JULY 2024



EXCEPTIONS TO DISCHARGE UNDER 523

Review of hot topics and case update in section 523 litigation

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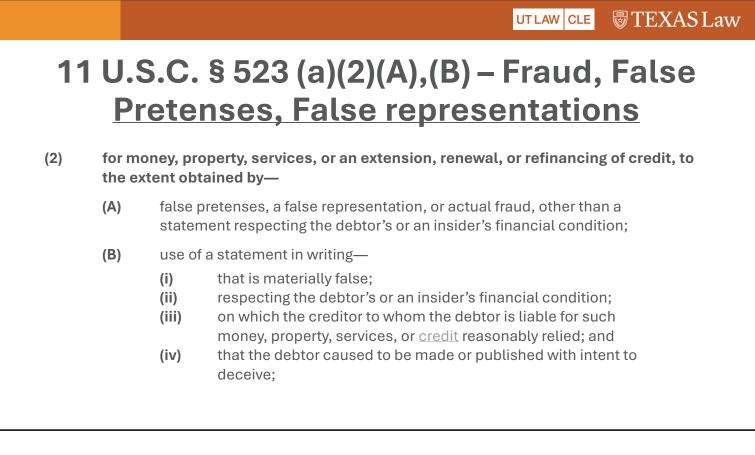
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11 U.S.C. § 523 – Exceptions to Discharge

- One of the primary purposes of bankruptcy is to discharge certain debts to give an honest debtor a "fresh start."
- The right to a discharge is **not absolute**.
- 11 U.S.C. §523 sets forth the statutory exceptions to discharge.
 - Some exceptions are automatic; while others require a creditor to initiate an adversary proceeding to obtain a judicial determination whether the debt to be excepted from discharge is of the type and kind set forth in 11 U.S.C. § 523 (See FED. BANKR. RULE 7001(6)).

11 U.S.C. § 523 – Exceptions to Discharge

- This presentation is focused on a case update on various §523 related issues and other important considerations that arise largely in connection with the following exceptions to discharge:
 - <u>11 U.S.C. § 523 (a)(2)(A),(B)</u> fraud, false pretenses, false representations
 - <u>11 U.S.C. § 523 (a)(4)</u> fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny
 - <u>11 U.S.C. § 523 (a)(6)</u> willful and malicious injury by the debtor to another entity or its property (See 11 USC §101(15) for definition of entity, which includes people)



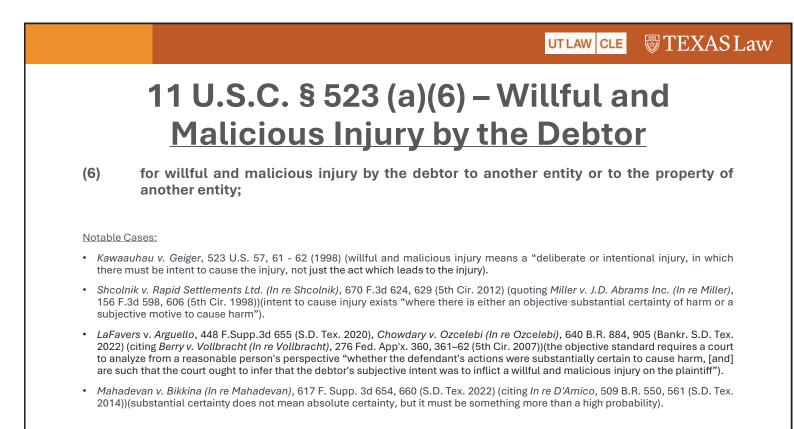
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11 U.S.C. § 523 (a)(4) – Fraud, False Pretenses, False Representations

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

Notable Cases:

- Bullock v. BankChampaign, N.A., 569 U.S. 267 (2013) (discussing heightened standard for defalcation while acting in a fiduciary capacity).
- Chapman v. Forsyth, 43 U.S. 202, 207 (1840)) and Davis v. Aetna Acceptance Co., 293 U.S. 328, 333 (1934) (a fiduciary relationship under §523(a)(4) is limited to express or technical trusts).
- Angelle v. Reed (In re Angelle), 610 F.2d 1335, 1341 (5th Cir. 1980)(finding "it is entirely fair to charge contractors with intent to create a trust simply because they have entered into a contract governed by a statute").
- In re Schwager, 121 F.3d 177, 186 (5th Cir. 1997) (clarifies that a partner's duties to other partners "fall squarely within" the definition
 of a fiduciary duty under § 523(a)(4)).
- LSP Inv. P'ship v. Bennett (In re Bennett), 989 F.2d 779, 787 (5th Cir. 1993) (Texas law imposes trust obligations on partners, which meet the requirements under §523(a)(4)).
- In re Miller, 156 F.3d 598, 602 (5th Cir. 1998)(embezzlement under \$523(a)(4) is the fraudulent appropriation of property by a person to whom such property was entrusted, or in whose hands it has lawfully come).
- n re Patton, 129 B.R. 113, 117 (Bankr.W.D.Tex.1991)(explaining that larceny differs from embezzlement with respect to the way the funds or property come into the possession of a party; property unlawfully appropriated at the outset is larceny, whereas embezzlement occurs when property is appropriated after it was entrusted to one's care).



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2024 Consumer Bankruptcy Hot Topics: Brunner/Gerhardt; plus 523 Discharge Exceptions

First appeared as part of the conference materials for the 2024 Consumer Bankruptcy Practice session "Exceptions to the 523 Discharge"