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DISCHARGE INJUNCTION VIOLATIONS IN CONSUMER BANKRUPTCIES

After discussing the standard for proving a discharge violation and remedies for violations, the author turns to injunction violations, with examples from: (1) automobiles and mortgages; (2) “new” post-petition loans; and (3) class actions for discharge violations, including fail-safe classes.

By Sarah E. Edwards *

BASICS OF A DISCHARGE

Section 524(a) of Title 11 of the United States Code (the “Bankruptcy Code”) protects a debtor who receives a bankruptcy discharge. The discharge effectuates the central goal of bankruptcy by providing debtors a financial fresh start. It discharges the debtor’s personal liability for pre-bankruptcy debts, and operates as an injunction against acts to collect or recover any discharged debt as a personal liability of the debtor.

Entry of a discharge order in favor a debtor automatically extinguishes the automatic stay and creates the discharge injunction.¹ The injunction prohibits an act to collect, recover, or offset any discharged debt as a personal liability of the debtor, whether or not discharge of such debt is waived. Section 524 does not provide an express enforcement

mechanism. Debtors have enforced the discharge injunction by reopening their bankruptcy cases, and filing adversary proceedings or motions requesting that the offending party be held in contempt.²

This survey is designed to assist consumer creditors and their counsel with identifying behavior that could result in significant penalties for violation of the discharge injunction.

¹ 11 U.S.C. § 362(c)(2)(C); 11 U.S.C. § 524(a)(2) (“A discharge in a case under this title— . . . 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[.]”).

² Most courts agree that no private right of action exists for violation of the discharge injunction. *See, e.g., Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002); *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2000). However, courts disagree on whether bankruptcy courts may invoke § 105(a) of the Bankruptcy Code to remedy discharge injunction violations. *Compare Pertuso*, 233 F.3d 417 (holding that no private right of action exists to enforce discharge injunction and that § 105(a) cannot be invoked to remedy discharge injunction violations) *with In re Haynes*, No. 11-23212 (RDD), 2014 WL 3608891, at *3 (Bankr. S.D.N.Y. July 22, 2014) (using § 105(a) to enforce the discharge injunction).

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