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United States Supreme Court Rules on 11 U.S.C. § 523(a)(2)

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***Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 584 U.S. ___; 201 L. Ed. 2d 102 (2018).**

Background

Respondent, R. Scott Appling (Appling), fell behind on his legal bills owed to Petitioner, Lamar, Archer & Cofrin, LLP (Lamar), a law firm Appling hired to represent him.[1] Lamar informed Appling the firm would withdraw from representation and place a lien on its work product if Appling did not pay his bills. Appling told Lamar he was expecting a tax refund he could apply towards the legal fees. Lamar relied on Appling's statement, agreed to continue the representation, and delayed collection of the outstanding fees. Appling and his wife received their tax refund, spent the money on their business, and did not pay Lamar. Lamar sent Appling its final invoice. Lamar sued in Georgia state court and obtained a judgment. Appling and his wife then filed bankruptcy.

Lamar initiated an adversary proceeding against Appling. It argued Appling's debt to Lamar was nondischargeable under 11 U.S.C. § 523(a)(2)(A).[2] This section bars discharge of debts arising from "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's … financial condition." Appling then moved to dismiss. He argued his alleged misrepresentations were "statement[s] . . . representing the debtor's . . . financial condition" and so § 523(a)(2)(B) applied. This section requires a statement to be "in writing" for it to be nondischargeable.

The Bankruptcy Court held that a statement about a single asset is not a "statement respecting a debtor's financial condition" and denied Appling's motion to dismiss.[3] The District Court affirmed. The Eleventh Circuit Court of Appeals reversed and held that "'statement[s] respecting the debtor's . . . financial condition' may include a statement about a single asset."[4] The Eleventh Circuit also held that § 523(a)(2)(B) did not bar Appling from discharging his debt to Lamar because Appling's statements about his tax return were not in writing.[5]

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[1] *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 584 U.S. ___; 201 L. Ed. 2d 102 (2018).
[2] All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101 *et. seq.*
[3] *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 500 B.R. 246, 252 (Bankr. M.D. Ga. 2013).
[4] *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 848 F.3d 953, 960 (11th Cir. 2017).
[5] *Id.*

The United States Supreme Court was tasked with deciding whether a statement about a single asset can be a "statement respecting the debtor's financial condition."[6] The Supreme Court agreed with the Eleventh Circuit's conclusion and affirmed. Justice Sotomayor delivered the opinion, in which Chief Justice Roberts, and Justices Kennedy, Ginsburg, Breyer, and Kagan joined. Justices Thomas, Alito, and Gorsuch joined as to all but Part III–B.

Holding

The Court held that a debtor's statement about a single asset can be a "statement respecting the debtor's financial condition" under § 523(a)(2) of the Bankruptcy Code.[7]

Analysis

The relevant text of § 523(a)(2) was the phrase "statement respecting the debtor's financial condition." The key word in dispute was the preposition "respecting," meaning "in view of; considering; with regard or relation to; regarding; concerning."[8]

Lamar argued "respecting" is not always used as broadly as the definitions reveal and contends the word "respecting" means "'about, concerning, with reference to, and as regards' and implies 'a more limited scope than relating to.'"[9] Under Lamar's formula, a statement about a single asset would not be a statement of the debtor's overall financial well-being. The Court was not persuaded by Lamar's attempt to impose a distinction between the definitions; the definitions overlap and are circular.

Appling argued "'a statement respecting the debtor's financial condition' is 'a statement that has a direct relation to or impact on the balance of all of the debtor's assets and liabilities or the debtor's overall financial status.'"[10] The Court agreed with Appling and the United States as *Amicus Curiae* and noted "'a statement respecting the debtor's financial condition' includes 'a representation about the debtor's asset that is offered as evidence of ability to pay.'"[11]

The Court addressed Lamar's contention that Appling's construction undermines the purpose of § 523(a)(2). Lamar claimed under Appling's rule, § 523(a)(2)(B) is given broad reach, rendering little to be protected by § 523(a)(2)(A). The Court noted

[6] *In re Appling*, 584 U.S. ___.
[7] *Id.*
[8] *Id* at 5.
[9] *Id* at 6.
[10] *Id* at 7.
[11] Brief for United States as *Amicus Curiae* Supporting Petitioners No. 16-1215.

previous decisions considering the application of § 523(a)(2)(A) establish the provision retains significant function when a "statement respecting the debtor's financial condition" is interpreted to include a statement about a single asset. Section 523(a)(2)(A) has been used to bar the discharge of debts arising from misrepresentations about the value of goods, property, and services and debts from forms of fraud that can be effected without a false representation.[12]

Lamar asserted Appling's interpretation contradicts the bankruptcy system's purpose to provide relief to the "'honest but unfortunate debtor'" because Appling's rule allows lying debtors to swindle innocent creditors out of debt arising from an oral misrepresentation.

The Court stated § 523(a)(2)'s heightened requirements reflect Congress's effort to balance the potential misuse of statements representing a debtor's financial condition and noted creditors can still benefit from the protection of § 523(a)(2)(B) by insisting the debtor's representations of their financial condition are made in writing.

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[12] *See Husky Int'l Electronics, Inc. v. Ritz,* 136 S. Ct. 1581; 194 L. Ed. 2d 655 (2016) (defining the term "actual fraud"); *United States v. Tucker* (*In re Tucker)*, 539 B.R. 861 (Bankr. D. Idaho 2015) (discussing fraudulent omissions); *SEC v. Bocchino* (*In re Bocchino)*, 794 F.3d 376 (3d Cir. 2015) (describing history of § 523(a)(2)(A)); *Cohen v. De La Cruz* (*In re Cohen)*, 106 F.3d 52, 54-55 (3d Cir. 1997) (discussing compensatory and punitive damages in context of § 523(a)(2)(A)).