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Nondischargeability Litigation: Advanced Trial Strategies and Considerations Following the Supreme Court's Bartenwerfer Ruling

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Nondischargeability Litigation: Advanced Trial Strategies and Considerations Following the Supreme Court's *Bartenwerfer* Ruling

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I. Introduction

Words tell stories, and the word "bankruptcy" has an interesting origin and history. The most widely accepted origin of the word bankruptcy is derived from the Latin term *bancus ruptus,* meaning broken bench. Traditionally, a lender conducted business from a bench in an open marketplace. If a lender became unable to lend or to meet his or her own debt obligations, his or her bench was broken as a symbolic showing of the inability to settle debts. Bankruptcy Data, https://www.bankruptcydata.com/free/history/ (last visited on Jun. 4, 2025).

Others speculate that the word bankruptcy derives from the Italian phrase *banco rotto,* or broken bench. When a merchant in Italy could not pay his creditors, the creditors destroyed his trading bench. Still more believe the word stems from the French expression *banque* r*oute, meaning* table trace. The Phrase refers to the practice of leaving a sign at the site of a banker's table that fled with money entrusted to him. In this respect, the word can be traced to the ancient Roman *mensarii* (government-sponsored bankers) or *argentarii* (bankers who exchanged foreign monies for Roman coin), who were said to leave only the shadow of their former station behind after escaping with the money of others. Gulf News, https://gulfnews.com/business/origin-of-the-word-bankruptcy-1.43180 (last visited Jun. 4, 2025).

Over the centuries, bankruptcy has evolved from a mechanism of punishment to a means of rehabilitation. The concept of the debt discharge was not introduced to Anglo-America until 1705 where discharge was offered as a reward to those debtors who cooperated in gathering assets for the benefit of their creditors, which leads us to the modern Bankruptcy Code.

The rehabilitative power of the modern Bankruptcy Code is not unlimited. Rather, courts use the Code to limit the dischargeability of certain debts. Decisions, like *Bartenwerfer* (explored below), which expand the nondischargeability of certain debts are often met with mixed reception. Many view the court's limitation on discharge as a devolution of the Code and its objective of protecting "an honest but unfortunate debtor." While others applaud *Bartenwerfer* as a measured and limited restriction on dischargeability.

II. Nondischargeability Regardless of Mental Culpability Under 523(a)(2)(A)

Bartenwerfer v. Buckley, 598 U.S. 69 (2023)

A. Issue

Is a debt obtained by fraud under 523(a)(2)(A) nondischargeable, regardless of the debtor's culpability?

B. Statutory Context

This case was decided under Section 523(a)(2)(A) of the Bankruptcy Code.

C. Facts

Section 523(a)(2)(A) provides that debt "(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by: (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition" is nondischargeable.

The facts of *Bartenwerfer* involve a couple who jointly purchased a home in San Francisco. At the time the couple was dating, but later married. The couple, acting as business partners, elected to remodel and sell the home. The boyfriend, David, undertook most if not all of the remodeling effort. Kate, the girlfriend, and petitioner Bartenwerfer in this proceeding, was totally uninvolved with the work on the house. The Bartenwerfers eventually sold the home, attesting that they had disclosed all material facts relating to the property. The buyer, Buckley, later uncovered several defects, successfully sued the Bartenwerfers, and was awarded $200,000.00 in damages.

The Bartenwerfers could not afford to pay the damages and filed for Chapter 7 bankruptcy relief. Buckley argued that the judgment debt of both debtors was nondischargeable pursuant to §523(a)(2)(A). The bankruptcy court imputed David's fraudulent intent onto Kate as his business partner and held that neither David nor Kate could discharge the court-ordered debt. The Ninth Circuit BAP reversed as to Kate's debt and remanded. The bankruptcy court found that Kate lacked knowledge of the fraud and thus could discharge her debt. The BAP affirmed, but the Ninth Circuit reversed. The Supreme Court affirmed the Ninth Circuit's decision.

The Supreme Court's decision reads like a grammar lesson. The Court considers the passive voice adopted by Congress in §523(a)(2)(A). The Court reasoned that the passive tone does not provide who must commit the fraud for the debt to be nondischargeable, but rather that the debt must have been incurred by some form of fraud. The Court relied on the common law definition of fraud for support. "The relevant legal context—the common law of fraud—has long maintained that fraud liability is *not* limited to the wrongdoer." *Bartenwerfer v. Buckley,* 598 U.S. 69, 76 (2023). The Court spins the petitioner's own argument against her, by considering the analogous phrase "Jane's clerkship was obtained through hard work." *Id* at 75. The Court opined that the phrase is open-ended, the clerkship could have been obtained through the hard work of Jane's professor who drafted a letter of recommendation. Similarly, the Court reasoned that the debt incurred by fraud in §523(a)(2)(A) could be obtained by Kate's business partner and still render Kate's debt nondischargeable.

Finally, the Court considered legislative history. The relevant Code section previously read "No debt created by the fraud of embezzlement *of the bankrupt*…shall be discharged under this act." *Id* at 79. The Court reasoned that Congress's amendment to remove "of the bankrupt" conveys its intention that the fraud be open beyond the actions of the fraudster. According to the Court's decision in *Bartenwerfer,* pursuant to §523(a)(2)(A), the critical inquiry for nondischargeability is whether the debt was incurred by fraud, not whether the debtor committed the fraud.

D. **Holding**

The Supreme Court held, in a unanimous decision, that Kate could be liable, as §523(a)(2)(A) hinges on how the fraudulent money was obtained, not on who committed the fraud to obtain it. The Court held that the use of passive voice focuses on events rather than a specific actor. Based on common law, courts have long recognized fraud liability is not limited to the actual wrong doer.

Additionally, the Court found that 523(a)(2)(B) and (C) are limited to culpable actions by the Debtor. When Congress includes particular language in one section but omits it in another, it does so intentionally.

