AMERICAN BANKRUPTCY INSTITUTE

2019 Alexander L. Paskay Memorial Bankruptcy Seminar

CONCURRENT SESSION

Consumer Session

Discharge and the Automatic Stay

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Bankruptcy Basics: The Automatic Stay and Discharge Injunction

I. Introduction

The following is an overview of two key aspects of bankruptcy: the automatic stay and the discharge injunction.[1]

The following materials cover the basics of the bankruptcy automatic stay and discharge injunction. The materials first discuss the scope of the automatic stay, the co-debtor stay, and stay violations and remedies afforded to debtors. The materials then discuss discharge injunction violations and remedies, including punitive damages and class claims, and loan modifications after discharge.

II. The Automatic Stay

A Basics of the Automatic Stay

The automatic stay becomes effective upon the filing of a bankruptcy. The stay provides the debtor with "breathing room" to reorganize its financial affairs by prohibiting creditors from seeking to, among other things, collect on a debt that arose prior to the bankruptcy filing. The stay also prohibits any act to obtain possession of or exercise control over property of the bankruptcy estate and any act to create, perfect, or enforce any lien against property of the estate.[2]

The automatic stay remains in place, assuming relief is not sought to lift the stay, until the earlier of the time the case is closed, dismissed, or discharge is granted. Therefore, a creditor is limited in the actions that can be taken in bankruptcy while the automatic stay is in place.

B The Co-Debtor Stay

In a Chapter 13 bankruptcy, the stay extends to any actions against "any individual that is liable on such a debt with the debtor," such as a co-maker, as long as the debt at issue is a consumer debt that was not incurred by the co-maker in the ordinary course of business and the chapter 13 case remains open and is not converted to a chapter 7 or 11.[3] This stay is referred to as the co-debtor stay.

For example, if a son leases a car (for consumer, non-business purposes) and his father signs as a co-lessee, the father would be protected from collection activities if his son filed a chapter 13 bankruptcy as long as the case remains open and is not converted to another chapter. It does not matter whether the father and son live in the same household, the key is that the father is liable under the lease with his son, the debtor. In that case, collection activities

[1] 11 U.S.C. §§ 363(automatic stay), 524 (discharge injunction).
[2] *See*, *e.g.*, *Laboy v. Doral Mortg. Corp. (In re Vazquez Laboy)*, 647 F.3d 367 (1st Cir. 2011)(holding that mortgage company willfully violated the automatic stay by recording a mortgage post-petition and with knowledge of bankruptcy filing).
[3] 11 U.S.C. § 1301.

cannot be taken against the father unless the son's chapter 13 case is dismissed or converted to a chapter 7 or 11, or the creditor seeks to lift the co-debtor stay and such relief is granted.[4]

There is no similar co-debtor stay in a chapter 7 case. Therefore, once a chapter 7 case is filed, the debtor is protected by the automatic stay, but co-makers do not have any protection as they do in a chapter 13 case.

C Lifting the Stay

A creditor can move to lift the automatic stay for cause or because there is a lack of equity in the property and the property is not necessary for an effective reorganization.[5] A creditor can also seek relief from the co-debtor stay if, among other things, the debtor's plan does not propose to pay the creditor's claim.[6]

If the Court lifts the automatic stay as to the collateral, it is not lifted as to the debtor and/or the other property of the estate, such as post-petition income. Therefore, any action to "obtain possession" of post-petition income (for example, setting up a payment plan or receiving payments from the debtor) could be deemed a violation of the automatic stay. Typically, an order granting relief from the stay will allow the creditor to pursue state law remedies against the collateral and it is best to also include a statement that the creditor can contact the debtor regarding the collateral and the loan (to recover possession, for purposes of filing a lawsuit to foreclose if in a judicial foreclosure state, etc.). However, the contact with the debtor contemplated by the order lifting the stay is regarding the foreclosure and/or sale of the collateral, not to set up a payment plan and/or allow the debtor to bring the default current.

D Particular Issues Related to the Scope of the Stay

Not all actions that intuitively appear to violate the stay actually do. For instance, the SEC or FTC are often allowed to continue with an asset freeze under the police power exception.[7] Even more so, the SEC or FTC can often force a debtor to pay disogorgement amounts due post-petition as the stay may not prevent a district court from enforcing orders through contempt. [8]

E Remedies for Stay Violations

A creditor that willfully violates the automatic stay is subject to sanctions.[9] Willfulness requires that the offending party be aware of the stay and took intentional actions that violated stay.[10] Note, however, that a debtor has the duty to mitigate damages caused by an alleged stay

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[4] 11 U.S.C. § 1301(c).
[5] 11 U.S.C. § 362(d).
[6] 11 U.S.C. § 1301(c); *see*, *e.g.*, *In re Jackson*, No. AP 15-80277, 2016 WL 1211278 (Bankr. W.D. Mich. Mar. 25, 2016), *aff'd*, No. 1:16-CV-369, 2017 WL 3981109 (W.D. Mich. Sept. 10, 2017), *appeal dismissed*, No. 17-2182, 2018 WL 1633702 (6th Cir. Mar. 30, 2018) (describing grant of stay where there was no equity in the property and the collateral, a residence, was not needed for an effective reorganization).
[7] *SEC v. Miller*, 808 F.3d 623, 637 (2d Cir. 2015).
[8] *FTC v. BlueHippo Funding, LLC*, 2017 U.S. Dist. LEXIS 45500, at *11 (S.D.N.Y. Mar. 28, 2017).
[9] 11 U.S.C. § 362(k).
[10] *In re Hancock*, No. 10-20804, 2018 WL 3203383, at *3 (Bankr. N.D. Ohio June 28, 2018).

violation.[11] Allegations of a stay violation are brought through a contempt motion filed in the bankruptcy court. Permissible sanctions include actual and punitive damages.

