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Nondischargeability Litigation

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Dischargeability Litigation under Section 523

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For over a century, Supreme Court jurisprudence has provided a framework for analyzing the scope of the bankruptcy discharge. *See, e.g.*, *Gleason v. Thaw*, 236 U.S. 558, 562 (1915). More particularly, the Supreme Court has provided that "[i]n view of the well-known purposes of the bankrupt law, exceptions to the operation of a discharge thereunder should be confined to those plainly expressed; and while much might be said in favor of extending these…the language of the act does not go so far." *Id.* In this regard. Section 523 of the Bankruptcy Code[1] excepts 21 types of debts from the discharge granted under Chapter 7, 11, 12, and 13.[2]

This paper will first discuss what exactly a discharge is, then it will briefly address the exceptions provided in Section 523(a)(2), (4), and (6), and then it will turn to procedural issues that arise in a Section 523 action, including the deadline to file a complaint under that Section and issues related to jurisdiction. Finally, it will address the exceptions to discharge outside of subsections (a)(2), (4), and (6) of Section 523.

Section 524 and what it means to receive a discharge under Title 11

As an initial matter, and before diving into the details of Section 523 and discharge litigation, it is important to discuss, briefly, what exactly occurs when a debtor receives a discharge under the various Chapters of Title 11, whether Chapter 7, 11, 12, or 13. The general answer is

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[1] The Bankruptcy Code or Code refers to Title 11 of the United States Code. References to "Section" refer to sections of the Bankruptcy Code.

[2] Under 11 U.S.C. § 103, Chapter 5 applies to cases under all other Chapters, unless it is otherwise expressly carved out in that particular Chapter. 11 U.S.C. § 103(a).

set forth in Section 524. It tells us, as its definition implies, what a discharge is.[3] 11 U.S.C. § 524. It provides that a discharge granted under each of the above-mentioned Chapters voids any judgment that is a personal obligation of a debtor. 11 U.S.C. § 524(a)(1). And, it goes on to explain that a discharge also acts as an injunction against the commencement or continuation of an act to recover on a claim that is a personal obligation of the debtor, including telephone calls, letters, etc. 11 U.S.C. § 524(a)(2). More particularly, that Code Section provides, in relevant part:

> (a) A discharge in a case under this title—
>
> (1) *voids any judgment* at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
>
> (2) *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 . . . .

11 U.S.C. § 524 (a)(1)-(2) (emphasis added). Interestingly, a discharge does not extinguish the debt, as one might assume from the commonly understood meaning of discharge, but relieves the debtor of the *in personam* obligations related to the debt.

Section 727 and the Extent of a discharge granted under Chapter 7

Section 727 is closely related to Section 524, and it governs more particularly the impact of a discharge under Chapter 7, including defining the extent of a discharge. It provides that a Court must grant a discharge to a debtor proceeding under Chapter 7, unless one of several enumerated exceptions to a discharge is present. 11 U.S.C. § 727(a). This list is exhaustive, and a bankruptcy court may not deny a debtor a discharge based on equitable grounds or its view of what is wrong and right. *See, e.g., Yadidi v. Herzlich (In re Yadidi)*, 274 B.R. 843 (B.A.P. 9th Cir.

[3] It also provides details regarding the reaffirmation of debts. 11 U.S.C. § 524.

2002). Notably, and surprising to some non-bankruptcy practitioners, a Chapter 7 discharge is not available to corporations, limited liability companies, or other non-individual debtors. 11 U.S.C. § 727(a)(1). And, generally, Section 727 denies bad actors a discharge along with those debtors who received discharges in prior cases, which were filed within a certain amount of time of the case in which they are seeking a new discharge.

