Creditors Can Compel Arbitration of Discharge Violations

Bankrupts are left to the mercy of arbitrators to enforce discharge injunctions.

A former bankrupt must arbitrate a claim that a creditor violated the discharge injunction by reporting that a debt was charged off rather than erased in bankruptcy, according to a district judge in White Plains, N.Y.

It is unclear from the decision whether the result would have been different had the debtor been seeking to enforce the discharge injunction only in his or her own case and not as a class action.

Two debtors reopened their chapter 7 cases to file class action suits against creditors that had told credit reporting agencies that their debts were charged off, not discharged. The debtors contended that the erroneous reports violated their discharge injunctions under Section 524(a)(2).

When Bankruptcy Judge Robert Drain denied the creditors' motions to enforce arbitration clauses in their credit agreements, the creditors appealed and won a reversal from District Judge Vincent L. Briccetti on Oct. 14.

Judge Briccetti relied in significant part on the Second Circuit's 2006 decision in *MBNA America Bank v. Hill*, which upheld an arbitration clause when the debtors filed class actions to enforce the automatic stay.

The result turned on the Federal Arbitration Act and its "liberal federal policy favoring arbitration," Judge Briccetti said. The question for him was whether Congress intended to preclude arbitration of a statutory federal right, as shown by an "inherent conflict" between arbitration and the Bankruptcy Code.

Judge Briccetti was persuaded by Section 1334(b) of the Judiciary Code, which does not give bankruptcy courts exclusive jurisdiction over claims arising under the Bankruptcy Code. In the creditors' favor, he cited the provision in Section 1334 giving bankruptcy courts exclusive jurisdiction over awards of compensation, thus cutting against the notion that Congress did not intended to exempt discharge enforcement from arbitration.

There was no "severe conflict" between the Bankruptcy Code and the Federal Arbitration Act that would "seriously" and "necessarily" jeopardize the "goal of centralized resolution of purely bankruptcy issues," Judge Briccetti said. Citing *MBNA America Bank*, he held that it is not

enough to allege "a violation of an important, even fundamental, Bankruptcy Code provision."

The debtors are moving for leave to take an interlocutory appeal to the Second Circuit.

Judge Bricetti did not cite the *Lehman* case, decided two weeks earlier, in which another Southern District judge found a "severe conflict" and upheld a decision by the bankruptcy court barring arbitration over the subordination of claims. The *Lehman* decision, by District Judge Edgardo Ramos, is discussed above.

The opinion is *Belton v. GE Capital Consumer Lending Inc. (In re Belton)*, 15-cv-1934 (S.D.N.Y. Oct. 14, 2015).