1. Actual Damages

Actual damages for stay violations are generally limited to attorneys' fees and costs, but can include emotional distress damages. A debtor bears the burden of proving the emotional injury, and "hurt feelings, anger and frustration are part of life, and are not the types of emotional harm that could support an award of damages."[12] However, corroborating medical evidence is not always required to prove emotional injury resulting from an automatic stay violation.[13]

2. Punitive Damages

Punitive damages for stay violations are permitted by statute in "appropriate circumstances."[14] Punitive damages are typically limited to cases where the court finds egregious, vindictive, or malicious conduct, or where the court wants to deter future behavior.[15] Moreover, some courts have permitted punitive damages for automatic stay violations not involving an individual debtor.[16]

***Thompson v. Gen. Motors Acceptance Corp., LLC*, 566 F.3d 699 (7th Cir. 2009)**	
Facts	
Chapter 13 debtor moved for sanctions against secured creditor which repossessed the debtor's vehicle prepetition. The creditor refused to return the vehicle when the debtor filed for bankruptcy.	
Argument	
Debtor Debtor argues that the creditor was obligated to return the vehicle immediately upon notification of the bankruptcy filing and that failure to do so violated the automatic stay.	*Lender* The lender asserted that it should have to relinquish possession of the vehicle because the debtor could not adequately protect the lender's interests.

[11] *In re Phillips*, No. 3:15-BK-30632-SHB, 2015 WL 4256641 (Bankr. E.D. Tenn. July 13, 2015) (noting that motion for contempt could have been avoided if debtors or their counsel had informed creditor of the debtors' bankruptcy).
[12] *Springer v. RNBJ RTO LLC* (*In re Springer)*, No. 15-33254, 2017 WL 3575859, at *4 (Bankr. W.D. Ky. Aug. 16, 2017) (citation omitted) (denying emotional injury award where debtor testified that while phone call she received at work was embarrassing, she could not say that anyone at the office overheard her conversation and debtor had not sought medical treatment for any emotional troubles).
[13] *Lansaw v. Zokaites (In re Lansaw)*, 853 F.3d 657, 669 (3d Cir. 2017), *cert. denied sub nom. Zokaites v. Lansaw*, 138 S. Ct. 1001, 200 L. Ed. 2d 253 (2018) ("[A]t least where a stay violation is patently egregious, a claimant's credible testimony alone can be sufficient to support an award of emotional-distress damages.").
[14] 11 U.S.C. § 363(k)(1).
[15] *See*, *e .g.*, *In re Johnson*, 580 B.R. 766, 800 (Bankr. S.D. Ohio 2018) (awarding punitive damages of $100,000 where debtor had to incur $400,000 in attorneys' fees to halt creditor's conduct).
[16] *In re WVF Acquisition, LLC*, 420 B.R. 902 (Bankr. S.D. Fla. 2009) (punitive damages permissible).

Analysis
The court considered whether a creditor must return a vehicle immediately upon the debtor's filing bankruptcy after a lawful prepetition seizure of the vehicle. The court also considered when the creditor should be entitled to adequate protection payments and whether it must return the vehicle to the debtor prior to receiving those payments.
Holding
The passive holding of an asset is an act to "exercise control" that violates the automatic stay under § 362(a)(3). The appeals court held that a lender must return an vehicle it had repossessed. After return, the lender may seek adequate protection. This holding aligns with decisions from the Second, Eighth and Ninth Circuits.

***WD Equipment, LLC v. Cowen (In re Cowen)*, 849 F.3d 943 (10th Cir. 2017)**	
Facts	
After creditors failed to turnover vehicles in contravention of the bankruptcy court's turnover order, Chapter 13 debtor brought an adversary proceeding against creditors for willful violations of the automatic stay. Creditors repossessed commercial vehicles prepetition but failed to relinquish possession after the debtor filed for bankruptcy.	
Argument	
Debtor Debtor alleged that the lenders' continued possession of the vehicles violated the automatic stay.	*Lenders* The lenders argued that the debtor's rights terminated prepetition and therefore the lenders had the right to maintain possession of the collateral.
Analysis	
The court reviewed the plain language of § 362 and noted that the section prohibits any "act" to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. The Court also analyzed the New Oxford American Dictionary description of the word "act," which means to "take action" or "do something."	
Holding	
Passively holding an asset of the estate in the face of a demand for turnover, does not violate the automatic stay in § 362(a)(3) as an act to "exercise control over property of the estate." Such acts must be affirmative acts in order to violate the stay.	

III. The Discharge Injunction

A Basics of a Discharge

Section 524(a) of the Bankruptcy Code protects a debtor who receives a bankruptcy discharge. A discharge is one of the most basic bankruptcy protections afforded to individual debtors. The discharge effectuates the central goal of bankruptcy by providing debtors a fresh financial start. It discharges the debtor's personal liability for pre-bankruptcy debts and operates as an injunction against acts to collect or recover any discharged debt as a personal liability of the debtor.

Entry of a discharge order in favor of a debtor extinguishes the automatic stay and creates the discharge injunction.[17] The injunction prohibits an act to collect, recover or offset any discharged debt as a personal liability of the debtor, whether or not discharge of such debt is waived.[18]

Section 524 does not provide an express enforcement mechanism. Debtors have enforced the discharge injunction by reopening their bankruptcy and filing an adversary proceeding or requesting that the offending party be held in contempt.[19]

B Standard for Proving a Discharge Violation

A contemnor is liable for its willful violations of the discharge injunction. To prove a claim of a discharge violation, a debtor must show that the alleged contemnor: (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction.[20] The standard of proof may be clear and convincing evidence,[21] or preponderance of the evidence,[22] depending on the jurisdiction.

Courts differ on the requisite level of knowledge required to prove a discharge violation. Some jurisdictions require the contemnor's actual knowledge that the discharge injunction was applicable.[23] Actual knowledge requires the contemnor to be aware of the discharge injunction

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[17] 11 U.S.C. § 524(a)(2) ("A discharge in a case under this title . . . operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived[.]").
[18] *Id*.
[19] Most courts agree that no private right of action for violation of the discharge injunction exists. *See*, *e.g.*, *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002); *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2000). However, courts disagree on whether bankruptcy courts may invoke § 105(a) to remedy discharge injunction violations. *Compare Pertuso*, 233 F.3d 417 (holding that no private right of action exists to enforce discharge injunction and that § 105(a) cannot be invoked to remedy discharge injunction violations) *with In re Haynes*, No. 11-23212 (RDD), 2014 WL 3608891, at *3 (Bankr. S.D.N.Y. July 22, 2014) (using § 105(a) to enforce the discharge injunction).
[20] *Rogerson v. Shaw (In re Shaw)*, No. 1:14-BK-11318, 2017 WL 2791663 (B.A.P. June 27, 2017) (unpublished); *In re Zilog*, Inc., 450 F.3d 996, 1007 (9th Cir. 2006).
[21] *Shaw,* 2017 WL 2791663 at *5.
[22] *Sprague v. Williams, et. al. (In re Van Winkle),* No. 13-11743 T7, 2017 WL 2729069 (Bankr. D.N.M. June 23, 2017).
[23] *Shaw*, 2017 WL 2791663 at *5 (holding that the bankruptcy court applied an incorrect standard when it failed to consider whether the alleged contemnor knew the discharge injunction applied to her cause of action).