The extent of the discharge granted under Section 727 is set forth in Section 727(b). It provides that, unless Section 523 provides differently, a discharge under Section 727 discharges a debtor from all debts that arose prior to the petition date (or the order for relief under Chapter 7, if the dates are different) along with any liability on a claim under Section 502. 11 U.S.C. § 727(b). More specifically, it provides,

> Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

Id. Notably, the term "debt" is broadly defined to mean "liability on a claim," and, "claim" is even more broadly defined. 11 U.S.C. § 101(5) and (12),

Of note, the provisions of Section 727 are construed strictly against a creditor, on the premise that a total bar to discharge is an extreme remedy. *See, e.g., Bank of North Georgia v. McDowell (In re McDowell)*, 497 B.R. 363, 373 (Bankr. N.D. Ga. 2013) (Drake, J.) (stating that "the Court must interpret the applicable provisions of Section 727 narrowly, so as to foster a presumption of the debtor's eligibility for a discharge). And importantly in the context of a discussion of Section 523 litigation, the denial of discharge under Section 727 and the finding that a particular debt is excepted from discharge under Section 523 are separate and distinct remedies.

And, while a creditor, whose claim is against a debtor who has had his or her discharge denied under Section 727, will not need relief under Section 523 (finding that a particular debt is non-dischargeable), it is quite common for a debtor to receive a discharge under Section 727, even though one more of his or her debts are determined non-dischargeable, under Section 523.

Eligibility Requirements under Chapter 13

Having briefly described a discharge under Chapter 7, this paper will now turn to the discharge granted under Chapter 13. Congress intended Chapter 13 to be a powerful means for rehabilitation, but only for a specific class of Debtors. Keith M. Lundin, *Lundin on Chapter 13,* §10.1, at ¶1, LundinOnChapter13.com (last visited June 27, 2022). At its most basic level, Chapter 13 relief is available only for individuals (i.e., humans or natural persons) with regular income (i.e., income that is sufficiently stable to support making payments under the plan.)[4] 11 U.S.C. § 101(30); see also 11 U.S.C. § 109(e). Therefore, similarly to a discharge under Chapter 7, a Chapter 13 discharge is not available to partnerships, corporations, limited liability companies, or non-individual debtors. Moreover, to qualify for Chapter 13 relief, an individual with stable income must also satisfy the debt limitations found in Section 109(e), must not have suffered a Section 109(g) dismissal within 180 days, and must have received a qualified prepetition briefing from an approved nonprofit budget and credit counseling agency (i.e., a credit counseling certificate).[5] *Id.* §9.1, at ¶4. Many reported decisions also consider a Debtor's "good faith" at the

[4] The requirement of "stable and regular" income is broadly interpreted so as to allow for Chapter 13 relief for individuals with almost any source of income as long as there is an amount sufficient to fund a plan after the payment of reasonable and necessary monthly expenses. Keith M. Lundin, *Lundin on Chapter 13,* §6.1, at ¶1, LundinOnChapter13.com (last visited June 27, 2022).

[5] This additional eligibility barrier was added by the Bankruptcy Abuse Prevention and Consumer Protection Act and applies in all cases filed after October 17, 2005.

threshold of the case; however, this is not mentioned in the Bankruptcy Code as a condition for Chapter 13 eligibility. *Id.* §9.1, at ¶5.

Section 1328 and the Chapter 13 Discharge

As the primary goal of most Chapter 13 debtors is to receive a "fresh start" at the conclusion of the case, the Chapter 13 discharge is intended to be a discharge of all debts, barring enumerated exceptions. 11 U.S.C. § 1328. A Chapter 13 bankruptcy is often the preferred route for personal bankruptcy because the Chapter 13 discharge is broader than a discharge received under any other chapter. *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 268, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) (quoting 8 Collier on Bankruptcy ¶ 1328.01, p. 1328-5 (rev. 15th ed. 2008)).

In Chapter 13 cases, Section 1328 prescribes the requirements, timing, extent, and exceptions to discharge. Moreover, Section 1328 provides for two types of discharge: (1) the "completion" discharge found in 1328(a) which requires the Debtor to complete all payments under the plan, either as originally confirmed or subsequently modified, regardless of paying all debts in full; and (2) the "hardship" discharge of 1328(b) which requires the Debtor has not been able to complete payments under the plan due to circumstances that the Debtor should not be held just accountable, that modification of the plan under 1329 is impracticable, and that unsecured creditors have received distributions under the plan that are not less than what they would have received in a Chapter 7.[6] 11 U.S.C. §§ 1328(a) and 1328(b). In practice, these subsections of Section 1328 are mutually exclusive; a debtor either completes or does not complete the payments

[6] Under 1328(a), the issuance of the completion discharge should be "as soon as practicable after completion by the debtor of all payments under the plan." Additionally, none of the reasons for a denial of discharge under 1328(f)(g) or (h) can be applicable. 2 Hon. W. Homer Drake, Jr, Hon. Paul W. Bonapfel & Adam Goodman, *Chapter 13 Practice and Procedure,* §21:1 (2d ed. 2021).

under the plan. *In re Dowey,* 580 B.R. 168, 171 (Bankr. D.S.C. 2017).