Finally, the Court recognized historically, the applicability of vicarious liability in dischargeability litigation is applicable to 523(a)(2)(A). Invoking its decision in *Strang v. Bradner*, 114 U.S. 555 (1885), it held that a debtor who is liable for her partner's fraud cannot discharge that debt in bankruptcy regardless of her own culpability.

E. **Significance**

Justice Barrett's Opinion does rely on the passive voice used in the Code section. The conclusion that Congress was "agnostic" regarding whose fraud caused the harm seems to pass over the importance of the fresh start.

The Concurrence by Justice Sotomayor highlights the fact that there was an agency relationship between the debtors. Does any quasi-commercial activity between husband and wife create an agency relationship? Some commentors have suggested that aggressive creditors may use this concept to attempt to enlarge the notion of agency relationships, particularly between spouses.

This decision can potentially lead to difficult results for debtors who lack any culpability in the underlying fraud but are otherwise connected to the debt.

Bartenwerfer instructs practitioners that an innocent debtor's discharge can be limited by the fraud of another. To understand the mental culpability required to support the finding of fraud, consider the Supreme Court's decision in *Bullock.*

III. <u>Culpable State of Mind Requirement under 523(a)(4)</u>
***Bullock v. BankChampaign, N.A.*, 569 U.S. 267 (2013)**

A. **Issue**

Is there an applicable mental state required to hold a debt nondischargeable under 523(a)(4) for defalcation while acting as a fiduciary.

B. **Statutory Context**

This case was decided under Section 523(a)(4) of the Bankruptcy Code.

C. **Facts**

Section 523(a)(4) of the Bankruptcy Code provides that any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny" is nondischargeable. The Supreme Court of the United States sought to define "defalcation" in *Bullock v BankChampaign, N.A.* and developed a "culpable state of mind" requirement in the process.

The facts of *Bullock* involved a father who established a trust containing his life insurance policy for the benefit of his five children. The father made his son, petitioner Bullock, the trustee. Bullock, at his father's direction and according to the terms of his father's insurance policy, borrowed money from the trust for the benefit of Bullock and his mother and father. Bullock repaid the trust in full, including interest as set by the insurance company. Nearly 20 years later, Bullock's brothers sued Bullock. The state court held that Bullock had committed a breach of fiduciary duty and imposed constructive trusts with BankChampaign serving as trustee to recover damages. Bullock eventually filed for bankruptcy. BankChampaign opposed the discharge of Bullock's debts to the trust imposed by the state court. The bankruptcy court issued summary judgment in BankChampaign's favor, the Federal District Court affirmed the bankruptcy court, and the Court of Appeals affirmed the District Court. The Supreme Court vacated and remanded based on its heightened culpable state of mind requirement.

D. **Holding**

The central issue in the *Bullock* decision was the definition of "defalcation." Justice Breyer delivered the opinion for the unanimous Court which ultimately elected to treat the term "defalcation" similar to the term "fraud," whereby the definition requires some intentional wrong or reckless conduct. The Court stated, "[W]here the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong. We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as equivalent." *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273 (2013). The Court also provided that "Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary "consciously disregards" (or is willfully blind to) "a substantial and unjustifiable risk" that his conduct will turn out to violate a fiduciary duty." *Id.* citing ALI, Model Penal Code §2.02(2)(c), p. 226 (1985).

To support its holding, the Court undertakes a logic-driven route of analysis. The Court considered the context of 523(a)(4) and defalcation amongst other terms like fraud, embezzlement, and larceny. The court held that all of these neighboring terms require some form of wrongful intent. Further, by requiring defalcation to carry a showing of wrongful intent or recklessness, it would not make the term redundant of its statutory companions. Rather, it differs from the other terms contained in 523(a)(4), as it can encompass breach of fiduciary obligations that do not involve conversion, falsity, or taking another's property. Ultimately, according to *Bullock,* in order to find a debt nondischargeable under 523(a)(4), one must demonstrate that the debtor's wrongful conduct was intentional or was committed with recklessness.

E. **Significance**

The honest but unfortunate debtor enjoys the power of a fresh start. However, not all debts are discharged. Courts have struggled to apply a consistent framework for determining what legal relationships amount to fiduciary capacity, and what behavior is nondischargeable as a fiduciary.

The decision in *Bullock* resolved the split among the Circuit Courts of Appeal on the question of the requisite mental state, if any, and measure of loss that must be established to show defalcation by a trustee sufficient to except related debts from discharge in bankruptcy. The decision in *Bullock* provides a definitive answer to lower courts and fiduciaries with respect to liability arising from their use of trust assets.

Given the standard set by the Supreme Court in *Bullock*, a debtor's credibility will be highly relevant to a discharge determination under 523 (a)(4). Evidence from 341 meetings, deposition testimony under Rule 2004, and other sources will impact the court in determining the requisite state of mind. This analysis will be fact intensive and the debtor’s credibility will be supremely important in the Court’s decision.

While an alleged fraudster’s credibility and mental culpability is relevant under 523(a)(4), the identity of the bad actor is less relevant to courts that apply *Bartenwerfer* to 523(a)(4).