and aware that it applied to his or her claim.[24] A belief, even an unreasonable one, that the injunction did not apply to the claim, could preclude willfulness.[25]

However, other jurisdictions also permit a finding of constructive knowledge.[26] In constructive knowledge jurisdictions, "the state of mind with which the contemnor violated the court order is irrelevant and therefore good faith, or the absence of intent to violate the order, is no defense."[27]

Courts agree that an alleged contemnor must have specific intent to undertake the actions that violate the discharge injunction.[28] In practice, the courts look for a showing of intent to collect a debt.[29] Where a discharge violation may have occurred, even with knowledge, the court may find that the violation is mere "technical" violation that lacks the requisite level of intent and, therefore, is not actionable.[30]

<table>
<tr><td colspan="2">Lorenzen et al. v. Taggert (In re Taggart), 888 F.3d 438 (9th Cir. 2018)</td></tr>
<tr><td colspan="2">Facts</td></tr>
<tr><td colspan="2">Former Chapter 7 debtor filed a motion to hold attorney and his clients in contempt for violating the discharge injunction when creditor (the "clients") sought post-discharge attorneys' fees from state court litigation.</td></tr>
<tr><td colspan="2">Argument</td></tr>
<tr><td>Debtor

Debtor alleged that his discharge barred any claim for attorneys' fees because the underlying matters litigated in state court related to claims against the debtor that were discharged.</td><td>Lenders

The lenders asserted that the debtor willingly engaged in opposing their claims in state court after the debtor obtained a discharge.</td></tr>
<tr><td colspan="2">Analysis</td></tr>
<tr><td colspan="2">The court considered whether the debtor had "returned to the fray" of the state court litigation, which could preclude him from an award of contempt sanctions against his creditors.</td></tr>
<tr><td colspan="2">Holding</td></tr>
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[24] *Id.*
[25] *Zilog,* 450 F.3d at 1009; *see also Romanucci & Blandin, LLC v. Lempesis,* 2017 Bankr. LEXIS 71526 at *12 (N.D. Ill. 5/4/17).
[26] *See Erhart v. Fina (In re Fina)*, 2012 LEXIS 163855 (E.D. Va. 11/14/12); *In re Nassoko*, 405 B.R. 515, 522 (Bankr. S.D.N.Y. 2009).
[27] *In re Cherry,* 247 B.R. 176, 187 (Bankr. E.D. Va. 2000); *Scott v. Wells Fargo Home Mortg., Inc.,* 326 F. Supp. 2d 709, 718 (E.D. Va. 2003).
[28] *Cherry*, 247 B.R. at 190.
[29] *Helmes v. Wachovia Bank, N.A. (In re Helmes)*, 336 B.R. 105 (Bankr. E.D. Va. 2005); *Gary V. Otten v. Majesty Used Cars, Inc., Robert Semitekolos (In re Gary V. Otten)*, No. 10-74946-AST, 2013 WL 1881736, at *12 (Bankr. E.D.N.Y. May 3, 2013) (considering intent in the context of cooperation with a criminal prosecution).
[30] *See In re Dabrowski*, 257 B.R. 394, 415 (Bankr. S.D.N.Y. 2001) (landlord was not liable for discharge violation where his actions were not taken with malevolent intent and a finding of contempt would be inappropriate and unjust).

Breaking with a majority of other Circuit courts, the Ninth Circuit held that a good faith belief that an action does not violate the discharge injunction precludes finding the creditor in contempt, even if the discharge injunction did apply and the creditor's belief was "unreasonable."

A petition for certiorari was filed with the United States Supreme Court on this issue.

C Remedies for Discharge Injunction Violations

Section 524 does not specify a particular remedy for a discharge violation. As a result, courts rely both on their statutory powers under 11 U.S.C. § 105(a) and on their inherent powers to sanction discharge injunction violations.[31] Courts award a variety of damages for discharge injunction violations; however, courts in different jurisdictions may or may not choose to award damages at all, even in similar factual circumstances.

1. Actual Damages

Courts may award actual damages to a debtor harmed by a willful discharge violation. Actual damages may include lost wages[32] and costs for mileage, lodging and other travel expenses.[33] Some courts have awarded actual damages for emotional distress caused by a discharge violation.[34] However, the debtor will bear the burden to prove a direct relationship between the alleged contemnor's actions and the emotional distress.[35]

Courts have also awarded attorney's fees.[36] Attorney's fees awards for discharge violations are calculated using the lodestar method that also is used to calculated damages for stay violations.[37]

2. Injunctive Relief

A debtor may also obtain injunctive relief, such as ordering a lien release,[38] or cancellation of a state court judgment.[39]

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[31] *See, e.g., In re Riser*, 298 B.R. 469, 472 (Bankr. M.D. Fla. 2003).
[32] *In re Ridley*, 572 B.R. 352 (Bankr. E.D. Okla. May 31, 2017); *In re Humbert*, 567 B.R. 512, 520 (Bankr. N.D. Ohio Feb. 16, 2017).
[33] *In re Lewis*, No. 16-60898-7, 2017 WL 1233816, at *3 (Bankr. D. Mont. Apr. 3, 2017).
[34] *Compare In re Lempesis*, 557 B.R. 659, 669 (Bankr. N.D. Ill. 2016) *aff'd*, 2017 Bankr. LEXIS 71526 at *16-17 (N.D. Ill. 5/4/17) (emotional distress damages allowed, at least as an addition to other financial damages) *with Aiello v. Providian Financial Corp.*, 239 F.3d 876, 880 (7th Cir. 2001) (damages not allowed as stand-alone remedy).
[35] *In re Bates*, No. AP 13-1043-JMD, 2015 WL 1777481, at *5 (Bankr. D.N.H. Apr. 16, 2015), *aff'd sub nom. Bates v. CitiMortgage, Inc.*, 550 B.R. 12 (D.N.H. 2016), *aff'd*, 844 F.3d 300 (1st Cir. 2016) (the evidence did not establish that the debtors' emotional distress was caused by a phone call in violation of the discharge injunction, rather than daily stresses of being married and raising children).
[36] *Sprague,* 2017 WL 2729069 ($33,161.70, composed of $31,046.45 in attorney's fees and $2,115.25 in estate representative fees); *Lewis*, 2017 WL 1233816 ($2,586.05).
[37] *Bates*, 2015 WL 1777481, at *5.
[38] *In re James*, 285 B.R. 114 (Bankr. W.D.N.Y. 2002).
[39] *In re Meadows*, 428 B.R. 894 (Bankr. N.D. Ga. 2010).