Notably, both Chapter 13 discharges apply to all unsecured debts that are provided for by the plan, or disallowed under Section 502, subject to certain exceptions. 11 U.S.C. § 1328. Moreover, neither discharge found in Section 1328 applies to: long-term debts that the plan treats under Section 1322(b)(5); an allowed post-petition debt if the Chapter 13 Trustee's prior approval of the incurrence of the debt was practicable but not obtained; taxes that the Debtor was required to collect or withhold; or debts excepted from discharge under 523(a).[7]

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) added three subsections to Section 1328 that specify the requirements for the grant of either type of discharge. Section 1328(g) requires that the debtor complete an instructional course concerning financial management. Section 1328(h) prohibits a discharge unless the court determines that there is no reasonable cause to believe that there is a proceeding pending where the debtor may be found guilty of certain crimes that indicate the bankruptcy case may not have been filed in good faith. Section 1328(f) prohibits a discharge if the Debtor received a Chapter 7, 11, or 12 discharge in a case filed during the four years preceding the Chapter 13 case, or a discharge of a Chapter 13 case filed during the two-year period preceding the filing of the Chapter 13 case. Moreover, to receive a completion discharge, the Debtor must also certify that he has paid all domestic support obligations during the case.

The basic effect of the Chapter 13 discharge is to eliminate the Debtor's personal liability on the discharged debts and provide the protections of the discharge injunction found in Section

[7] There are two other types of debts excepted from the completion discharge: a debt for restitution or criminal fine that is included in the Debtor's conviction of the crime; and a debt for restitution that resulted due to the Debtor's willful or malicious injury that caused personal injury or death. 11 U.S.C. Section 1328(a)(3) and 1328(a)(4).

524. 2 Hon. W. Homer Drake, Jr, Hon. Paul W. Bonapfel & Adam Goodman, *Chapter 13 Practice and Procedure,* §21:1 (2d ed. 2021). It is important to note that the Chapter 13 discharge does not void the debt or the judgment, just as the discharge injunction does not prohibit the collection of the debt if it survives the bankruptcy case or if another party is liable on the debt. *Id. at* §21:2.

In the context of Section 523 litigation, the two discharges have distinct differences. In the case of a hardship discharge, Section 1328(c)(2) excepts from the discharge any debt that has been excepted from discharge under Section 523(a). *Id.* at §21:15. For a completion discharge, Section 1328(c)(2) excepts only certain debts that Section 523(a) excepts. *Id.* at §21:15. Notably, the biggest differences in the scope of the two discharges are for priority taxes and debts, other than child support obligations, that arise out of a divorce decree. Both debts are excepted from the hardship discharge but not the completion discharge. Therefore, the scope of a hardship discharge is the same as the Chapter 7 discharge. *Id.* at §21:15.

A Few Considerations When Seeking Determination Regarding Dischargeability of Debts Under Section 523(a)(2), (4), and (6)

As previously mentioned, Section 523(a) excepts 21 types of debt from discharge. However, debts specified in subsections (2), (4), and (6) ***will*** be discharged unless a complaint is timely filed. Practitioners should take care to present their case to address the elements of the particular subsection of Section 523 that they are seeking to prove. This paper will next briefly discuss dischargeability under Sections 523(a)(2), (4), and (6), the deadline to commence an adversary proceeding, the burden of proof, and other considerations practitioners should be aware of.

Dischargeability Pursuant to Section 523(a)(2)(A)

Section 523(a)(2)(A) excepts from discharge debts for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by: (i) false pretenses, (ii) a

false representation, or (iii) actual fraud, other than a statement respecting the debtor's or an insider's financial condition. A creditor seeking to determine dischargeability of a debt under section 523(a)(2)(A) must establish:

(i) the debtor made a false representation with the purpose and intent to deceive the creditor:

(ii) the creditor relied on the misrepresentation:

(iii) the reliance was justified; and

(iv) the creditor sustained a loss as a result of the misrepresentation.

