures even go a step further by eating the bones of the carcass as well, leaving no part of the meal wasted.[21] Vultures' keen eyesight allows them to spot a three-foot carcass from four miles away.[22] Once the vultures descend on the carcass, they fight and squabble over feeding spots.[23]

As you can see, many of the animal vulture's characteristics are parallel to creditor vultures that prey on the elderly. In fact, "vulture" is a common word in most dictionaries describing certain people: "A person of a rapacious, predatory, or profiteering nature";[24] "a person or thing that preys greedily and ruthlessly on others, esp[ecially] the helpless"[25]; and "a person who tries to take advantage of someone who is in a very bad situation."[26]

---

[18] Melissa Mayntz, *20 Fun Facts About Vultures*, ABOUT.COM, http://birding.about.com/od/Bird-Trivia/a/20-Fun-Facts-About-Vultures.htm (last visited Apr. 3, 2015).
[19] *Vultures*, SEAWORLD PARKS & ENT., http://seaworld.org/animal-info/animal-bytes/birds/vultures/ (last visited Apr. 3, 2015).
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] *Vulture*, FREE DICTIONARY, http://www.thefreedictionary.com/vulture (last visited Apr. 3, 2015).
[25] *Vulture*, DICTIONARY.COM, http://dictionary.reference.com/browse/vulture (last visited Apr. 3, 2015).
[26] *Vulture*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/vulture (last visited Apr. 3, 2015).

These vultures spot their victims from miles away, prey on the weak, do their work quickly through deception, and then fight for position in bankruptcy court to get their piece of the pie.[27] Credit card companies and different types of home loan companies can exhibit these vulture-like behaviors. They present major problems that can lead to an elder's finances spinning out of control.[28]

A. Credit Card Debt

The deregulation of the credit card industry is a contributing factor to the increased availability of credit cards and the increased opportunities for abuse by credit card companies.[29] Credit card debt increases with age and accounts for the vast majority of total unsecured debt reported by debtors age sixty or older.[30] Elderly debtors, on average, have nearly four times as much credit card debt as debtors under the age of twenty-five.[31] Also noteworthy, the average gross monthly income of elderly debtors is about thirty percent below the average for all debtors in general.[32] These sobering truths are not helped by the repeal of usury laws as it relates to the credit industry.[33]

Many elderly individuals find themselves facing mounting debt, lawsuits, and foreclosure because of the eradication of state usury laws as a limit on interest rates, late fees, and other penalty charges.[34] Existing laws focus on

---

[27] *See supra* nn.15–20 and accompanying text.
[28] *See infra* Part III. A. –B.
[29] *See generally* Donna S. Harkness, *When Over-the-Limit is Over the Top: Addressing the Impact of Unconscionable Consumer-Credit Practices on the Elderly*, 16 ELDER L.J. 1 (2008).
[30] ED FLYNN & GORDON BERMANT, EXEC. OFF. FOR THE U.S. TRS., BANKRUPTCY BY THE NUMBERS (2002), http://www.justice.gov/ust/eo/public_affairs/articles/docs/abi122002a.pdf.
[31] *Id.*
[32] Ed Flynn & Gordon Bermant, *Credit Card Debt in Chapter 7 Cases*, AM. BANKR. INST. (Dec./Jan. 2003), http://www.abi.org/abi-journal/credit-card-debt-in-chapter-7-cases.
[33] *Id.*
[34] *See* Harkness, *supra* note 29, at 1.

the disclosure of credit terms to consumers, but have not protected the elderly, who are less likely to understand credit and are thus more vulnerable to predatory practices.[35] Further, the problems that affect the elderly are not due to the increased extension of credit; rather, much of the profit gained by the credit card industry results from extending credit to people who are more likely to default, such as the elderly.[36] A credit card company's most profitable accounts are those who "stumble and slide, who make payments and miss payments, and who end up paying default rates of interest and penalty fees."[37] In light of these customers, the credit card companies fill the credit agreement with excess charges and fees triggered at the first sign of default.[38]

B. Home Loans and Reverse Mortgages

Even elders who own their homes are not immune from debt.[39] Because more elderly today enter retirement age with a mortgage or other loan, they often fall victim to predatory lenders.[40] Predatory lending is