3. Punitive Damages

In some courts, an award of punitive damages also is available for discharge violations.[40] These courts rely on the broad language of § 105(a), allowing the court to issue "any order" necessary to carry out the provisions of title 11 to justify an award of punitive damages.[41]

In jurisdictions where punitive awards are permissible, the courts will consider the following factors: (i) the defendant's conduct; (ii) the defendant's ability to pay; (iii) the motives for the defendant's actions; and (iv) any provocation by the debtor.[42] Where conduct is particularly egregious, a court may award continuing damages for subsequent violations,[43] or require the contemnor to verify that it has taken steps to prevent further bad behavior.[44]

However, most courts hold that punitive damages awards are impermissible as criminal contempt sanctions, which are outside the purview of the bankruptcy courts.[45] A contempt proceeding for violation of the discharge injunction is civil in nature which should be designed to remedy past misconduct and deter future violations.[46] Bankruptcy courts have no criminal contempt power to punish past behavior.[47]

***In re Humbert*, 567 B.R. 512 (Bankr. N.D. Ohio Feb. 16, 2017)**	
Facts	
Former Chapter 7 debtor moved for sanctions against his former landlord for violation of the discharge injunction, seeking compensatory damages, attorney's fees, and punitive damages. The landlord sought to collect postpetition rent from the debtor in state court after the debtor received a discharge. During the pendency of bankruptcy, the landlord was ordered to pay sanctions for a stay violation after it initiated an eviction action against the debtor without first seeking stay relief.	
Argument	
Debtor	*Landlord*

[40] *See, e.g., Lempesis*, 557 B.R. at 670 ($50,000.00); *Sprague,* 2017 WL 2729069 at *7 ($16,838.30).
[41] *Lempesis*, 557 B.R. at 669.
[42] *Sprague,* 2017 WL 2729069 at *7.
[43] *See e.g., Ridley*, 572 B.R. 352 ($12,000.00, plus $1,000.00 for each month the creditor failed to correctly reflect the debtor's account default).
[44] *Lewis*, 2017 WL 1233816 at *4 ($5,000.00 awarded (based on $500 per violation) plus the requirement to file a notice with the Court within 30 days representing that the creditor: (i) tendered payment to the Debtor; (ii) has taken all necessary steps to insure that Debtor will not receive another invoice in violation of the discharge; (iii) that the creditor advised its agents and third-parties to cease and desist all collection efforts; and (iv) that the creditor has submitted all appropriate information to any third-party credit reporting entity).
[45] *Humbert*, 567 B.R. at 521 (Bankr. N.D. Ohio Feb. 16, 2017) ("An award of punitive damages for contempt of a discharge injunction sounds in the nature of criminal contempt and therefore lies beyond the authority of a bankruptcy judge."); *In re Northlund,* 494 B.R. 507, 521 (Bankr. E.D. Cal. 2011); *Riser*, 298 B.R. at 472 ("Pursuant to its statutory contempt powers under § 105, a court may impose coercive but not punitive sanctions.").
[46] *In re Diaz,* Order and Judgment on Debtors' Motion for Sanctions for Violation of the Discharge Injunction, Doc. No. 51, No. BKS-10-25047-BTB (Bankr. D. Nev. Oct. 23, 2017) (fines for future violations "are intended to deter (creditor's) contemptuous conduct and (creditor) may avoid these fines by not sending further correspondence to the Debtors.").
[47] *See, e.g.*, *Humbert,* 567 B.R. at 521*; Lewis*, 2017 WL 1233816 at *3.

Debtor argued that because the lease was rejected, the rejection was treated as a breach that occurred immediately prior to filing the bankruptcy petition and therefore any rent owed was discharged. Further, the landlord's continued attempts to collect in violation of the Bankruptcy Code warranted punitive damages.	The landlord argued that, notwithstanding the debtor's discharge, the estate's interest in the lease was abandoned to the debtor after discharge and the debtor assumed the obligation on the lease.
Analysis	
The Court rejected the creditor's argument that the debtor assumed the obligation of the lease and was liable for post-discharge rent because he remained on the premises after discharge. However, the court noted that the debtor was permitted to stay on the premises for over six months after filing for bankruptcy without paying the $1,300 per month provided for in the lease.	
Holding	
Punitive damages awards are impermissible as criminal contempt sanctions, which are outside the purview of the bankruptcy courts. A violation of the discharge injunction is civil in nature which should be designed to remedy past misconduct and deter future violation. However, the Court did allow actual damages of attorney's fees.	

D Class Claims for Discharge Injunction Violations

Bankruptcy class actions alleging violations of the discharge injunction typically arise in an individual consumer's bankruptcy case against a single creditor, such as a mortgage lender or servicer. The issues facing such a class action may involve the geographic scope of the class and the nature of the remedies sought.

Most often, bankruptcy courts grapple with their authority to adjudicate contempt claims for violations of the discharge injunction stemming from a discharge injunction order entered by a single court. The courts consider whether their jurisdiction is limited to enforcement on a district-wide level, or may be expanded nationwide.

Federal Rule of Civil Procedure 23, governing class actions, is made applicable to bankruptcy proceeding by Bankruptcy Rule 7023. Accordingly, every such action must meet the numerosity, commonality, typicality and adequate representation prongs of Rule 23(a).[48] The case also must meet one of the elements of Rule 23(b) (risk of inconsistent adjudications, preservation of a limited fund, grounds generally applicable to the class, or common questions of law or facts). Compliance with these elements presents issues unique to bankruptcy cases, and the courts vary on their resolution of those issues.

***McNamee v. Nationstar Mortg., LLC*, No. 2:14-CV-1948, 2018 WL 1557244 (S.D. Ohio Mar. 30, 2018)**
Facts
The plaintiff and his wife received a chapter 7 discharge of their residential mortgage loan. The couple

[48] *See*, *e.g.*, *In re Wilborn*, 609 F.3d 748 (5th Cir. 2010) (reversing bankruptcy court's certification of class of Chapter 13 debtors because the proposed class did not satisfy the requirements of Federal Rule of Civil Procedure 23 and Bankruptcy Rule 7023); *see also In re Rodriguez*, 695 F.3d 360 (5th Cir. 2012) (affirming certification of "fail-safe" class of Chapter 13 debtors whose membership could only be ascertained by a determination of the merits of the case).

surrendered and vacated the home, but their post-discharge mortgage servicer began to send correspondence to the plaintiff titled "Mortgage Loan Statement" specifying amounts due and payment due dates. The plaintiff received correspondence for years, even after the lender foreclosed on the home.