See, e.g., *In re Maxwell*, B.R. 736, 741 (Bankr. M.D. Fla. 2005).

"While § 523(a)(2)(A) speaks of debt for value "obtained by ... false pretenses, a false representation, or actual fraud," it does not define those terms or so much as mention the creditor's reliance as such, let alone the level of reliance required." *Field v. Mans*, 516 U.S. 59, 66 (1995). Section 523(a)(2)(A) "requires justifiable, but not reasonable, reliance." *Id.* at pp. 74-75.

"The term "actual fraud" in § 523(a)(2)(A) encompasses forms of fraud, like fraudulent conveyance schemes, that can be effected without a false representation." *Husky Intern. Electronics, Inc. v. Ritz*, 578 U.S. 356, 359 (2016).

Dischargeability Pursuant to Section 523(a)(2)(B)

Section 523(a)(2)(A) excepts from discharge debts for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by use of a statement in writing: (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive.

A debt is non-dischargeable under Section 523(a)(2)(B) where the debt was obtained by a writing: "(1) that is materially false; (2) respecting the debtor's or an insider's financial condition;

(3) on which the creditor to whom the debt is liable for such money, property, services, or credit reasonably relied; and (4) that the debtor caused to be made or published with the intent to deceive." *In re Miller*, 39 F.3d 301, 304 (11th Cir. 1994).

"A bankruptcy court may look to the totality of the circumstances, including the recklessness of a debtor's behavior, to infer whether a debtor submitted a statement with intent to deceive." *Id.*

"Reckless disregard for the truth or falsity of a statement combined with the sheer magnitude of the resultant misrepresentation may combine to produce the inferrence [sic] of intent [to deceive]." *Id.* (quoting *In re Albanese*, 96 B.R. 376, 380 (Bankr. M.D. Fla.1989) (citations omitted)).

Dischargeability Pursuant to Section 523(a)(4)

Section 523(a)(4) excepts debts arising from: (i) fraud or defalcation while acting in a fiduciary capacity, (ii) embezzlement, and (iii) larceny.

"As commonly used, "embezzlement" requires conversion, and "larceny" requires taking and carrying away another's property. *See* LAFAVE, CRIMINAL LAW §§ 19.2, 19.5 (larceny); id., § 19.6 (embezzlement). "Fraud" typically requires a false statement or omission. *See id.*, § 19.7 (discussing fraud in the context of false pretenses). "Defalcation," as commonly used (hence as Congress might have understood it), can encompass a breach of fiduciary obligation that involves neither conversion, nor taking and carrying away another's property, nor falsity. Black's 479. *See, e.g., In re Frankel,* 77 B.R. 401 (Bkrtcy.Ct.W.D.N.Y.1987) (finding a breach of fiduciary duty and defalcation based on an unreasonable sale of assets)." *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 275 (2013).

As to defalcation while acting in a fiduciary capacity, Section 523(a)(4) requires an intentional wrong which includes both conduct that the fiduciary knows is improper, as well as the type of reckless conduct that criminal law treats as the equivalent, *e.g.,* conscious disregard, willful blindness, substantial and unjustifiable risk. *Id.* at pp. 274-74 citations omitted).

Dischargeability Pursuant to Section 523(a)(6)

Section 523(a)(6) excepts debts arising from willful and malicious injury by the debtor to another entity or to the property of another entity.

In order to be successful under section 523(a)(6), the plaintiff must demonstrate: (1) an intentional action by the defendant; (2) done with the intent to harm; (3) which causes damage (economic or physical) to the plaintiff; and (4) the injury is the approximate result of the action by the defendant. *In re Magpusao*, 265 B.R. 492, 498 (Bankr. M.D. Fla. 2001).

"Malicious has been defined by the Eleventh Circuit as wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will. Malice may be implied or constructive. Conduct that is reckless or willfully ignorant does not constitute malicious and willful pursuant to the *Geiger*[8] standard. There must be a showing of an intentional or deliberate act, which is not done merely in reckless disregard of the rights of another." *In re Maxwell*, 334 B.R. 736, 743 (Bankr. M.D. Fla. 2005) (citations and quotation marks omitted).

