

No. 05-1171

IN THE
Supreme Court of the United States

ROBERT SASSON,
Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually
and as Trustee for CAMELOT MEDICAL GROUP, INC.,
PROFIT SHARING PLAN,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF THE NATIONAL ASSOCIATION OF
CONSUMER BANKRUPTCY
ATTORNEYS AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys (“NACBA”) is a non-profit organization of more than 3,200 consumer bankruptcy attorneys nationwide. Member attorneys and their law firms represent debtors in an estimated 300,000 bankruptcy cases filed each year. NACBA is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NACBA’s corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. NACBA has filed *amicus curiae* briefs in various appellate courts seeking to protect the rights of consumer bankruptcy debtors, including briefs filed in this Court. *E.g.*, *Kontrick v. Ryan*, 124 S.Ct. 906 (2004).

The NACBA membership has a vital interest in the Court’s decision whether to grant review of this matter. NACBA members primarily represent individual low- and moderate-income wage-earners. These debtors and their families have a great need for the “breathing spell” from the burdens of their creditors as Congress intended. Litigating creditor motions to determine whether a debt may be discharged in bankruptcy may be a necessary part of a bankruptcy case because such motions help to define the nature and extent of claims against a debtor’s estate. But it does not necessarily follow that

¹ All parties to this case have consented to the filing of this brief, and letters indicating consent were submitted to the Court prior to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, their counsel, or their members made a monetary contribution to the preparation of this brief.

the debtor must then be forced to also litigate in bankruptcy court the merits of a claim that is ultimately determined to be non-dischargeable. Debtors of limited means simply cannot handle the burdens of defending creditor lawsuits regarding debts that, by definition, are against a debtor's person and no longer affect the estate in bankruptcy. Unless this Court grants certiorari and resolves the split among the circuit courts on the question whether bankruptcy courts may lawfully exercise "supplemental jurisdiction" to enter judgments on non-dischargeable debts, NACBA's constituency faces differing treatment in bankruptcy regarding those debts based solely upon where their petition is filed.

Additionally, NACBA is gravely concerned that holding such claims to fall within the "supplemental jurisdiction" of the bankruptcy courts would turn the very purpose of bankruptcy on its head. Forcing a debtor of limited means to litigate the merits of a non-dischargeable debt during the course of a bankruptcy proceeding undermines the debtor protections provided in bankruptcy. Bankruptcy instead becomes a debt-collection device for the benefit of creditors, whose leverage in obtaining a settlement or judgment against a debtor is increased by the debtor's inability, for lack of financial resources, to adequately litigate the merits of a debt bearing no significance on the administration of his estate. Moreover, forcing a debtor to engage in collateral litigation regarding non-dischargeable debts turns the debtor's (and the bankruptcy court's) focus away from the only real purpose of bankruptcy – the orderly administration of the estate and repayment of estate assets to creditors of the estate.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEAL HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY GO BEYOND THEIR STATUTORILY LIMITED JURISDICTION TO EXERCISE “SUPPLEMENTAL JURISDICTION” UNDER SECTION 1367 OVER MATTERS THAT DO NOT AFFECT THE ESTATE.

The courts of appeal have split on the question whether bankruptcy courts may exercise supplemental jurisdiction under 28 U.S.C. § 1367 over claims which are “related” to claims in bankruptcy because they arise under a common nucleus of operative facts as claims in a bankruptcy case, but which do not otherwise fall within the specific grant of “related to” jurisdiction to bankruptcy courts as set forth in 28 U.S.C. § 1334(b).

Here, the issue presents itself in the context of a bankruptcy court’s determination whether a preexisting debt may be excluded from discharge in bankruptcy pursuant to 11 U.S.C. § 523(a).² There is no question that dischargeability determinations fall within Congress’ specific grant of jurisdiction to the bankruptcy courts, because that issue “arise[s] under” a specific provision of the Bankruptcy Code. *See* 28 U.S.C. § 1334(b). That a bankruptcy court would have jurisdiction to determine whether or not a debt may be discharged makes perfect sense – the

² The Bankruptcy Code provides that creditors may seek a declaration from a bankruptcy court that certain types of claims are excluded from discharge in bankruptcy and thus the creditor may continue to sue the debtor to recover the debt after the bankruptcy. Debts which may be determined to be non-dischargeable include, *inter alia*, (i) debts obtained by fraud, false pretenses, or a false representation (11 U.S.C. § 523(a)(2)), (ii) debts for fraud or defalcation while acting in a fiduciary capacity (11 U.S.C. § 523(a)(4)), and (iii) debts for willful or malicious injury to another entity or the property of another entity (11 U.S.C. § 523(a)(6)).

bankruptcy court, after all, is charged with jurisdiction over a debtor's estate and claims against the estate. See *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) (bankruptcy court jurisdiction "is premised on the debtor and his estate"). The bankruptcy court therefore must have jurisdiction to decide whether a claim is, in fact, a claim against the estate that falls within the court's jurisdiction.

