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No Fair Ground of Doubt: Supreme Court Clarifies Standard for Holding Creditor in Civil Contempt for Violations of a Bankruptcy Court Discharge

By: Thomas J. Cunningham, Brad C. Knapp, Michael De Simone, Steven J. Brotman, and Stephen J. Humeniuk

On June 3, 2019, the Supreme Court held that a court may hold a creditor in civil contempt for violating a bankruptcy discharge if there is "*no fair ground of doubt*" as to whether the discharge order barred the creditor's conduct. The Court disagreed with both the Court of Appeals for the Ninth Circuit and the Oregon bankruptcy court that either a purely subjective or a strict liability standard should be applied.

In *Taggart v. Lorenzen*, Case No. 18-489, the Supreme Court granted certiorari to decide whether "a creditor's good faith belief that the discharge injunction does not apply precluded a finding of civil contempt." In rejecting the standards set forth by the Ninth Circuit and the Bankruptcy Court, Justice Breyer's opinion for the unanimous Court reaches a middle ground that civil contempt sanctions "may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order."

The Court's decision was based on bankruptcy statutes specifying that a discharge order "operates as an injunction," 11 U.S.C. § 524(a)(2), and that the "old soil" of injunction enforcement written into the Bankruptcy Code brings with it the "potent weapon of civil contempt." Citing cases outside of the bankruptcy context, the Court reiterated that civil contempt "should not be resorted to where there is [a] fair ground of doubt as to the wrongfulness of the defendant's conduct." *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885). Applying this standard, the Court clarified that bankruptcy courts may impose civil contempt sanctions for discharge violations "where there is not a 'fair ground of doubt' as to whether the creditor's conduct might be lawful under the discharge order."

In accepting the traditional standard for civil contempt, the Court has sent the message to bankruptcy courts that simply being aware of a bankruptcy discharge and intentionally engaging in conduct that ends up violating the discharge injunction is insufficient to enter an order of contempt and award damages. The Court, however, also signaled that the standard should not be purely subjective as it "relies too heavily on difficult-to-prove states of mind." By anchoring civil contempt sanction proceedings involving 11 U.S.C §§ 105(a) and 524(a)(2) to a fair ground of doubt standard, the Court left open the possibility that, subject beliefs aside, "an objectively unreasonable understanding of the discharge order or the statutes that govern its scope" could lead to sanctions in appropriate circumstances.

Bankruptcy creditors should be mindful of the Supreme Court's standard in communicating with discharged debtors. A creditor's subjective belief that debt collection is appropriate or that language included in communications to a discharged debtor are informative rather than an attempt to collect a discharged debt may not be sufficient to stave off civil contempt sanctions under this standard. Especially if such beliefs are objectively unreasonable when measured against the statutes that govern the scope of discharge orders. Rather creditors will be facing determinations by bankruptcy judges as to whether there was an objectively reasonable basis for the communications or other collection activity. In that vein, the "fair ground of doubt" standard may create new arguments for creditors in closer cases where the law remains open to reasonable interpretation or guiding authority remains inconsistent.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

Thomas J. Cunningham | 561-820-0201 | tcunningham@lockelord.com
Brad C. Knapp | 504-558-5210 | bknapp@lockelord.com
Michael De Simone | 561-820-0211 | michael.desimone@lockelord.com
Steven J. Brotman | 561-820-0214 | steven.brotman@lockelord.com
Stephen J. Humeniuk | 512-305-4838 | stephen.humeniuk@lockelord.com