IV. Several courts have held that *Bartenwerfer* applies to Sec. 523(a)(4) as well

Like § 523(a)(2)(A), the language of § 523(a)(4) is agnostic about who the bad actor is. It simply excepts from discharge any debt ‘for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.’ Other courts since *Bartenwerfer* have decided that its rationale applies equally to nondischargeability claims brought under § 523(a)(4). E.g., *In re DeSouza*, Case No.22-40141, 659 B.R. 288, 2024 Bankr. LEXIS 966, 2024 WL 1739536, *8 (Bankr. E.D. Tex., April 23, 2024); *Indus. Dev. Auth. of the town of Front Royal v. Poe* (*In re Poe*), Case No. 21-10048-KHKH, AP No. 21-01032-KHK, 2023 Bankr. LEXIS 1698, 2023 WL 4359972, *5 (Bankr. E.D. Va. July 5, 2023) (‘Thus, following the Supreme Court’s analysis of the statutory construction of 523(a)(2)(A) lead this court to conclude that the fraud exception under 523(a)(4) is not limited to debts obtained by a debtor’s conduct.’). The court agrees with and is persuaded by the reasoning of cases such as *DeSouza* and *Poe*. The discharge exception under § 523(a)(4) may apply to Defendant under the rationale of *Bartenwerfer*, even if he is innocent of any bad acts with respect to Plaintiff, if there was an agency or partnership relationship that would make him vicariously liable under Ohio law
Kuns Northcoast Sec. Ctr. LLC v. Sharp (*In re Sharp*), Nos. 22-30854, 22-03039, 2024 Bankr. LEXIS 1293, at *26-27 (Bankr. N.D. Ohio June 3, 2024).

Bartenwarfer affirmed existing law in the 5th and 11th Circuits, but represents a change for the 7th and 8th circuits, and to some degree in the 6th Circuit. *See, e.g., In re M.M. Winkler & Assoc.*, 239 F. 3d 746, 749 (5th Cir. 2001) (debts that arise from fraud cannot be discharged); *In re Ledford*, 970 F. 2d 1556, 1561 (6th Cir. 1992) (no discharge if the debtor benefited from the fraud); *Sullivan v. Glenn*, 782 F. 3d 378, 381 (7th Cir. 2015) (a debt is nondischargeable only if the debtor knew or should have known of the fraud); *In re Walker*, 726 F. 2d 452, 454 (8th Cir. 1984) (same); In re Villa, 261 F. 3d 1148, 1151 (11th Cir. 2001) (a debt cannot be discharged when fraud is imputed to the debtor under agency principles).

To fully flesh-out the impact of *Bartenwerfer*, we examine the post-*Bartenwerfer* jurisprudence discussing various ways in which a person could become vicariously liable for the fraud of another.

A. **Partnership / Agency**

A concurrence limits the reach of the holding in *Bartenwerfer* to cases where a partnership or agency relationship exists between the debtor and the fraudulent actor. The concurrence stated that:

> The Court here does not confront a situation involving fraud by a person bearing no agency or partnership relationship to the debtor. Instead, '[t]he relevant legal context' concerns fraud only by 'agents' and 'partners within the scope of the partnership.'
>
> *Bartenwerfer* at 677. "This Court therefore understands Bartenwerfer to require the Court to find some form of partnership or agency under state law in order to hold Defendant responsible for the nondischargeable fraud of another under § 523(a)(2)(A)."

Auction Credit Enters., LLC v. Desouza (*In re Desouza*), 659 B.R. 288, 297 (Bankr. E.D. Tex. 2024)

Is *Bartenwerfer* truly confined only to agency / partnership relationships? Some courts have suggested as much.

> Even a finding that Debtors are jointly and severally liable for damages to Plaintiff, in itself, is not enough to show an agency or partnership relationship or that one of the Debtors is vicariously liable for the actions of the other…

Lavender v. Bortz (*In re Bortz*), Nos. 22-33772, 23-3052, 2025 Bankr. LEXIS 1199, at *33 (Bankr. S.D. Tex. May 16, 2025).

B. **Alter ego / Veil piercing**

Other jurisdictions hold that nonshareholders may be liable under an alter ego theory, finding that the veil piercing doctrine is an equitable one that disregards form for substance. See *Buckley v. Abuzir*, 2014 IL App (1st) 130469, 380 Ill. Dec. 624, 8 N.E.3d 1166, 1172 (Ill. App. Ct. 2014) (noting that courts and commentators are split, but explaining that 'our research shows that the majority of jurisdictions addressing this question allow veil-piercing against nonshareholders.'); *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 826 N.W.2d 816, 829 (Minn. Ct. App. 2013) ("[A] district court may pierce the corporate veil to impose personal liability against any party who disregards the corporate form, regardless of whether the party holds an ownership interest in the entity' because 'veil piercing is grounded in equity and intended to prevent abuse of corporate protections." (quoting *Equity Tr. Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339-40 (Minn. Ct. App. 2009))), *rev'd on other grounds*, 844 N.W.2d 210 (Minn. 2014).

The courts that grant a corporate veil piercing remedy to those seeking to hold a nonshareholder liable for corporate debt typically do so only in those cases where the nonshareholder dominates or controls the corporation. For example, in *Gieseke*, the court found that the sole shareholder knew very little about the corporation, its shares, revenue or financing of its business. *Gieseke*, 826 N.W.2d at 830. Instead, the shareholder's husband (a nonowner) ran the corporation, using it as a façade for the individual dealings of the husband and his shareholder wife. Id. Consequently, the court pierced the corporate veil and held both personally liable for the