Plaintiff alleged that the correspondence violated the discharge injunction as well as the Fair Debt Collection Practices Act (FDCPA). Plaintiff filed an Adversary Proceeding on behalf of himself and individuals who, like him, vacated the surrendered residences and continued to receive debt collection correspondence from the servicer.

Argument

Debtor	*Lender (Servicer)*
The plaintiff defined four categories of class members who were allegedly harmed by the servicer's attempts to collect.	The servicer asserted that the Plaintiff could not meet any of the requirements of Federal Rule 23(a).

Analysis

The plaintiff met his burden under Federal 23 in the following ways:

Ascertainability: The class is ascertainable because it is defined by individuals who received specific letters from Defendant after filing a Statement of Intent and vacating the property.

Not Overly Broad: Every proposed class definition contemplates that the putative class member has already vacated the property.

Commonality: The class is defined both by reference to a document that governs the post-discharge relationship and by the observations of the servicer's own contractors as to the occupancy status of the house. Thus, once the class is identified, no thorny questions as to the exact nature of the post-discharge relationship remain live.

Typicality: The Plaintiff could still meet typicality requirements, even though he did not stop receipt of the correspondence by contacting his servicer.

Predominance/Superiority: Questions of liability are common to each putative class member who, after receiving bankruptcy discharge and vacating their surrendered residence, received either a Mortgage Loan Statement or a Force-Placed Insurance Communication.

Holding

The court certified two district wide classes on the plaintiffs' discharge injunction violation allegations.

***Anderson v. Credit One Bank, N.A., (In re Anderson)*, 884 F.3d 382 (2d Cir. 2018)**

Facts

Former chapter 7 debtor filed putative class action to recover for credit card issuer's alleged violation of discharge injunction in continuing to report, as "charged off," credit card debt that had been discharged in bankruptcy. The debtor alleged that debt marked as "charged off" rather than "discharged" is more valuable to third-party debt

buyers, who believe debtors will be compelled to pay the discharged debt in order to clear this negative item from their credit reports.

Argument

Debtor	*Lender*
The credit issuer's refusal to update the debtor's credit information reflects a policy of not updating credit information for debts that are discharged in bankruptcy for the purpose of collecting such discharged debt.	The credit card issuer moved to compel arbitration.

Analysis

The debtor's claim is non-arbitrable because it is a core bankruptcy proceeding that goes to the heart of the "fresh start" guaranteed to debtors under the Bankruptcy Code. The discharge is the foundation upon which all other portions of the Bankruptcy Code are built. The "fresh start" is only possible if the discharge injunction crafted by Congress and issued by the bankruptcy court is fully heeded by creditors and prevents their further collection efforts. Violations of the injunction damage the foundation on which the debtor's fresh start is built.

The court distinguished its holding in *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006), where the plaintiff claimed a violation of the automatic stay long after that stay had been rendered moot by the closing of her bankruptcy case.

Holding

The court did not address class certification, but noted that because putative class members are all allegedly victims of willful violations of the discharge injunction issued by the bankruptcy court, there is a continuing disruption of the debtors' ability to obtain their fresh starts.

The United States Supreme Court denied certiorari on October 1, 2018.

***Sellers v. Rushmore Loan Mgmt. Servs., LLC*, No. 3:15-CV-1106-J-32PDB, 2017 WL 6344315 (M.D. Fla. Dec. 12, 2017), *reconsideration denied*, No. 3:15-CV-1106-J-32PDB, 2018 WL 340009 (M.D. Fla. Jan. 9, 2018)**

Facts

Former chapter 7 debtors filed class action against mortgage servicer that purchased their residential mortgage. The debtors received a discharge of their personal liability on the debt. However, their servicer continued to send them Mortgage Statements in connection with the discharged mortgage debt. The Plaintiffs-debtors asserted claims for violation of the discharge injunction, FDCPA, and Florida Consumer Collection Practices Act (FCCPA).

Argument

Debtor	*Lender*
The plaintiffs identified common issues which they argued will turn on common evidence, including whether the account statements were an attempt to collect a debt.	Determination of the viability of claims will require an individualized examination of the Bankruptcy Code's application to each borrower.

Analysis

The Court limited its analysis to consideration of predominance under Rule 23(b). Certification is inappropriate in the event that plaintiffs must still introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual claims.

In this matter alone, the Court had to examine whether the property was Plaintiffs' principal residence at the time they received the challenged communications and whether making periodic payments in lieu of foreclosure was an option available to them. These inquiries were relevant to both of the main issues before the Court: whether the Mortgage Statements would be misleading to the least sophisticated consumer and whether the § 524(j) exception to the Bankruptcy Code discharge injunction applied.

Holding

The court declined certification of class of chapter 7 debtors who received a discharge but thereafter received mortgage statements. The plaintiffs failed to show predominance because individualized inquiries would be required for every class member to determine whether the § 524(j) exception applied, and if so, whether the Bankruptcy Code precluded and/or preempted the FDCPA and FCCPA.

Although the district court denied reconsideration of class certification, the plaintiffs appealed to Eleventh Circuit on April 9, 2018.

***Haynes v. Chase Bank USA, N.A., (In re Haynes)*, No. 11-23212 (RDD), 2014 WL 3608891 (Bankr. S.D.N.Y. July 22, 2014)**

Facts

Former debtor brought suit against his former lender, Chase, alleging that Chase fails to correct credit reports that list debts, post-discharge under Section 727 of the Bankruptcy Code, as being only "charged off," rather than being "discharged in bankruptcy." The debtor sued on behalf of himself and a class of similarly situated plaintiffs, nationwide.

Argument

Debtor	*Lender*
Debtor asserted that Chase adopted a pattern and practice of failing to update credit information for debts discharged in bankruptcy because it sells those debts and profits by the sale. If credit information is not updated, class members will feel compelled to pay off the debt, even though it is discharged.	Chase contended that, under the circumstances pled in the complaint, it already corrected the plaintiff-debtor's credit report and, as a result, he could not represent a class of individuals alleging that their credit reports had not been updated.