Debts have been found nondischargeable under section 523(a)(6) where an "ongoing pattern of deceit" demonstrated a debtor "intentionally and deliberately misled the Plaintiffs in the parties' transactions" involving alleged investment opportunities and the pattern of deceit showed

[8] Refers to *Kawaauhau v. Geiger*, 118 S. Ct. 974 (1998). In that case, the U.S. Supreme Court held that a debt arising from a medical malpractice judgment that was attributable to negligent or reckless conduct was not excepted from discharge as "willful and malicious" pursuant to Section 523(a)(6) of the Bankruptcy Code.

that the debtor "knew or should have known his acts and omissions would cause the very financial damage to the Plaintiffs which they indeed suffered." *In re Chong*, 523 B.R. 236, 250 (Bankr. D. Colo. 2014); *cf. In re Monson*, 522 B.R. 721, 731 (Bankr. M.D. Fla. 2015), *aff'd*, 661 F. App'x 675 (11th Cir. 2016) (where the debtor had contractually agreed to liquidate his company's equipment to repay a creditor if the business was not profitable; instead, he opened a new business and moved the equipment to his new business, the court found the debtor's conduct constituted a willful and malicious injury to the plaintiff within the meaning of § 523(a)(6) of the Bankruptcy Code; "the Debtor injured [the plaintiff's] right to recover its loan, the injury was intended, and the Debtor was conscious of his wrongdoing").

Deadline to File Complaint

Either a debtor or a creditor may initiate an action under Section 523, and such a matter is governed by Rules 7001 and 7003 of the Federal Rules of Bankruptcy Procedure. In other words, an action to determine the dischargeability of debt is an adversary proceeding. Under Chapter 7, the deadline for a creditor to file a complaint seeking a determination of the dischargeability of debt under Sections 523(a)(2), (4), and (6) is 60 days from the first date set for the meeting of creditors under Section 341. Fed.R.Bankr.P. 4007(c). Under Chapter 13, this same deadline applies for a complaint seeking a determination of dischargeability under Sections 523(a)(2) and (4), but it does not apply to a complaint brought under Section 523(a)(6) because such debts are only non-dischargeable if a debtor obtains a hardship discharge. If a debtor seeks a discharge under a hardship discharge, the court is required to fix a deadline to file a complaint under 523(a)(6). Fed. R. Bankr. P. 4007.

A complaint to determine the dischargeability of all of the other debts listed in Section 523 may be filed at any time before a case is closed, and, even if the case is closed, it may be filed after

a case is reopened. Or, a creditor or debtor may seek a determination of the dischargeability of these debts in a court other than a bankruptcy court.

Any request to extend the deadline must be made before the time has expired. Fed.R.Bankr.P. 4007(d). And, a trap for the unwary is the fact that an extension to file a complaint to object to a discharge under Section 727, does not also extend the deadline to file a complaint to determine the dischargeability of a debt under Section 523.

Burden of Proof

The creditor must prove that the debt is not dischargeable under Section 523(a) by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291 (1991). And, exceptions to discharge are construed in favor of a debtor.

Collateral Estoppel

Collateral estoppel applies to dischargeability proceedings. *Grogan v. Garner*, 498 U.S. at 284, n. 11 ("We now clarify that collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a)).

Courts will look to the collateral estoppel law of the jurisdiction that issued the judgment to determine whether to give it preclusive effect in the dischargeability adversary proceeding. *See In re Harris*, 3 F.4th 1339, 1344 (11th Cir. 2021) ("[B]ecause the default judgment … was issued by a Florida court, we apply the collateral estoppel law of Florida to determine "the judgment's preclusive effect.") (citations omitted).

As noted by the Eleventh Circuit:

> The Supreme Court, in holding that exceptions to discharge must be proven by a preponderance of the evidence, has explained that a bankruptcy court can "properly give collateral estoppel effect to those *elements of the claim that are identical to the elements* required for discharge and which were actually litigated and determined in the prior action."

Harris at 1346 (quoting *Grogan*, 498 U.S. at 284, 111 S. Ct. 654 (emphasis added)).