corporation's conversion and tortious interference. Id. Similarly, in Buckley, the court observed that 'those jurisdictions that allow veil-piercing against nonshareholders have not required that the nonshareholder hold other formal roles within the corporation—for instance, as an officer, director, or employee—but rather abandon such formalism in favor of an equitable approach focusing on the individual's domination of the corporation.' *Buckley*, 8 N.E.3d at 1172 (emphasis added); *see also Freeman v. Complex Computing Co.*, 119 F.3d 1044, 1051 (2d Cir. 1997) (finding a nonshareholder may be the equitable owner of a corporation where he exercises considerable authority over the corporation and completely disregards the corporate form); *Roohan v. First Guar. Mortg., LLC*, 97 A.D.3d 891, 891, 948 N.Y.S.2d 200 (N.Y. App. Div. 2012) ('A nonowner, however, may be held liable for a corporation's torts if he or she 'dominated and controlled [it] to such an extent that [he or she] may be considered its equitable owner[ ]" (alterations in original) (*quoting Guilder v. Corinth Constr. Corp.*, 235 A.D.2d 619, 651 N.Y.S.2d 706 (N.Y. App. Div. 1997))); *Shamis v. Ambassador Factors Corp.*, 34 F. Supp. 2d 879, 900 (S.D.N.Y. 1999) ('[A] nonshareholder defendant may be, 'in reality,' the equitable owner of a corporation where the nonshareholder defendant 'exercise[s] considerable authority over [the corporation] ... to the point of completely disregarding the corporate form and acting as though [its] assets [are] his alone to manage and distribute.'' (alterations in original) (*quoting Lally v. Catskill Airways Inc.*, 198 A.D.2d 643, 645, 603 N.Y.S.2d 619 (N.Y. App. Div. 1993))); *Fairfield Dev., Inc. v. Georgetown Woods Senior Apartments Ltd. P'ship*, 768 N.E.2d 463, 473 (Ind. Ct. App. 2002) (holding a nonshareholder defendant liable because he was a 'principal figure' in the corporation's dealings with the plaintiff); *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 840 N.E.2d 767, 777, 298 Ill. Dec. 654 (Ill. App. Ct. 2005) ('The basis of our holding in *Macaluso* for imposing the liability of the corporation upon the nonshareholder defendant were his exercise of ownership control over the corporation such that their separate personalities did not exist and that the corporation was a business conduit of the defendant.' (*citing Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 420 N.E.2d 251, 255-56, 50 Ill. Dec. 934 (Ill. App. Ct. 1981))).
Messiahic, Inc. v. Glasser (*In re Glasser*), 664 B.R. 265, 301-02 (Bankr. D.N.D. 2024).

C. **Conspiracy**

Bartenwerfer … instructs the Court to ask if the debtors are liable for these debts under applicable law, without considering whether the debtors themselves actually committed the fraudulent acts. … Thus, under *Bartenwerfer*, the Defendants' joint debts to the Plaintiff for civil conspiracy are clearly excepted from their chapter 7 bankruptcy discharges.

Panjwani v. Khan (*In re Khan*), 652 B.R. 552, 564 (Bankr. S.D. Fla. 2023).

D. **Guaranty (contractual)**

As noted above, the *Bortz* and *Desouza* courts suggested that *Bartenwarfer* is confined to agency / partnership relationships, which by inference would excluded contractual guarantees as a basis for 523(a)(2) liability.

The *Bartenwarfer* decision itself suggests that a guarantor or surety may have a defense if she was 'duped' into becoming secondarily liable:

> If a surety or guarantor is duped into assuming secondary liability, then his obligation is typically voidable. *Law of Suretyship and Guaranty* § 6:8 (2022); *Restatement (Third) of Suretyship & Guaranty* §12 (1996).

Bartenwerfer v. Buckley, 598 U.S. 69, 82, 143 S. Ct. 665, 676, 214 L.Ed.2d 434, 446 (2023).

But a closer look at the Restatement reveals that those defenses are only available if the obligee (creditor) is responsible for misrepresentations. Moreover, most guarantees include language shifting the responsibility for investigating the representations of the principal obligor to the guarantor.

Consider the expansive definition of 'indebtedness' that could include claims that would be nondischargeable under 523(a)(2) and (a)(4):

> CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. Under this Guaranty, Guarantor's liability is unlimited, and Guarantor's obligations are continuing.
> INDEBTEDNESS. The word 'Indebtedness' as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. 'Indebtedness' includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES.

Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender during its relationship with Borrower.

In order to appreciate Bartenwerfer's application it is helpful to compare the decision to the Court's Opinion.

E. **Unjust Enrichment**

> [A] valid claim for unjust enrichment requires that the plaintiff prove that a benefit was conferred "upon an opposing party and that retention of that benefit would be unjust." *Porter v. Hu*, 116 Haw. 42, 55, 169 P.3d 994 (Haw. 2007) (*quoting Durette v. Aloha Plastic Recyling, Inc.*, 105 Haw, 490, 504, 100 P.3d 60 (2004)). This equitable remedy is invoked only when there is no adequate remedy at law. *Id*. "A person that has been unjustly enriched at the expense of another is expected to make restitution to the other." *Durette*., 105 Haw. at 502 (Haw. 2004) (*quoting Restatement of Restitution* § 1 comment b (1937).

Ponce v. Csigi (*In re Csigi*), Nos. 23-00617, 23-90019, 2024 Bankr. LEXIS 3026, at *6 (Bankr. D. Haw. Dec. 17, 2024)

> Steven does not deny that he benefitted from Marylin's misappropriation of the trust's money. The trust paid to settle claims that could have destroyed the business that he and Marylin owned, to buy a vehicle in his name, and to renovate and expand the home which he, Marylin, and their children owned and occupied. It would be unjust for Steven to retain that benefit. If one asks [*7] whether Steven or the trust should have the benefit of the money that Marylin misappropriated, the answer is easy: the trust should have the money and Steven should not. Therefore, I will grant summary judgment on the portion of Count VIII claiming that Steven is liable to Villia for unjust enrichment.

Id., at *6-7.

> [I]n this case Steven owes a debt (under the unjust enrichment theory) that is "for" Marylin's fiduciary defalcation.
> Therefore, I will grant Villia's motion as to the portion of Count IV alleging that Steven's liability is not dischargeable by virtue of § 523(a)(4).

Id., at *12

Courts have considered the various legal routes for a person to become vicariously liable for the fraud or wrongdoing of another. These doctrines may lead to difficult results for the "honest but unfortunate debtor." If the debts of an "honest" debtor may be found nondischargeable, it follows that the debts of a less than honest debtor may be nondischargeable. Debt incurred by the willful and malicious debtor is certainly ripe for nondischargeability litigation.