Analysis

Assuming the facts in the Complaint in a light most favorable to the plaintiff-debtor, it appears that Chase fails, on a systematic basis, to correct credit reports of discharged debtors. As a result, Chase is enhancing its purchasers' ability to collect on the debt. Chase profits from that practice by getting a higher purchase price from its buyers, even if those buyers buy the debt before the bankruptcy has occurred. The buyers know that, post-sale, Chase will refuse to correct the credit report to reflect the obligor's bankruptcy discharge, which means that the debtor will feel significant added pressure to obtain a "clean" report by paying the debt.

Regarding its jurisdiction over a nationwide class, the court considered 28 U.S.C. § 1334(a) and (b). The court found important § 1334(b)'s language granting bankruptcy courts "jurisdiction of *all civil proceedings* arising

under title 11, or arising in or related to cases under title 11." There is a fundamental difference between the normal injunction issued by a court after considering the factors required to be applied in issuing an injunction order and the injunction created by Congress in Section 524(a) to support the discharge under Section 727 of the Bankruptcy Code. The bankruptcy discharge order is a national form, which is issued in every case when there is a discharge. By statute, in 524(a)(2), it operates as an injunction. Additionally, § 105(a) of the Code goes beyond a bankruptcy court's own contempt power by enabling the Court to carry out specific provisions of the Bankruptcy Code.

Holding

The Court has the statutory power and the subject matter jurisdiction to decide this nationwide class action.

***Forson v. Nationstar Mortg. LLC, (In re Forson)*, No. 08-61001, 2018 WL 1635231 (Bankr. S.D. Ohio Mar. 21, 2018) and *Forson v. Nationstar Mortg. LLC, (In re Forson) In re Forson*, 549 B.R. 866 (Bankr. S.D. Ohio 2016)**

Facts

Plaintiff successfully completed Chapter 13 bankruptcy wherein he received a discharge upon successful payment of pre-petition arrearage and monthly mortgage maintenance payments. After the bankruptcy closed, plaintiff moved to reopen and filed an Adversary Proceeding alleging that his mortgage lender failed to treat his loan as current post-bankruptcy. Plaintiff alleged that his lender collected discharged fees and that the lender systematically attempted to collect such fees from other discharged debtors. The debtor sought to certify a district-wide and nationwide class of similarly situated plaintiffs.

Argument

Debtor	*Lender*
Plaintiff alleged that the discharge injunction is not an individualized, court-specific order, but is instead a statutorily imposed injunction that has the same effect in every bankruptcy nationwide.	The lender alleged that the Bankruptcy Court lacked jurisdiction over the class claims. A contempt proceeding resulting from a violation of an order or injunction may only be maintained in the court that issued the order or injunction that was violated.

Analysis

Nationwide certification would require the court to rule upon violations of discharges issued by other courts. However, Plaintiff could continue to prosecute this case on behalf of the Districtwide Class pursuant to Bankruptcy Rule 7023.

Holding

Bankruptcy Court lacked jurisdiction to certify nationwide debtor class, because one bankruptcy court could not enforce injunctions issued by other courts across the country. However, the Court left open possibility of district-wide certification.

2018 Update: Class still has not been certified. The court ruled on dispositive motions finding that lender violated discharge injunction by sending letters and mortgage statements to the debtor indicating that his mortgage loan was delinquent, describing past amounts due, and stating that there was an additional fee if payment was not received by certain date.

***Bieter v. Chase Home Finance, LLC (In re Beiter)*, 554 B.R. 433 (Bankr. S.D. Ohio 2016)**	
Facts	
Plaintiff brought Adversary Proceeding against mortgagee on behalf of herself and other similarly situated discharged debtors alleging violation of the discharge injunction. Plaintiff contended that mortgagee repeatedly sent her incorrect and inconsistent mortgage statements that contained unexplained late fees, indicated erroneous past-due amounts, and failed to reflect her bankruptcy discharge.	
Argument	
Debtor The debtor alleged that there is a sufficient number of other similarly situated debtors that experienced similar if not the same violations of the discharge injunction by the lender such that a nationwide class and district-wide class may be formed to seek redress for all class members.	*Lender* The lender asserted that the bankruptcy court does not have jurisdiction over the class because contempt proceedings can only be heard and determined by the individual judge who presided over the matter. Thus, the class allegations must be stricken since they include bankruptcy cases over which other judges presided.
Analysis	
Sixth Circuit precedent provides that a contempt proceeding must be initiated in the bankruptcy court which issued the discharge. However, the lender conflates the terms "court" and "judge." While, generally, only the court that issues the injunction may enforce it, the injunction is not personal to a specific judge of that court.	
Holding	
The court lacks jurisdiction over a nationwide class, but has jurisdiction over a district-wide class.	

***Beck v. Gold Key Lease, Inc. (In re Beck)*, 283 B.R. 163 (Bankr. E.D. Pa. 2002)**	
Facts	
Former Chapter 7 debtors discharged automobile lease and did not reaffirm. However, the lease creditor attempted to collect its debt after the discharge had been granted. Plaintiff-debtors brought adversary proceeding on behalf of nationwide debtor class to recover for creditor's alleged contempt in violating discharge injunction.	
Argument	
Debtors Plaintiffs argued that the § 524 statutory injunction is not individually crafted so that "few of the practical reasons for confining contempt proceedings to the issuing tribunal apply here."	*Lender* The bankruptcy court does not have authority to hold the creditor in contempt for violation of § 524(a) discharge injunction issued not only by the court itself but by bankruptcy courts nationwide.
Analysis	
The Court can only provide a remedy consistent with the contempt power of the Bankruptcy Court. The Court that issues the order that was violated is the Court that determines whether a person is in contempt. While this Court can issue contempt findings for persons or entities subject to an order of this Court, it cannot issue orders	

for parties not within its authority.
Holding
The plaintiffs' remedy was limited to enforcement of the discharge order through a contempt proceeding. The court deferred ruling on whether it could enforce any discharge order within its district.

E Post-Discharge Mortgage Modification

1. Introduction

In a consumer bankruptcy, the debtor has three primary options for addressing her residential mortgage debt. The debtor may: (1) keep the property and pay (2) surrender the property; (3) enter into a reaffirmation agreement.[49]

A majority of courts recognize a fourth option for residential mortgage loans in bankruptcy: "ride-through".[50] When a debtor chooses ride-through, she is discharged of personal liability for her mortgage debt, but the lender retains *in rem* liability.