---

[35] *Id*. at 28–29.
[36] *Id*.
[37] Elizabeth Warren, Leo Gottlieb Professor of Law, Testimony before the Committee on Banking, Housing and Urban Affairs of the U.S. Senate 3 (2007), http://www.banking.senate.gov/public/_cache/files/d4fcda94-c9d7-4df7-bf10-dd69ad008c0f/23C6AE00CC53D93492511CC744028B5E.warren.pdf.
[38] *Id*.; Harkness, *supra* note 29, at 17–18 (citing Warren, *supra* note 37). "Hidden within the fine print are, inter alia, such contract terms as 'universal default, default rates of interest, late fees, over-the-limit fees, [and] fees for payment by telephone.' To make matters worse, the credit card company will heighten the likelihood of late payment or default by such things as 'repeated changes in the dates bills are due, changes in the locations to which bills should be mailed, making it hard to find the total amount due of the bill, moving bill reception centers to lengthen the time it takes a bill to arrive by mail, misleading customers about grace periods, and implementation of double cycle billing.'" *Id*.
[39] Deanne Loonin & Elizabeth Renuart, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 HARV. J. LEGIS. 167, 168, 171 (2007).
[40] *Id*.

> The use by lenders of deceptive, manipulative, or coercive practices in order to induce borrowers to accept loans that (1) have interest rates or fees significantly above the current market rate given the risk profile of the borrowers or other terms significantly worse than the market norm offered by legitimate lenders, or (2) which leave the borrowers worse off than they would have been without any new loans, or (3) both.[41]

Several examples of predatory lending practices include (1) racial targeting in advertising and loan solicitations; (2) making loans in connection with home-improvement scams; (3) allowing kickbacks in the form of yield-spread premiums; (4) steering of borrowers to high-cost lenders; (5) making loan payments in excess of the borrowers' ability to repay resulting in foreclosure (equity stripping); (6) engaging in fraud on borrowers and on secondary-market buyers via falsified loan applications; (7) forging signatures; (8) inflating appraisals and the like; (9) allowing high annual interest rates, high points, balloon payments, negative amortization, padded or duplicative closing costs and fees; (9) insurance packing and single-premium credit life insurance; (10) providing for excessive prepayment penalties, mandatory-arbitration clauses, and loan flipping (repeated refinancings by the same lender); (11) refinancings of low- or no-interest mortgages at higher rates; (12) shifting unsecured debt into mortgages; (13) making loans in excess of one hundred percent of the loan-to-value ratio of the underlying collateral; and (14) abusing collection practices, and foreclosure abuses.[42] On top of all of this, brokers and lenders

---

[41] Kurt Eggert, *Lashed to the Mast and Crying for Help: How Self-Limitation of Autonomy Can Protect Elders from Predatory Lending*, 36 LOY. L.A. L. REV. 693, 699–700 (2003) (citation omitted); *see also* Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1260 (2002) (describing predatory lending as "a catalogue of onerous lending practices . . . often targeted at vulnerable populations and result[ing] in devastating personal losses").

[42] *See* Engel & McCoy, *supra* note 41, at 1268.

sometimes falsify a borrower's information in order to qualify a homeowner for a loan.[43]

Considering the amount of commercial targeting involved, reverse mortgages are popular among the elderly.[44] While useful, reverse mortgage lending presents inherent potential for abuse and predatory lending practices.[45] Because reverse mortgages are only effective if the borrower has significant equity in his or her home, the elderly and near-elderly are often targeted for these types of loans.[46] With a reverse mortgage, the borrower may borrow against the equity in her home if she owns the home outright or has only a small mortgage balance remaining on the home that can be paid off at the closing.[47] Ideally, this type of mortgage can inject a large amount of money in which an elderly person can live. A fundamental risk for the borrower, however, comes in assuming that the borrower will be able to remain in her home long enough to make the mortgage a good bargain.[48] If the borrower dies, sells the home, or moves away (whether voluntarily or because of necessity) shortly after the mortgage is closed, the bargain may be costly, as the borrower would likely lose the house to the mortgage company altogether in order to repay the loan.[49]

---

[43] *See id*. When brokers and lenders falsify information, it usually involves increasing the income level of the borrower. *Id.* Brokers and lenders may also inflate the value of the home through a partnership with a familiar appraiser who may not mind fudging the numbers as well. *Id.*
[44] *See* Angela Rowland, *Defending the American Dream: Legislative Attempts to Combat Predatory Lending*, 50 S. TEX. L. REV. 343, 359–60 (2008).
[45] *See id*.
[46] *See id*. "Lenders market these loans to the elderly by convincing them it will be the only way to avoid selling their home. In truth, it is almost never in the borrower's interest to structure the loan this way because equity in the home will be lost each month, and in many cases the lender obtains the remainder of the equity in the home when the borrower dies, regardless of its value." *Id*.
[47] RALPH C. BRASHIER, MASTERING ELDER LAW 416 (2d ed. 2015).
[48] *Id*. at 417.
[49] *Id*.