Therefore, "[t]he issue previously presented and determined must be identical to the one currently before the court being asked to apply collateral estoppel." *Id.* at 1347.

Jurisdiction of Dischargeability Actions

Bankruptcy Courts have exclusive jurisdiction of most dischargeability actions brought under Sections 523(a)(2), (4), and (6). 5 *Collier on Bankruptcy* ¶ 523.03 (Allen N. Resnick & Henry Sommer eds., 16th ed.) (citing 1983 Advisory Committee Note to Fed. R. Bankr. P. 4007). For all other exceptions to discharge set forth in Section 523(a), a bankruptcy court, state court, or other court of competent jurisdiction may exercise jurisdiction. *Id.*

Prevailing Debtor May be Awarded Attorneys' Fees & Costs

A final point that parties should consider when bringing a dischargeability action is that in certain circumstances, attorneys' fees and costs may be awarded to the opposing side.

First, the Bankruptcy Code contains a provision that awards a debtor attorneys' fees and costs for prevailing in a nondischargeability proceeding if the court finds the position of the creditor was not substantially justified in bringing the action. *See* 11 U.S.C. § 523(d). A creditor has no similar right under this provision. *See In re Carter*, 2021 WL 2582505 (Bankr. N.D. Ga. 2021) ("The Bankruptcy Code does not provide recovery of attorneys' fees upon successful prosecution of a nondischargeability action.").

In addition, attorneys' fees may be awarded to both a debtor and creditor with respect to a dischargeability proceeding where there is an enforceable contractual right to attorneys' fees. *In re Martinez*, 416 F.3d 1286 (11th Cir. 2005).

Other Dischargeability Provisions

In addition to the exceptions discussed above, a creditor could have its debt excepted from discharge for 18 other reasons. As a reminder, actions brought under these subsections are not subject to the time limitations set out in Rule 4007 of the Federal Rules of Bankruptcy, and a creditor may seek an adjudication of these claims by a court other than a bankruptcy court.

a. Section 523(a)(1) and Taxes or Custom Duties

Under Section 523(a)(1), a debtor is unable to discharge a debt that is a tax or customs duty set out in Section 507(a)(3).

b. Section 523(a)(3) and Unscheduled Claims

Under Section 523(a)(3), if a debtor does not schedule a claim in time for a creditor to initiate a dischargeability action under (a)(2), (4), or (6), and the debt is of a kind that is set out in those subsections, then that creditor's claim is not discharged. 11 U.S.C. § 523(a)(3)(B). On the other hand, if the debt is not a of the kind set forth in those subsections, and the case is a no asset case (such that filing a proof of claim would have no impact on the creditor's claim), then the claim is discharged despite the debtor's failure to schedule the claim. 11 U.S.C. § 523(a)(3)(A).

c. Section 523(a)(5) and Domestic Support Obligations

Under Section 523(a)(5), a debtor is not able to discharge debts that are domestic support obligations, as that term is defined under 11 U.S.C. § 101(14)(A).

d. Section 523(a)(7) and Fines, Penalties, and Forfeitures

Under Section 523(a)(7), a debtor is not able to discharge certain fines, penalties, or forfeitures owed to a governmental entity. 11 U.S.C. § 523(a)(7).

e. Section 523(a)(8) and Student Loans

Under Section 523(a)(8), a debtor is not able to discharge certain types of student loan debts. 11 U.S.C. § 523(a)(8). Given the significant amount of student loan debt for which many debtors are obligated, this exception has been the subject of numerous articles and recent opinions with respect to the meaning of "undue hardship."

f. Section 523(a)(9) and Debts Arising from Intoxication

Section 523(a)(9) protects victims of drunk driving by prohibiting a debtor from discharging civil claims arising from personal injuries caused by such actions. 11 U.S.C. § 523(a)(9).

g. Section 523(a)(10) and Debts that Could have been Scheduled in a Prior Case

Section 523(a)(10) prevents a debtor from discharging claims that could have been scheduled in a prior case in which the debtor waived or was denied a discharge. 11 U.S.C. § 523(a)(10).

h. Section 523(a)(11) and Fraud or Defalcation with Respect to FDIC or Credit Union