V. <u>Willful and Malicious Requirements for Discharge under 523(a)(6)</u>
***In re Smith,* 2004 Bank. LEXIS 2035, *1.**

Section 523(a)(6) provides that debt incurred "for willful and malicious injury by the debtor to another entity or to the property of another entity" is nondischargeable. A Pennsylvania bankruptcy court provides useful guidance on the intent required for nondischargeability under §523(a)(6). The Court held that nondischargeability under §523(a)(6) requires a showing that the debt was incurred by actions that were both willful and malicious.

The facts of *In re Smith* involve a small business High Performance Gymnastics Training Center, LLC which borrowed money from Home Run Capital, LLC, which was underwritten by Kapitus Servicing, Inc. The Debtor, as the principal of High Performance entered into a Factoring Agreement with Home Run Capital and Kapitus as the Authorized Sub-Servicing Agent. By the terms of the Factoring Agreement, Home Run Capital agreed to provide High Performance with a cash advance of $62,600.00. In exchange, High Performance agreed to sell its future account receivables to Home Run Capital until a total of $83,884.00 was paid. The Debtor also executed a Guaranty Agreement as an individual and as the principal of High Performance to secure the Factoring Agreement.

Sometime during or around this transaction, Kapitus contacted High Performance. Debtor disclosed to Kapitus several statements that ultimately were not true, including debtor's intention to avoid selling his business, Debtor's intention to avoid bankruptcy, that debtor did not have any other funding source taking payments on less than a monthly basis, etc. Based on debtor's answers, Kapitus advanced the payment to High Performance. High Performance ultimately seized payments to Kapitus. In June 2019, Kapitus successfully sued High Performance and Debtor and was awarded $81,893.00 plus interest and attorney fees in damages. In September 2020, High Performance shut down, and in November 2020 Debtor filed for bankruptcy relief. Kapitus initiated an adversary proceeding to prevent discharge of Debtor's judgment debts pursuant to §523(a)(6).

The Court found that there is an intent requirement under §523(a)(6). The Court held that "[t]o succeed on a §523(a)(6) claim, the Plaintiff must prove by a preponderance of the evidence that the injury to the Plaintiff was both willful and malicious." *In re Smith,* 2024 Bankr. LEXIS 2035, *18. The Court defined "willful" as "a deliberate or intentional injury, not just a deliberate or intentional act that leads to injury." *Id.* The Court defined "malicious" as "actions that are wrongful and without just cause or excuse…a debtor may act with malice without bearing any subjective ill will toward the creditor or any specific intent to injure the same." *Id.*

The Court found that the Debtor converted the property of another by directing his bank to seize automatic payments to Kapitus. Further, Debtor transferred sums of money from his business account to his personal account instead of paying his debt owed to Kapitus. Taken together, the Court held that the Debtor's actions were intentionally willful and malicious, and therefore were nondischargeable pursuant to §523(a)(6).

Typically, in a chapter 13 case, a chapter 13 debtor obtains a discharge pursuant to § 1328(a) after completion of all plan payments. A discharge under § 1328(a) is broader than that available to a debtor in chapter 7 under § 727(a), because chapter 13 allows a debtor to discharge certain claims that § 523(a) would make potentially nondischargeable in chapter 7. *Compare* 11 U.S.C. § 1328(a), *with* 11 U.S.C. § 727; *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 268 (2010) (explaining a chapter 13 discharge "is broader than the discharge received in any other chapter."). Specifically, claims under the § 523(a)(6) exception to discharge for willful and malicious injury are not one of categories of claims excepted from a chapter 13 discharge under § 1328(a). *See* 11 U.S.C. § 1328(a)(2).

However, this chapter 13 power is not without limits. In chapter 13, § 523(a)(6) may still become relevant if a debtor seeks a hardship discharge under § 1328(b). *See* 11 U.S.C. § 1328(c). Bankruptcy Rule 4007(d) protects a creditor who may wish to pursue a 523(a)(6) claim when a chapter 13 debtor seeks a hardship discharge. The rule provides that upon the filing of a hardship discharge motion, the court shall enter an order providing no less than 30 days' notice of a deadline to file a 523(a)(6) complaint. Fed. R. Bankr. P. 4007. This deadline may be extended for cause. This rule gives creditors an opportunity to file an adversary for any 523(a)(6) claims that would have otherwise been prevented under chapter 13.

Similarly, creditors may also get another bite at the apple if a chapter 13 debtor converts a case from chapter 13 to chapter 7. Bankruptcy Rule 1019 provides for new filing periods for deadlines set in Bankruptcy Rule 4007 in situations where a case is converted to chapter 7, providing in relevant part:

> When a ... chapter 13 case has been converted or reconverted to a chapter 7 case: ... A new time period for filing ... a complaint to obtain a determination of dischargeability of any debt shall commence under Rule[] ... 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter .. . 13 case and thereafter reconverted to a chapter 7 case and the time for filing ... a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

Fed. R. Bank. P. 1019(2)(A).

The prohibition in the rule to a new filing deadline in reconverted cases is intended to avoid providing a second deadline to parties who had a full opportunity to file a complaint in the initial chapter 7 case.

This restriction concerns parties who had the opportunity to initiate a complaint, but did not do so in the time permitted. What if a party files a complaint in the time frame permitted, but seeks to litigate facts or issues that were subject to a prior proceeding or judgment? In these instances, the party may be barred from litigation under a preclusion doctrine.

VI. <u>Preclusion</u>

There are three tools that practitioners can employ to avoid re-litigation of certain facts and issues that were established in prior proceedings. The tools for avoiding re-litigation are commonly known as *res judicata*, collateral estoppel, and judicial estoppel. First, *res judicata*, also known as claim preclusion, precludes the subsequent litigation of any claims which could have been raised in the first proceeding. Second, collateral estoppel, also known as issue preclusion, bars the re-litigation of only those issues that were decided in the earlier proceeding. Finally, judicial estoppel is an equitable concept providing that a party who prevails on one ground in a lawsuit may not in another lawsuit repudiate that ground. Each of the doctrines aim to relieve the cost and vexation of multiple lawsuits, conserve judicial resources, prevent inconsistent decisions, and encourage reliance on adjudication. More importantly, they can be critical tools in avoiding protracted litigation on facts and issues that have already been established in previous litigation between the parties or their privies.

