



Bankruptcy Alert

Recent U.S. Supreme Court Bankruptcy Decision: *Lamar, Archer & Cofrin, LLP v. Appling*, regarding the dischargeability of debts incurred by misrepresentations respecting a single asset

By: Sidney K. Swinson and Brandon C. Bickle

July 17, 2018

On June 4, 2018, the U.S. Supreme Court decided *Lamar, Archer & Cofrin, LLP v. Appling*, a case involving the dischargeability of a debt incurred by a Chapter 7 bankruptcy debtor through misrepresentation. The case has important implications in cases where a creditor alleges that its debt is nondischargeable because the debtor incurred the debt by misrepresenting any aspect of the debtor's "financial condition."

Lamar, Archer, & Cofrin, LLP is a law firm (the "Firm") that provided legal services to the debtor in the case, Scott Appling (the "Debtor"). The Debtor fell behind in paying the Firm's legal bills, and the Firm threatened (among other things) to withdraw from representing him. To prevent this, the Debtor told the Firm he was expecting a large tax refund, sufficient to pay the Firm's currently owed and future legal fees. In reliance on this statement, the Firm continued with its representation. As it turned out, the Debtor did obtain a smaller tax refund, which he did not use to pay legal fees but instead used in his business, all the while telling the Firm he was waiting on the refund and would use it to pay the Firm's legal fees.

Of course, the Debtor never paid the Firm's legal fees. The Firm eventually sued and obtained a judgment, causing the Debtor to file Chapter 7 bankruptcy. The Firm filed an adversary proceeding to have its debt deemed nondischargeable based on the Debtor's misrepresentations concerning the tax refund.

The Firm's nondischargeability argument was based on 11 U.S.C. § 523(a)(2)(A), which renders debts nondischargeable if incurred by "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's . . . financial condition." The Debtor moved to dismiss the adversary proceeding, arguing that since his statements were indeed "respecting" his "financial condition," they must be in writing to be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(B).

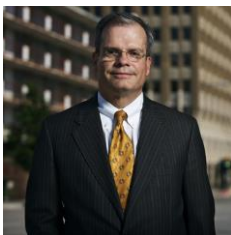
The Bankruptcy Court agreed with the Firm and denied the motion to dismiss. The Debtor eventually lost at trial and appealed. The 11th Circuit Court of Appeals reversed, holding that the Debtor's statements concerning a single asset (the tax refund) were indeed "respecting the debtor's financial condition" and therefore must be in writing to be nondischargeable.

The Firm appealed to the U.S. Supreme Court, which affirmed the 11th Circuit. Explaining the necessity that the statement be in writing, the Supreme Court wrote:

The Bankruptcy Code prohibits debtors from discharging debts for money, property, services, or credit obtained by "false pretenses, a false representation, or actual fraud," 11 U. S. C. § 523(a)(2)(A), or, if made in writing, by a materially false "statement ... respecting the debtor's ... financial condition," § 523(a)(2)(B).

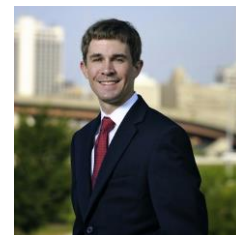
The Supreme Court based its holding on the plain language of the statute; in particular, the broad meaning of the word, "respecting."

The takeaway is straightforward. First, the Supreme Court has set the bar very low for determining when a statement "respects" a debtor's "financial condition." This exception to the nondischargeability of debts incurred by fraud applies even when a misrepresentation concerns a single asset, as opposed to broader statements concerning the debtor's overall financial status. Second, if a decision to extend money, property, services, or credit to a debtor is based on representations by the debtor concerning one or more of the debtor's assets or ability to pay, those must be in writing (which is a good idea for reasons beyond the eventual nondischargeability of the debt). Failing to do so means that, unless another discharge exception applies, the debt will likely be discharged if the debtor files bankruptcy.



1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Ok 74103
(918) 595-4800
www.gablelaw.com

sswinson@gablelaw.com
bbickle@gable.law.com



This article is provided for educational and informational purposes only and does not contain legal advice or create an attorney-client relationship. The information provided should not be taken as an indication of future legal results; any information provided should not be acted upon without consulting legal counsel.