THE SUPREME COURT HAS CONTEMPT FOR THE NINTH CIRCUIT

by Jonathan D. Fink, Esq.

In a unanimous decision, the U.S. Supreme Court has upended the Ninth Circuit's standard for finding a creditor in contempt for violating the bankruptcy discharge injunction under 11 USC § 524(a)(2).

The June 3, 2019 decision in *Taggart v. Lorenzen* arose from an Oregon bankruptcy court order finding a creditor in contempt under a "strict liability" standard to the effect that a creditor would be liable for contempt sanctions "irrespective of the creditor's beliefs, so long as the creditor was '"aware of the discharge"' order and '"intended the actions which violate[d]"' it." The bankruptcy court order was appealed and the Ninth Circuit reversed, finding that the correct standard was "'that a court cannot hold a creditor in civil contempt if the creditor has a "good faith belief" that the discharge order "does not apply to the creditor's claim…' even if the creditor's belief is unreasonable.'"

The U.S. Supreme Court granted certiorari and rejected both standards, holding that, instead, the correct standard to apply was that;

> [A] court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.

The Supreme Court based its analysis on the origins of the Bankruptcy contempt power from traditional civil contempt proceedings, finding that those standards came along with the statutes authorizing a limited contempt power for the Bankruptcy courts. The Court found that the Ninth Circuit's standard was not only inconsistent with the traditional civil contempt principles but was also reliant on an often too difficult to prove subjective state-of-mind and could lead creditors with dubious claims to try to improperly collect from discharged debtors. The Court was equally contemptuous of the "strict liability" approach advocated by debtor, observing that it would "risk additional federal litigation, additional costs, and additional delays. That result would interfere with 'a chief purpose of the bankruptcy laws': '"to secure a prompt and effectual'" resolution of bankruptcy cases…. These negative consequences, especially the costs associated with the added need to appear in federal proceedings, could work to the disadvantage of debtors as well as creditors."

Although the Supreme Court opined that this new standard struck a "careful balance between the interests of creditors and debtors," the question remains as to how the standard will actually be applied by the Bankruptcy courts since the standard is bereft of guidelines. It seems likely that, pending further clarification by subsequent decisions, some Bankruptcy judges who favored the "strict liability" standard will still find contempt by concluding that there was no objectively reasonable basis upon which a creditor who knew of the discharge but sought to collect on the debt anyway could have thought its conduct to be lawful. Nonetheless, by rejecting the "strict liability" standard outright, the Supreme Court has at least preserved the hope that fairer, better reasoned decisions will ensue.

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