A. **Res Judicata/Claim Preclusion**

Under *res judicata*, "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *Bragg v. Flint Bd of Ed*, 570 F.3d 775, 776 (6th Cir. 2009). In order for *res judicata* to apply, the proponent must prove the following four elements: (1) A final decision on the merits in the first action by a court of competent jurisdiction; (2) The second action involves the same parties, or their privies, as the first action; (3) The second action raises an issue actually litigated or which should have been litigated in the first action; and (4) An identity of the causes of action. *Autumn Wind Lending, LLC v. Est. of Siegel*, 92 F.4th 630, 634 (6th Cir., 2024), quoting *Sanders Confectionery Prod v. Heller Fin., Inc.*, 973 F2d 474, 480 (6th Cir., 1992).

1. <u>The elements</u>

a. A final decision on the merits - In order for a decision to be final, it must be final and appealable. In order for a judgment to be final and appealable, "[t]he order need not dispose of all the issues presented by the pleadings," but "[i]t must be final in the sense that it disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." *In re Walker*, 232 B.R. 725, 733 (Bankr. N.D. Ill. 1999) (citations and quotations omitted). When a judgment has been vacated, reversed, or set aside on appeal, it is thereby deprived of all conclusive effect, both as *res judicata* and as collateral estoppel. *State v. Baron*, 156 Ohio App. 3d 241, 249, 2004 Ohio 747, 805 N.E.2d 173 (Ohio Ct. App. 2004) Until such time as a decision is made on appeal, however, a final judgment retains its preclusive effect.

b. The same parties or their privies - Determining whether the same parties are before the court in the second proceeding is normally a simple analysis. However, whether a party is in privity can be more complex. Privity means a successor in interest to the party, one who controlled the earlier action, or one whose interests were adequately represented. *Latham v. Wells Fargo Bank, N.A.*, 896 F.2d 979 (5th Cir. 1990). In determining whether there is privity or not, the court may examine the following factors: "the extent of control the party in the second lawsuit exerted over the first lawsuit in which he was not a named party; the existence of 'deliberate maneuvering' to avoid the effects of the judgment entered in the first lawsuit; the 'close relationship between the parties;' and 'whether the prior relationship justifies binding the nonparty to the prior judgment." *In re Kmart Corp*, 362 B.R. 361, 380 (Bankr. N.D. Ill., 2007).

c. The issue was actually litigated or should have been litigated. - This element requires that "[t]he second action raises an issue actually litigated or which should have been litigated in the first action." *Autumn Wind Lending, LLC v. Est. of Siegel*, 92 F.4th 630, 634-35 (6th Cir., 2024). "An issue is actually litigated when it 'is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined.'" *In re Leonard*, 644 F. App'x 612, 616 (6th Cir. 2016) (quoting Restatement (Second) of Judgments § 27 cmt. d (Am. L. Inst. 1982)). A stipulated dismissal will not normally amount to the issue being "actually litigated." *See, e.g. Green v. Nevers*, 111 F.3d 1295, 1301 (6th Cir. 1997)) (highlighting that stipulations of dismissal are "self-executing and do not require judicial approval"); *see also Levi Strauss Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1372-73 (Fed. Cir. 2013) (noting that a stipulated dismissal with prejudice counts as an adjudication on the merits but does not count as the actual litigation of any issue).

d. Identity of the causes of action - The identity of the causes of action requires that the claims arose out of the same series of transactions or the same core of operative facts. *Browning v. Levy*, 283 F.3d 761, 773-74 (6th Cir. 2002); see also *United States v. Tohono O'Odham Nation*, 563 U.S. 307, 316, 131 S. Ct. 1723, 179 L. Ed. 2d 723 (2011) ("The now-accepted test in preclusion law for determining whether two suits involve the same claim or cause of action depends on factual overlap, barring claims arising from the same transaction." (quotation marks omitted)). "Where two successive suits seek recovery for the same injury, a judgment on the merits operates as a bar to the later suit, even though a different legal theory of recovery is advanced in the second suit." *Cemer v. Marathon Oil Co.*, 583 F.2d 830, 832 (6th Cir. 1978).

2. <u>Rational for Doctrine</u>

Courts apply the doctrine of res judicata to promote the finality of judgments, which in turn increases certainty, discourages multiple litigation and conserves judicial resources. See *Federated Department Stores v. Moitie*, 452 U.S. 394, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981). Res judicata is a broader in scope than collateral estoppel because *res judicata* forecloses all that might have been previously litigated, whereas collateral estoppel treats as final only those questions actually and necessarily decided in a prior suit. *Montana v. United States*, 440 U.S. 147, 153 (1979).

3. <u>Example Bankruptcy Cases</u>

Vizachero v Brazieka (In re Brazieka), ___BR___, Adv. Pro. No. 16-04839, 2017 Bankr LEXIS 558, at *1 (Bankr. E.D. Mich. Mar. 1, 2017) (finding that the Debtor's admissions were sufficient for the creditor to have obtained summary disposition in state court on her claim that debtor fraudulently obtained money from her. Accordingly, the bankruptcy court could give res judicata effect to the state court consent judgment).

Baermann v Ryan (In re Ryan), 408 B.R. 143, 164 (Bankr. N.D. Ill. 2009) (The court ruled that there was not "an identity of the causes of action," because "[a] claim under § 523(a)(2)(A) of the Bankruptcy Code is not identical to a claim for fraud under Illinois law or a claim under the Illinois Residential Real Property Disclosure Act."

Stoughton Lumber Co v Sveum (In re Sveum), ___BR___, Bankr. No. 12-15483, Adv. No. 13-2, 2013 Bankr. LEXIS 2761, at *12 (Bankr. W.D. Wis. July 8, 2013) (finding that the creditor's claim was not barred by res judicata. "While the state court judgment dismissed the theft by contractor claims on the merits, the settlement debt may still have arisen out of fraud or defalcation in a fiduciary capacity.").

