

Bankruptcy – Specific performance – Determination of nondischargeability

U.S. Bankruptcy Court

By: Mass. Lawyers Weekly Staff ◉ November 15, 2018

Where a town sought a declaration that its judgment for specific performance against a debtor was not subject to bankruptcy discharge, the town's right to performance is not a "debt" because it is not a right to payment, and therefore not dischargeable in bankruptcy.

"By its complaint in this adversary proceeding, the Town of Hingham, Massachusetts (the 'Town') seeks relief against debtor Ginger Sirikanjanachai (the 'Debtor') in two Counts. By Count I the Town seeks a declaration that its judgment for specific performance against the Debtor is not a 'claim' as that term is defined in the Bankruptcy Code and therefore not subject to the discharge she has received in her chapter 7 case. By Count 11, the Town seeks a determination under 11 U.S.C. § 523(a)(2)(A) or (B) that its right under the same judgment to recover attorney's fees from the Debtor is excepted from discharge as one arising from alleged misrepresentation. ...

"The complaint states with particularity all but two of the misrepresentations on the basis of which it now seeks a determination of nondischargeability. ...

"The issue presented by Count I of the complaint is whether the Debtor's obligation under the Deed Rider, and now under the equitable order of specific performance in the Town's state court judgment against the Debtor, to sell the Unit to the Town, where the Town has exercised its right of first refusal, is subject to the discharge the Debtor has received in this case. The Town's position is that, per 11 U.S.C. § 727(b), a chapter 7 discharge applies only to 'debts' existing on the date of the bankruptcy filing, but the obligation of specific performance is not a debt within the meaning of 11 U.S.C. § 101(12) and therefore is not subject to discharge. ...

"In Count II the Town seeks a determination that its rights under the state court judgment are excepted from discharge by 11 U.S.C. § 523(a)(2)(A) or (B), parts (A) and (B) being distinct bases for determination of nondischargeability. The Town's rights under the judgment are two: the right of specific performance that was the subject of Count I (as to which I understand that Count II is pled as an alternate basis for determination of nondischargeability); and the right to recover attorney's fees of \$70,000. The Town contends that these judgment rights are excepted from discharge on the basis of seven distinct false representations or false pretenses, each one of which, the Town maintains, would suffice to except the entire judgment from discharge. ...

"Whether they are 'statements respecting the debtor's or an insider's financial condition' depends on what constitutes a statement respecting the debtor's or an insider's financial condition, an unsettled issue. Some courts have taken the position that it should be construed narrowly, to apply only to statements concerning the debtor's overall financial condition, such as a balance sheet, an income statement, or a tax return. Others view the term much more broadly, as applying to any statement bearing on the debtor's financial condition and including representations regarding the ownership of a single asset. I have previously ruled that the narrower interpretation is the more appropriate, *Danvers Saving Bank v. Alexander*, 427 B.R. 183, 195 (Bankr. D. Mass. 2010), and I follow that ruling here. The three representations in question are not broad enough in scope to constitute 'statements respecting the debtor's or an insider's financial condition' within the meaning of § 523(a)(2). Accordingly, the three statements are appropriately subject to subsection (a)(2)(A). All the requirements of that subsection having been satisfied as to each of the three, each is a further basis for excepting the judgment obligations from discharge. ...

"For the reasons set forth above, judgment shall enter declaring the Debtor's obligations under the state court judgment to be excepted from discharge."

In Re: Sirikanjanachai (Lawyers Weekly No. 04-050-18) (20 pages) (Bailey, J.) (Nov. 7, 2018).



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