Section 523(a)(11) prevents a debtor from discharging claims that arose from fraud or defalcation while the debtor was a fiduciary with respect to an FDIC institution or credit union. 11 U.S.C. § 523(a)(11). This exception falls within the exception provided under Section 523(a)(4), but it allows a creditor to avoid the strict deadlines for bringing an action under that subsection along with the exclusive jurisdiction of the bankruptcy court. *See* 11 U.S.C. § 523(c); Fed. R. Bankr. 4007.

i. Section 523(a)(12) and Malicious or Reckless Failure to Fulfill Obligation with Respect to FDIC

Section 523(a)(12) prevents a debtor from discharging claims that arose from a malicious or reckless failure to fulfill an obligation to maintain the capital of an FDIC institution. 11 U.S.C. § 523(a)(12).

j. Section 523(a)(13) and Order of Restitution under Title 18

Section 523(a)(13) prohibits a debtor from discharging an order of restitution arising under Title 18 of the United States Code. 11 U.S.C. § 523(a)(13).

k. Section 523(a)(14) and Obligations Incurred to Pay Taxes owed to the United States

Section 523(a)(14) prevents a debtor from discharging debts incurred to pay taxes owed to the United States. 11 U.S.C. § 523(a)(14).

l. Section 523(a)(14)(A) and Obligations Incurred to Pay Taxes Owed to an Entity other than the United States

Under Section 523(a)(14)(A), a debtor is prevented from discharging debts incurred to pay taxes owed to an entity other than the United States. 11 U.S.C. § 523(a)(14)(A).

m. Section 523(a)(14)(B) and Fines and Penalties under Election Laws

Under Section 523(a)(14)(B), a debtor my not discharge debts for fines or penalties arising under federal election laws, including those that are imposed for actual pecuniary loss. 11 U.S.C. § 523(a)(14)(B).

n. Section 523(a)(15) and Obligations Owed to a Spouse, Former Spouse, or Child

Section 523(a)(15) prevents a debtor from discharging obligations owed to a spouse, former spouse, or child, other than domestic support obligations set out in Section 523(a)(5), arising out of a separation agreement, divorce decree, or other order of a court. 11 U.S.C. § 523(a)(15).

o. Section 523(a)(16) and Debts Owed to Condo Association

Section 523(a)(16) prevents a debtor from discharging obligations owed to a condo association for debts that arise after an order for relief and while the trustee or debtor has a possessory interest in the underlying condo unit. 11 U.S.C. § 523(a)(16).

p. Section 523(a)(17) and Court Costs regarding Actions and Appeals of a Prisoner

Under Section 523(a)(17), a debtor, who was a prisoner, may not discharge costs or expenses incurred in an action or appeals, regardless of a debtor's assertion of poverty. 11 U.S.C. § 523(a)(17).

q. Section 523(a)(18) and Obligations Owed to Retirement Plan

Under Section 523(a)(18), a debtor may not discharge an obligation owed to a retirement plan. 11 U.S.C. § 523(a)(18).

r. Section 523(a)(19) and Obligations Arising from Securities Laws or Regulations

Under Section 523(a)(19), a debtor may not discharge an obligation arising from securities laws or regulations. 11 U.S.C. § 523(a)(19).

Faculty

Michael J. Bargar is a partner in the Bankruptcy, Creditors' Rights and Financial Restructuring practice of Arnall Golden Gregory LLP in Atlanta, where he represents trustees, creditors and debtors in all aspects of bankruptcy. With experience counseling trustees, he handles fraudulent-transfer and preferential-transfer lawsuits, as well as other avoidance actions arising under chapter 5 of the Bankruptcy Code. Trustees also look to Mr. Bargar for his advice in connection with § 363 asset sales, including sales of patents, motor vehicles, oil and gas wells, and improved and unimproved real properties. In February 2018, the U.S. Trustee appointed him to the Chapter 7 Panel of Trustees for the Northern District of Georgia, Atlanta Division, a role in which he continues to serve. Mr. Bargar has experience representing creditors in bankruptcy matters and has successfully obtained stay relief for both mortgagees and landlords, as well as obtained judgments for creditors by prosecuting complaints to determine the dischargeability of debts. He files proofs of claim in chapter 7, 11 and 13 cases, and he defends against objections to proofs of claim, including objections to claims arising from the post-petition rejection of leases. He also works with individual and corporate debtors in chapter 7 and 11 bankruptcy cases, as well as individual and corporate debtors in loan workouts. In conjunction with his practice, Mr. Bargar is a Barrister of the Georgia Bankruptcy American Inn of Court, and he is a Fellow of the American Bar Foundation. Prior to attending law school, Mike worked at National City Bank and then at his *alma mater*, Ashland University, where he received his B.A. He received his M.B.A. in banking and finance from Case Western Reserve University and his J.D. from Emory University School of Law, where he was executive notes and comments editor of the *Emory Bankruptcy Developments Journal*. He also received the Emory University School of Law Transactional Law and Skills Certificate and the Dean's Award for Outstanding Performance in Mergers and Acquisitions.

