

DEBTOR/CREDITOR

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Get It in Writing

The bankruptcy statute permits a creditor to object to the discharge of a debt obtained by “a false representation.” However, if the false statement is one “respecting the debtor’s financial condition,” then the statement must be in writing to serve as a basis for such an objection. The United States Supreme Court recently clarified the type of statement which must be in writing to prevent discharge.

A client fell behind on payments to his attorney, and the attorney threatened to withdraw from representation. At a meeting, the client told his attorney that he expected a tax refund of \$100,000, which would be enough to cover present and future legal fees. The statement was false, as the refund was only \$60,000. The attorney continued to represent the client, who subsequently used the refund to pay other bills and filed for bankruptcy protection.

The attorney objected to discharge of the debt for legal fees, arguing that the legal services had been obtained by the client’s false representation. The client argued that the statement related to his financial condition, but was not in writing. The Court agreed with the client that a representation about a single asset was still a statement “respecting the debtor’s financial condition” for which a writing was required to make the debt nondischargeable. *Lamar v. Appling*, 138 S.Ct. 1752 (2018).

Forfeited LLC as Involuntary Petitioner

Maryland law provides that a corporate entity, such as a limited liability company, forfeits its right to do business in Maryland if it does not pay its personal property tax. However, the forfeited LLC may still defend “any action, suit, or proceeding in a court of this State.” Maryland courts understand this to mean that an LLC whose rights have been forfeited may only defend an action in court, but not prosecute one.

A Federal District Court in Baltimore recently decided that this disability from prosecuting actions applies only to actions in Maryland state courts. A forfeited LLC still qualifies as a petitioning creditor to commence an involuntary bankruptcy case in federal court.

Yan v. Zhengang, 2018 U.S. Dist. LEXIS 41603 (D. Md. Mar. 14, 2018).

What Is Non-Consumer Debt?

The bankruptcy statute requires an individual debtor whose (1) family income is above the median for the state of residence and (2) debts are primarily consumer debts to file a Chapter 13 case rather than a Chapter 7 case. A Chapter 13 case is significantly more expensive and time consuming than a Chapter 7 case. Therefore, it is advantageous to have a greater amount of non-consumer debts.

A Maryland bankruptcy judge recently explained that in addition to debts incurred for business purposes, other debts which are not incurred “primarily for a personal, family or household purpose” are also non-consumer debts, such as debts for taxes, personal injury, or court imposed sanctions. *In re Durant*, 2018 Bankr. LEXIS 1878 (Bankr. D. Md. June 19, 2018).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation. Congress has required bankruptcy attorneys to state: “I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code.” 11 U.S.C. § 528. If you wish to receive “Notes on Debtor/Creditor Relations”, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word “here”.

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