IV. FAILED ATTEMPTS TO REGULATE

State consumer protection laws and the Fair Debt Collection Practices Act (FDCPA) may provide a remedy to some elder debtors who are being exploited. However, if a debtor cannot prove that the vultures were at fault in some way, then neither of these two remedies can protect a debtor once the debtor is forced into bankruptcy.[50] These two remedies are really only useful to persons who have not yet entered bankruptcy and can simply afford to take the financial risk of instituting a suit.[51]

A. Consumer Protection Laws

Consumer protection laws are designed to safeguard the rights of consumers as well as fair trade, competition, and accurate information in the marketplace. They prevent businesses from gaining an advantage over their competitors through fraud or unfair practices. They may also provide additional protection from fraud for those most vulnerable in society. However, consumer protection laws are far too inconsistent across the country to definitively provide elder debtors with recourse.[52] These laws require a debtor to persuade the state's attorney general to institute a suit or to be forced to pay for a suit themselves, which may be difficult and unrealistic because of the deep financial trouble that the debtor may already be experiencing.[53] Most of the remedies available contain restricted

---

[50] *See infra* Part IV.A. –B.
[51] *See id*.
[52] *See generally* CAROLYN L. CARTER, NAT'L CONSUMER LAW CTR., A 50-STATE REPORT ON UNFAIR AND DECEPTIVE ACTS AND PRACTICES STATUTES 24–29 (2009), https://www.nclc.org/images/pdf/car_sales/UDAP_Report_Feb09.pdf (analyzing consumer protections statutes across the country and finding many differences between them that negatively affect debtors).
[53] *See* STATE ATTORNEYS GENERAL POWERS AND RESPONSIBILITIES 233-34 (Emily Myers & Lynn Ross eds., 2d ed. 2007). Private individuals may not be able to obtain the full range of remedies available that the state attorney general enjoys when instituting a lawsuit. Private individuals may be required to give the creditors advance notice before filing a lawsuit, or the law may impose additional evidentiary burdens on those private

damages and attorney fees, plus there is also the theoretical possibility of punitive damages floating around in some states.[54] However, these punitive damages are almost never awarded because they require the debtor to prove a high evidentiary bar of knowing intent by the creditor. Thus, while these statutes are designed to protect consumers, they are difficult for consumers to actually use in practice.

B. Fair Debt Collection Practices Act

While consumer protection statutes are designed to protect consumers, the FDCPA is designed to protect debtors—consumers who have made a purchase or transaction—from debt collectors sometimes known as collection agencies.[55] In general, a collection agency cannot engage in conduct meant to harass, oppress, or abuse.[56] This conduct encompasses the use or threat to use violence, harming or threatening to harm a person (or someone they know), a person's reputation, or a person's property, using obscene, profane, or abusive language, publishing someone's name as a person who doesn't pay bills, listing someone's debt for sale to the public, calling someone repeatedly, or placing telephone calls to someone without identifying the themselves as bill collectors.[57]

Further, a collection agency theoretically cannot lie.[58] For example, the collection agency (1) cannot claim to be a law enforcement agency or suggest that it is connected with the federal, state, or local government, (2) misrepresent the amount a person owes or the amount of compensation the collection agency will receive, (3) claim to be an attorney or that a communication is from an attorney, (4) claim that a person will be

---

individuals, such as requiring them to prove that they relied on the specific practice they are suing over, or that the creditor's conduct affects the public at large.

[54] CARTER, *supra* note 52, at 20.

[55] 15 U.S.C. § 1692d (2015).

[56] *Id*.

[57] *Id*.

[58] 15 U.S.C. § 1692e (2015).

imprisoned or that person's property will be seized, (5) threaten to take action that is not truly intended or cannot legally be taken, (6) falsely claim a person has committed a crime, (7) threaten to sell a person's debt to a third party, and claim that, as a result, that person will lose defenses to payment he or she once had against the seller, (8) communicate false credit information such as failing to state that person disputes a debt, (9) send a person a document that falsely appears to be from a court or an attorney, (10) use a false business name, or (11) claim to be employed by a credit bureau if that is not indeed true.[59]