Because ride-through relieves the debtor of personal liability on her mortgage debt, a lender may choose to foreclose after the bankruptcy closes. Creditors are not prevented from post-discharge enforcement of a valid pre-bankruptcy lien on the property provided that the lien was not avoided or set aside under other provisions of the Bankruptcy Code.[51]

Alternatively, a borrower may simply continue to make monthly mortgage payments without a formal reaffirmation agreement.[52] The debtor's payments alone will not revive personal liability on the mortgage.

2. Post-Discharge Mortgage Modification

Courts debate whether consumer debtors may create a new obligation on property that rode through the debtor's bankruptcy via modification or refinancing.[53] Case law considering the

[49] 11 U.S.C. 521(a)(2)(A) (chapter 7). Reaffirmation is governed by 11 U.S.C. § 524(c). In chapter 7 or chapter 13 bankruptcies, a reaffirmation agreement is valid if: (1) the agreement was made before the debtor was granted a discharge; (2) the debtor received disclosures required in subsection 524(k); (3) the agreement is filed with the court; and (4) if applicable, the agreement contains an affidavit from the debtor's attorney stating that the debtor was fully informed, the agreement is voluntary and does not impose undue hardship on the debtor or her dependent, and the attorney had fully advised the debtor of the legal effect and consequences of the agreement and any default thereunder.

[50] Some courts do not recognize the "ride-through" option. *See*, *e.g.*, *In re Linderman*, 435 B.R. 715 (Bankr. M.D. Fla. 2009) (a debtor does not have the ability to "ride through" and cannot keep real property securing a mortgage loan simply by making payment and not reaffirming the debt after the enactment of BAPCPA in 2005").

[51] 11 U.S.C. § 524(j). *Johnson v. Home State Bank*, 501 U.S. 73, 81 (1991). A lender collecting on the basis of *in rem* liability creditor must be clear that it is not attempting to collect a debt for which the debtor is personally liable. If not, collection attempts could be construed an improper attempt to collect on a discharged debt.

[52] See 11 U.S.C. § 524(f).

validity and enforceability of such agreements often conflicts, with one Court of Appeals describing case law as "replete with irreconcilable conflict and confusion."[54]

Nothing in the Bankruptcy Code expressly prevents a debtor from entering into new financing post-discharge. However, courts grapple with whether post-discharge financing between the debtor and her pre-petition lender, affecting pre-petition property that "rode through" the bankruptcy violates the discharge injunction.

Courts often have two primary considerations when determining whether a post-discharge loan modification or refinance violates the discharge injunction: (1) Did the new agreement provide sufficient "new consideration" to create an independent financing agreement; and (2) Is the debtor's acquiescence to the new agreement "voluntary"?

***Solomon Smith v. First Suburban Nat'l Bank (In re First Suburban Nat'l Bank)*, 224 B.R. 388 (Bankr. N.D. Ill. 1998)**	
Facts	
Chapter 7 debtor defaulted on his mortgage loan and lost his home in a foreclosure proceeding. Post-discharge, the debtor, his wife, and their daughter obtained financing on a new home from the same lender. As consideration for the new loan, the debtor agreed to pay the deficiency balance on his first mortgage loan. By rolling the deficiency balance into the new loan, the bank agreed that it would not pursue the deficiency against the debtor's wife (who was not discharged from personal liability on the mortgage affecting the first property). The second home was purchased in a land trust, wherein the lender was appointed trustee and the debtor, his wife, and their daughter were the sole beneficiaries of the trust. At trial, the debtor's wife also testified that she was unaware that the deficiency balance from the mortgage affecting her first home would be added to her new mortgage loan.	
Argument	
Debtor The lender violated the discharge injunction by negotiating to add discharged debt to the debtor's mortgage on his new home.	*Lender* The Lender argued that it offered the debtor new consideration sufficient to support an new, independent loan.
Analysis	
There is no real distinction between the debt that the debtor's wife owed the lender and the debt to the lender from which the debtor was discharged; their obligations were based on the same debt. Moreover, the debtor's wife had no ability or income sufficient to repay the debt herself, and collection efforts or threats against her would be indirect pressures to collect from the debtor.	
Holding	
The new agreement was not a valid reaffirmation because the agreement was not filed with the bankruptcy court	

[53] In March 2010, in connection with administering HAMP, the U.S. Treasury Department issued Supplemental Directive 10-02, which makes it clear that (in its view) discharged borrowers are eligible for HAMP as long as the borrowers understand they are not personally liable for the modified debt.
[54] *Venture Bank v. Lapides*, 800 F.3d 442, 447 (8th Cir. 2015).

and failed to comply with statutory requirements under § 524.

Any post-petition agreement which obligates a debtor on a discharged debt must comply with the relevant Code sections dealing with reaffirmation. Failure to do so will result in the agreement being considered invalid and collection upon that agreement a violation of the discharge injunction.

***In re Martin*, 474 B.R. 789 (B.A.P. 6th Cir. 2012) (unpublished)**

Facts

Chapter 7 debtor rode through commercial real estate loan which her lender (an individual) refused to foreclose upon. The debtor continued to make post-petition payments. After the debtor received her discharge, the lender filed suit in state court to collect the outstanding balance of the debt on the commercial property. The lender alleged that, prior to discharge, the debtor made an oral promise to continue to make payments on the debt.

Argument

Debtor	*Lender*
The debtor denied making an oral promise to repay the debt or that she otherwise entered any new agreement with the lender to repay her debt.	The debtor's oral promise to repay constituted a new agreement and, pursuant to 11 U.S.C. § 524(f) the debtor's post-petition payments obligated her to continue making payments until the debt was paid in full.

Analysis

The discharge injunction applies only to debts that were discharged by the bankruptcy proceeding. Pursuant to § 727(b), any debt that arises after the debtor files for bankruptcy relief is not affected by the chapter 7 discharge and the discharge injunction does not prohibit a creditor from enforcing said debt. As a result, post-petition agreements can create an enforceable obligation.

To create an enforceable, post-petition agreement, the parties must prove the essential elements of a contract: offer, acceptance, contractual capacity, consideration, and a meeting of the minds. Executing a new promissory note to repay a debt that was discharged in order to avoid a foreclosure on debtor's home is new consideration that supports a finding of a valid post-discharge agreement.

Holding

Voluntary payments under § 524(f) do not revive personal liability on a debt or obligate the debtor to continue to make payments.