B. **Collateral Estoppel/Issue Preclusion**

The doctrine of collateral estoppel precludes re-litigation of issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to the judgment, even if decided as part of a different claim or cause of action. *In re Markowitz*, 190 F.3d at 461 (quoting *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992)). Collateral estoppel is available whether or not the second action involves a new claim or cause of action. 18 Fed. Prac. & Proc. Juris. § 4416 (3d ed.). The decision of whether to apply collateral estoppel is within the discretion of the court, and application of the doctrine is determined on a case-by-case basis.

For a proponent of collateral estoppel to prevail, the proponent must prove the following elements:

> (1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation, (2) the issue was actually litigated and decided in the prior action, (3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation, (4) the party to be estopped was a party to the prior litigation (or in privity with such a party), and (5) the party to be estopped had a full and fair opportunity to litigate the issue. [*Wolfe v. Perry*, 412 F.3d 707, 716 (6th Cir. 2005) (citing *Santana—Albarran v. Ashcroft*, 393 F.3d 699, 704 (6th Cir. 2005)).]

To determine whether these five elements are met, bankruptcy courts "look at the entire record of the [prior] proceeding, not just the judgment." *Trost v. Trost*, 735 F. App'x 875, 879 (6th Cir. 2018).

1. <u>The Elements</u>

a. The issue is identical - In order for collateral estoppel to be applicable, the issues in the two proceedings must be identical. Stated differently, there must be a factual finding on the issue involved in the prior proceeding. Where multiple claims possibly form the basis of a judgment and the trial court does not specify the basis for its decision, none of the claims are necessary to the judgment for the purpose of collateral estoppel. *Massengill v. Scott*, 738 S.W.2d 629, 632 (Tenn. 1987) (rejecting the application of collateral estoppel in an action involving multiple claims because the jury returned a general verdict); *see also TruPoint Bank v. Clark (In re Clark)*, No. 08-50899, 2009 Bankr. LEXIS 611, 2009 WL 693164, at *4 (Bankr. E.D. Tenn. Mar. 11, 2009) (rejecting the application of collateral estoppel to a state-court judgment that "d[id] not set forth any findings of fact and conclusions of law and d[id] not otherwise indicate upon which of the various causes of action the [plaintiff] was being granted judgment"). Accordingly, there needs to be some specific findings of facts and conclusions of law before collateral estoppel can be applied.

b. Actually litigated - In addition to establishing identical issues, the proponent must demonstrate that the issue was "actually litigated." Whether an issue is "actually litigated" depends upon the parties' participation in the first proceeding. Generally, courts have applied collateral estoppel if a party substantially participated in the litigation prior to the entry of a judgment. For example, a default judgment entered without any participation from a defendant is not sufficient to meet the "actually litigated" standard. *See Vogel v. Kalita (In re Kalita)*, 202 B.R. 889, 913 (Bankr. W.D. Mich. 1996); *but see Davis v. Tuggle's Adm'r*, 297 Ky. 376, 178 S.W.2d 979, 981 (Ky. 1944) ("The fact that no defense was offered in the suit . . . cannot make any difference, for the rule as to the conclusiveness of judgments applies to a judgment by default . . . ."). On the other hand, a default judgment entered as part of a discovery sanction or after a party has responded to a complaint will likely meet the "actually litigated" standard. See *Leonard v. RDLG*, LLC, 529 B.R. 239, 247 (E.D. Tenn, 2015); see also *Phillips v. Weissert (In re Phillips),* 434 B.R. 475, 486 (BAP 6th Cir, 2010). Additionally, disposition of a case on summary judgment grounds meets the "actually litigated" requirement of the issue preclusion test. *Nat'l Acceptance Co v Bathalter*, ___BR___, No. 91-3128 1991 U.S. App. LEXIS 29787, at *7 (CA 6, Dec. 9, 1991). To meet this element, the party must have participated in some meaningful way in the first proceeding for a proponent to establish that the issue was "actually litigated." In *Fliss v. Generation Capital I, LLC*, the Seventh Circuit affirmed the bankruptcy court's sustaining of the debtor's claim objection where a state court consent judgment and order stating that the debt was still owed had limited preclusive effect. 87 F.4th 348, 355 (7th Cir. 2023).

c. The issue must be necessarily decided - Issue preclusion attaches only to determinations that were necessary to support the judgment entered in the first action. All alternative, independent grounds upon which a court may base its decision qualify as "necessary" to the court's judgment. *Winters v. Lavine*, 574 F.2d 46, 66-69 (2d Cir. 1978); *Williams v. Ward*, 556 F.2d 1143, 1154 (2d Cir. 1977); *General Dynamics Corp. v. AT&T*, 650 F. Supp. 1274, 1285 (N.D. Ill. 1986). An exception to this rule occurs when a court's judgment order could be based upon one of several alternative grounds that are not expressly relied upon or enumerated in the court's opinion. *Gilldorn Savings Asso v Commerce Savings Asso*, 804 F.2d 390, 395 (7th Cir. 1986). In order to meet this element, the issue must be necessary and essential to a judgment on the merits in the prior litigation.

d. The same party or in privity - In addition to the elements discussed *supra*, the proponent must demonstrate that the same party is involved in the second litigation or privity exists. "The term 'privity' signifies that the relationship between two or more persons is such that a judgment involving one of them may justly be conclusive upon the others, although those others were not party to the lawsuit." *Gill and Duffus Servs., Inc. v. A.M. Nural Islam*, 675 F.2d 404, 405, 218 U.S. App. D.C. 385 (D.C. Cir. 1982). As such, "'[a] privy is one [who is] so identified in interest with a party to the former litigation that he or she represents precisely the same legal right in respect to the subject matter of the case.'" *Herrion v. Children's Hosp. Nat'l Med. Ctr.*, 786 F. Supp. 2d 359, 371 (D.D.C. 2011). This element is generally easy to demonstrate if the same parties are involved in the second action.

e. Full and fair opportunity to litigate - The fifth element requires that the party in the prior proceeding had a full and fair opportunity to litigate. "[A] full and fair opportunity to litigate entails . . . the procedure requirements of due process." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 483 n. 24, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982). "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." *Id.* at 481. "In the end, [the] decision will necessarily rest on the trial court's sense of justice and equity." *Blonder-Tongue Labs., Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 334, 91 S. Ct. 1434, 28 L. Ed. 2d 788, (1971). Normally, if the Court finds that the issue was "actually litigated", the Court will also find that the party had a full and fair opportunity to litigate.