Richard P. Cook is the owner and managing attorney of Cape Fear Debt Relief, a boutique bankruptcy firm in Wilmington, N.C., that represents individuals and small businesses in chapter 7, 11 and 13 cases before the U.S. Bankruptcy Courts in Eastern North Carolina. In February 2020, Mr. Cook was named a subchapter V trustee for the Eastern District of North Carolina. He is recognized by the North Carolina State Bar as a Board-Certified Specialist in both Business and Consumer Bankruptcy Law. Mr. Cook was selected as a "Rising Star" by *Super Lawyers* in 2017, 2018, 2019, 2020, 2021 and 2022, and in 2020 he was honored as one of ABI's "40 Under 40." He formerly served on the board of the North Carolina State Bar Association's Bankruptcy Section Council from 2013-16 and as the Fourth Circuit Chair for the National Association of Consumer Bankruptcy Attorneys from 2019-21, and he is a regular speaker at state and national bankruptcy conferences. In 2017, 2019, 2020 and 2021, Mr. Cook was recognized as a *Pro Bono* Honor Society Inductee by the N.C. *Pro Bono* Resource Center for providing more than 50 hours of *pro bono* legal services each year. Prior to founding Cape Fear Debt Relief, he was an associate with Butler & Butler, LLP in Wilmington, N.C., and prior to that, he was an associate with Brock & Scott, PLLC in Winston-Salem, N.C. Mr. Cook received his undergraduate degree and J.D. from the University of North Carolina at Chapel Hill in 2003 and 2007, respectively.

Kelsey A. Makeever has been a staff attorney for the Office of Melissa J. Davey, Standing Chapter 13 Trustee, in Atlanta since October 2019. Previously, she worked as a courtroom attorney at one

of the largest consumer bankruptcy firms in Georgia, where she represented debtors in chapter 13 bankruptcies. Ms. Makeever is actively involved in the bankruptcy bar of Georgia by volunteering her time to sit as a board member of the Metro Atlanta Consumer Bankruptcy Attorney Group. She received her B.S. in history and political science *cum laude* from Florida State University in 2014 and her J.D. from Florida State University in 2017.

Hon. Grace E. Robson is a U.S. Bankruptcy Judge for the Middle District of Florida in Orlando. She previously was a partner with Markowitz Ringel Trusty & Hartog, P.A. Judge Robson is a Board-Certified bankruptcy attorney with more than 20 years of experience representing corporate debtors, trade and institutional creditors, trustees, receivers and creditors' committees. Prior to taking the bench, she practiced corporate reorganization and bankruptcy, debtor-creditor relations and bankruptcy litigation. Judge Robson has been involved in all facets of reorganization-related representations, including pre-filing consultation, filing complex corporate bankruptcy cases, post-bankruptcy financing, asset purchase agreements as well as "routine" matters. She is an active member of ABA, currently serving as a co-chair of the Secured Creditors Subcommittee of the Business Law Section, Business Bankruptcy Committee (and previously served as a co-chair of the *Pro Bono* Services Subcommittee). Prior to relocating to the Middle District of Florida, she served on the board of directors of the Bankruptcy Bar Association for the Southern District of Florida and was the Broward Chair of the *Pro Bono* Committee, the Broward Chair of the CARE Program Committee and chair of the Wellness Committee. Judge Robson received her B.A. *cum laude* from the State University of New York at Albany in 1994 and her J.D. from the Benjamin N. Cardozo School of Law in 1997.