Finally, a collection agency cannot engage in any unfair method to collect a debt.[60] These methods or practices include (1) adding interest, fees, or charges not authorized in the original agreement or by state law, (2) accepting a check postdated by more than five days unless it notifies the person between three and ten days in advance of when it will deposit the check, (3) depositing a postdated check prior to the date on the check, (4) soliciting a postdated check for the purpose of then threatening a person with criminal prosecution, (5) causing a person to incur communications charges, such as collect call fees, by concealing the true purpose of the communication, (6) threatening to seize or repossess a person's property if it has no right to do so or has no intention of doing so, (7) communicating with a person by postcard, or (8) putting any words or symbols on the outside of an envelope sent to a person that indicates an agency is trying to collect a debt.[61]

The problem with the FDCPA is that it only deals with collection agencies, and thus only with the efforts to collect a debt *after* the predatory practices have been completed. Worse, the civil remedies available to debtors are not sufficient to stop these agencies from their illegal practices. Section 1692k only allows actual damages lost plus additional damages up

---

[59] *Id.*
[60] *Id.*
[61] 15 U.S.C. § 1692e (2015).

to $1,000—meaning that not only must the debtor institute a suit against the collection agency, but the debtor can only get back what he or she lost, plus a mere $1,000.[62] These civil penalties do not deter vultures, nor do they help debtors once they are in bankruptcy.

V. Finding True Relief in Bankruptcy

In order for a creditor to get paid in bankruptcy court, it must file a proof of claim.[63] A proof of claim is a written statement that notifies the bankruptcy court, the debtor, the trustee, and other interested parties that a creditor wishes to assert its right to receive a distribution from the bankruptcy estate.[64] The court usually accepts the proof of claim and its stated amount unless the debtor, trustee, or another interested party objects.[65]

Elder debtors should be permitted to object to a creditor's proof of claim and argue that the creditor is presumed to have unduly influenced the elder because of age. However, the circumstances surrounding the creation of the debt are generally not a factor that the bankruptcy court considers. If it were, then the elder would need to prove that he or she was targeted by a vulture to make the commercial transaction and that the transaction was not in the elder's best interests based on the terms, such as usurious interest rates, ambitious remedies for default, or an unreasonable payment-to-value ratio. If the court sustains the debtor's objection to the creditor's proof of claim, then that creditor's status disappears and the debt will be discharged,

---

[62] *See* 15 U.S.C. § 1692k(a) (2015).
[63] U.S. Bankr. Court, B10 Official Form (Apr. 2013), www.uscourts.gov/file/752/download.
[64] *What Is a Proof of Claim in Bankruptcy?*, Nolo, http://www.nolo.com/legal-encyclopedia/what-proof-claim-bankruptcy.html (last visited Apr. 17, 2015).
[65] *Id.* Reasons to object include the amount of debt being incorrect, improper interest or penalty charges being added to the debt, the claim being stated as a priority or secured claim when it is not, the creditor filed the claim with the purpose of harassing the debtor, or the creditor not attaching supporting documentation. *Id.*

leaving the vulture with no *in personam* rights against the debtor.[66] This method is not only feasible, but may be the only way to deter vultures that prey on the elderly. Further, because most attorneys are paid at either the beginning of the case or during the monthly disbursements following a plan confirmation, contesting the vulture's claim would not cost the debtor any additional fees. Debtors would not need to put up any money to fight for their rights—they are broke after all!

VI. CONCLUSION

The lack of a sufficient income, combined with unexpected, life-changing medical emergencies or divorce, will always be the main catalysts that lead people into bankruptcies. These issues are even more compounded with elderly people who may not be working or who may not have saved enough money over time. Equally as important is considering *how* the elderly are pushed into bankruptcy through various commercial transactions with creditors. The elderly are targeted for their supposed wealth and lack of

---

[66] *See* 11 U.S.C. § 524(a) (2015).

> (a) A discharge in a case under this title—
> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and
> (3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived. *Id*.

sophistication when it comes to credit or financing. Consumer protection laws, or the FDCPA, does not deter the vultures from taking advantage of the elderly.[67] Vultures simply wait for the elder debtor to default on the terms of the transaction, charge them outrageous and hidden fees, and then wait at the bankruptcy table for their cut of the bankrupt elder's remaining estate.[68]

While consumer protection laws and the FDCPA have failed, by both lack of enforcement and unfeasible procedures for the debtor to contest obviously wealthier creditors, the bankruptcy court itself can provide an ultimate vulture-deterrent that can work to limit elders from entering into bankruptcy. Elder debtors should be allowed to object to vultures' proofs of claims on the grounds that they were targeted and unduly influenced by those creditors to accept credit or loans that were not in their best interest.

---

[67] *See supra* Part IV.A. –B.
[68] *See supra* Part III.