2. Rationale and Doctrine

The doctrine of collateral estoppel is a judicially created doctrine that serves the dual purpose of protecting parties from relitigating identical issues with the same party or a person in privity and promoting judicial economy by preventing needless litigation. The doctrine prevents legal harassment and the overuse or abuse of judicial resources.

3. Example Bankruptcy Cases

In re Phillips, 500 B.R. 570 (B.A.P. 8th Cir. 2013) (confirming bankruptcy court's grant of preclusive effect to Minnesota state court's order regarding ownership of assets and issue under collateral estoppel).

In re Bullard, 449 B.R. 379 (B.A.P. 8th Cir. 2011) (finding collateral estoppel did not apply due to lack of record on adjudication of underlying civil battery claim in state court).

C. **Judicial Estoppel**

The doctrine of judicial estoppel bars a party from (1) asserting a position that is contrary to one that the party has asserted under oath in a prior proceeding, where (2) the prior court adopted the contrary position either as a preliminary matter or as part of a final disposition. *Browning v. Levy*, 283 F.3d 761, 775 (6th Cir., 2002) (citations and quotations omitted). The doctrine of judicial estoppel is utilized in order to preserve "the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship." *Id.* at 726. Judicial estoppel is strong medicine, however, and it should not be used where it would "work an injustice, such as where the former position was the product of inadvertence or mistake." *Fairchild v. Touchtunes Music Corp.*, ___F. Supp. 2d___; 2002 U.S. Dist. LEXIS 24139, at *5 (N.D. Ill. Dec. 12, 2002). "Judicial estoppel is a matter of equitable judgment and discretion." *In re Knight-Celotex, LLC*, 695 F.3d 714, 721 (7th Cir. 2012). "Doctrines such as law of the case or judicial estoppel, *see* In re Hovis, 356 F.3d 820 (7th Cir. 2004), may be waived or forfeited, as may rules such as claim or issue preclusion." *Matter of Terrell*, 39 F.4th 888, 891 (7th Cir. 2022).

1. <u>The Elements</u>

a. Prior inconsistent statement - The doctrine "only applies when the positions at issue are clearly contradictory and the estopped party's conduct involves more than mistake or inadvertence." *Audio Technica US, Inc. v. United States*, 963 F.3d 569, 575 (6th Cir. 2020). Additionally, the statements must be made "under oath." See *Id.* The "under oath" requirement is met when a party previously asserted an inconsistent position in a written filing and argued the motion on the merits before the court. *Shufeldt v. Baker, Donelson, Bearman, Caldwell & Berkowitz, Prof. Corp.*, 855 F. App'x 239, 245 (6th Cir., 2021) Settlements and alternative pleadings will not satisfy this prong. See e.g. *Audio Technica US, Inc. v United States*, 963 F.3d 569, 576 (6th Cir. 2020) ("Settlements, even in the form of an agreed order, ordinarily do not constitute judicial acceptance of whatever terms they contain.").

b. Judicial acceptance - Judicial acceptance "means only that the first court has adopted the position urged by the party, either as a preliminary matter or as part of a final disposition." *Teledyne Indus, Inc. v NLRB*, 911 F.2d 1214, 1218 (6th Cir. 1990) (quoting Edwards, 690 F.2d at 599 n.5). In order to satisfy this element, the underlying court must have accepted the position to the detriment of the opposing party. *See Kelly v. Herrell*, No. 21-2442, No. 21-2443, 2022 WL 17851675, at *2-4 (7th Cir. Dec. 22, 2022) (holding that judicial estoppel did not apply when the United States Trustee sought an order that a third party abandoned a property sale and later withdrew its motion).

2. <u>Rationale</u>

The purpose of the doctrine is to protect the integrity of the judiciary by preventing a party from convincing two different courts of contradictory positions, which would mean that one of those two courts was deceived. For this reason, courts will typically apply judicial estoppel only where "the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled." *Audio Technica US, Inc. v. United States*, 963 F.3d 569, 575 (6th Cir. 2020).

VII. <u>Conclusion</u>

The Supreme Court's decision in *Bartenwerfer v. Buckley* marks a shift in bankruptcy law by holding that debts incurred through fraud are nondischargeable under §523(a)(2)(A), even if the debtor was unaware of or uninvolved in the fraudulent conduct. This interpretation, grounded in the statute's passive language and common law principles, emphasizes the nature of the debt over the debtor's intent. As a result, liability can be imputed through agency, partnership, or other legal relationships, potentially limiting the protections traditionally afforded to innocent debtors.

Post-*Bartenwerfer* case law has extended its rationale to various legal theories—such as conspiracy, veil-piercing, and unjust enrichment—broadening the scope of nondischargeability. While this trend strengthens creditor protections, it also raises concerns about fairness and the erosion of the "fresh start" principle for debtors who may be held liable for the actions of others.

Ultimately, these developments underscore the importance of understanding both applicable non-bankruptcy law and the legal relationships involved in each case. Practitioners must be vigilant in assessing potential vicarious liability and the evidentiary standards required to support or defend against nondischargeability claims.

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