There was no evidence of any new consideration supporting a new agreement. Additionally, an oral agreement to continue mortgage payments on commercial property did not satisfy state Statute of Frauds laws.

As a result, the lender's attempts to collect on the commercial mortgage violated the discharge injunction and the lender was ordered to pay the debtor's attorney's fees and lost wages.

***Minster State Bank v. Heirholzer (In re Heirholzer)*, 170 B.R. 938 (Bankr. N.D. Ohio 1994)**

Facts

The debtor was discharged from a second mortgage debt. Shortly after the debtor received his discharge, he executed a new promissory note with accompanying mortgage. The sum of the new note was identical to the amount owed under the first note and the debtor used funds from the new note to pay off the discharged debt. As consideration for the new note, the lender agreed not to foreclose on the debtor's home. However, the debtor's home was foreclosed upon by another priming lender. Because the second lender did not receive proceeds from the foreclosure sale, it sought to garnish the debtor's wages. The debtor thereafter sought determination that the debt at issue was discharged.

Argument

Debtor	*Lender*
The debtor argued that the second note was an invalid reaffirmation agreement. Because the second note was based in part on a dischargeable debt, the note could only be enforced by a valid reaffirmation agreement.	The Lender argued that the second note was a separate and enforceable post-discharge contract.

Analysis

The court found it relevant that the parties executed a completely new set of paperwork to document the second agreement. The court also cited § 362(a) to explain that the lender had every right to foreclose upon the debtor's home post-bankruptcy, which supports the lender's contention that consideration was established by the lender's agreement not to foreclose.

Holding

The second note was not a reaffirmation agreement. However, the lender's decision to forego foreclosure represents new and sufficient consideration to support a new, binding post-discharge obligation.

***Rajotte v. Carter & Rajotte (In re Rajotte)*, 81 F. App'x 29 (6th Cir. 2003) (unpublished)**

Facts

Prior to bankruptcy, the debtor obtained a commercial loan that was guaranteed by his brother-in-law. The debt was discharged in bankruptcy and the lender looked to the guarantor for full payment. After payment in full from the debtor's brother-in-law, the lender released an unmatured note payable to the debtor from his first wife, which the debtor had pledged to the bank. After the debtor received his discharge, he arranged a tripartite agreement between himself, his brother-in-law, and his first wife. According to this agreement, the brother-in-law accepted partial payment from the first wife in full satisfaction of the unmatured note, the first wife agreed to drop litigation against the debtor for past-due child support, and the debtor agreed to repay his brother-in-law the full value of the commercial loan, plus accumulated interest. When the debtor failed to make payments, the brother-in-law filed suit against the debtor.

Argument	
Debtor The debtor argued that the tripartite agreement was an invalid reaffirmation agreement.	*Lender* The lender argued that the tripartite agreement was a new obligation, proposed by the debtor, and supported by independent consideration.
Analysis	
The court distinguished case law wherein debtors obligated themselves on post-discharge notes with pre-petition lenders because, in the instant case, it was the debtor who proposed the tripartite agreement.	
Holding	
The appellate court affirmed the lower's decision finding that there was untainted consideration in the tripartite agreement because the debtor received relief from his child support payments, which helped him avoid possible jail time. However, the brother-in-law was only permitted to collect amounts he loaned to the debtor post-petition for new consideration.	

***Venture Bank v. Lapides*, 800 F.3d 442 (8th Cir. 2015)**	
Facts	
Chapter 7 debtor discharged a third-mortgage on his home. During the pendency of bankruptcy, the debtor and lender executed a "Re-Affirmation" agreement that was not signed by the debtor's attorney or filed with the bankruptcy court. The debtor hoped to reestablish his credit with the lender in order to refinance his three mortgages. After the debtor received a discharge, he missed payments due under the Re-Affirmation agreement. The lender attempted to foreclose and filed suit seeking a declaratory judgment that the Re-Affirmation agreement was enforceable.	
Argument	
Debtor The debtor argued that his payments were not voluntary.	*Lender* The lender argued that the debtor made post-discharge payments voluntarily to induce the lender to refinance his mortgages.
Analysis	
The Court of Appeals considered whether the bankruptcy court erred when it found that the post-discharge loan agreements were valid if either (1) they complied with the requirements of § 524(c), or (2) all essential elements of a contract are present.	
Holding	
The appellate court found that the agreement must comply with § 524 and must contain all elements of a contract. Because the agreements did not comply with § 524(c), the court need not consider whether the lender's promise	

not foreclose constituted adequate consideration.

Additionally, the debtor's payments were not "voluntary" because the lender required the debtor to obligate himself to repay his discharged debt in the hope that the lender would refinance his mortgages.

F Post-Discharge Reaffirmations

In a consumer bankruptcy, the debtor typically must reaffirm a debt prior to entry of the discharge. Some courts will allow the discharge to be vacated, and others will allow reaffirmations if the material terms were agreed to verbally prior to discharge even if no document was executed or filed.

***In re LeBeau*, 247 B.R. 537 (Bankr. M.D. Fla. 2000)**	
Facts	
Discharge was entered prior to filing of a reaffirmation agreement. However, debtor and lender argued that they had reached an oral agreement prior to the entry of the discharge.	
Argument	
Debtor The debtor argued a reaffirmation could be valid if reached orally prior to discharge being entered.	*Lender* Lender argued the same.
Analysis	
The court considered reaffirmations in light of both § 524 and state law contract principles and analyzed when the meeting of the minds and an enforceable contract was reached.	
Holding	
The court allowed the reaffirmation as there was a meeting of the minds prior to entry of the discharge and that such time is the operative time for when a reaffirmation is reached. As the reaffirmation was prior to the discharge, the agreement could be filed after the discharge.	

***In re Hauswirth*, 242 B.R. 95 (Bank. N.D. Ga. 1999)**	
Facts	
Discharge was entered and debtor attempted to convert to chapter 13 and receive a second discharge in the same case.	
Argument	
Debtor	*Lender*

The debtor argued it could be entitled to a second discharge.	No argument listed.
Analysis	
The court considered whether it had the power to vacate a discharge in order to allow a chapter 13 to continue while also not giving the debtor two discharges in one case.	
Holding	
The court refused to allow the debtor two discharges, but instead found it could vacate a discharge if it did not prejudice any creditors. While not related to reaffirmations, it does state that a court can vacate a discharge, even temporarily, if no other parties are prejudiced.	