Once a bankruptcy court decides that a claim is non-dischargeable, however, the debt becomes personal to the debtor and has no bearing whatsoever on the res of the estate. Such a debt is specifically contemplated to be paid from post-bankruptcy assets. See, e.g., *Berger, Shapiro, & Davis, P.A. v. Haeling (In re Foos)*, 183 B.R. 149, 162 (Bankr. N.D. Ill. 1995) (once a creditor successfully obtains a declaration that a debt is non-dischargeable, the debtor "would bear the burden of satisfying that debt out of post-bankruptcy assets . . . [which are] not property of the estate"); *In re Boggan*, 125 B.R. 533, 534 (Bankr. N.D. Ill. 1991) ("The holder of a non-dischargeable claim has remedies against the debtor personally and the debtor's post-bankruptcy assets that other creditors do not have"). Indeed, this is precisely the reason creditors seek non-dischargeability determinations: in addition to obtaining a pro-rata distribution on the debt from debtor's estate, a creditor can seek full recovery of the debt from a post-bankruptcy debtor whose debts have otherwise been discharged.

Because a non-dischargeable debt does not impact the estate, the bankruptcy court's jurisdiction over the claim – typically a claim arising under state law based on tort or contractual theories – should end. Cf. *Hood*, 541 U.S. at 450 ("the bankruptcy court's jurisdiction is premised on the res, not on the persona"). However, creditors seeking a declaration regarding the dischargeability of a debt also commonly

seek judgments from the bankruptcy courts on the merits of the underlying claims. See Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 AM. BANKR. L.J. 115, 116 (2000) (“Most” nondischargeability determinations “not only ask the court to except particular debt(s) from discharge, but also to enter a money judgment against the debtor for the amount of the debts”).

The jurisdiction specifically conferred upon bankruptcy courts is limited to “civil proceedings arising under Title 11, or arising in or related to cases under Title 11” that could potentially impact the res of a debtor’s estate. 28 U.S.C. § 1334; *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (Congress “intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with *all matters connected to the bankruptcy estate*) (citation omitted) (emphasis added)). Because non-priority, non-dischargeable debts cannot, by definition, impact the res of a bankruptcy estate, bankruptcy courts lack subject matter jurisdiction over disputes regarding the claims underlying such debts. See *id.* at 307 (“the Bankruptcy Court’s jurisdiction [over a proceeding] must be based on the ‘arising under,’ ‘arising in,’ or ‘related to’ language of §§ 1334(b) and 157(a)”).

Notwithstanding the Court’s statements in *Celotex* regarding the proper bases of bankruptcy court jurisdiction, the circuits have split on the question whether bankruptcy courts may go *beyond* their specific grant of jurisdiction in 28 U.S.C. § 1334 to also exercise “supplemental jurisdiction” under 28 U.S.C. § 1367 over claims which the court would otherwise lack jurisdiction concerning because they do not impact the res of the bankruptcy estate.

The Third, Fifth, Seventh, and Eleventh Circuits prohibit bankruptcy courts from exercising supplemental jurisdiction over claims which do not impact the res – that is, claims which do not affect payments to other creditors from the bankruptcy estate or the administration of the estate – even if the interests of “judicial economy” arguably may be served if the court hears the dispute. As aptly explained by the Eleventh Circuit: “Overlap between the bankrupt’s affairs and another dispute is insufficient [to warrant bankruptcy court’s exercise of jurisdiction] unless its resolution also affects the bankrupt’s estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b). Judicial economy itself does not justify federal jurisdiction.” *Miller v. Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990) (footnotes omitted).³ These decisions reflect an understanding of the specialized jurisdiction extended to bankruptcy courts. Section 1367 of Title 28 is, of course, readily applied to extend the jurisdiction of the district courts while such courts sit under heads of

³ See also *Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 302 (3d Cir. 1985) (“The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [present section 1334(b)]”) (quotation omitted); *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995) (bankruptcy court’s exercise of “ancillary and pendent jurisdiction could subsume the more restrictive ‘related to’ and ‘arising in’ jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous”); *Wisconsin Dep’t of Industry, Labor, and Human Relations v. Marine Bank Monroe (In re Kubly)*, 818 F.2d 643, 645 (7th Cir. 1987) (it is not sufficient for there to be a “logical relationship or ‘nexus’ between a proceeding and a bankruptcy case” because “the ‘related to’ jurisdiction encompasses only disputes that affect the payments to the bankrupt’s other creditors or the administration of the bankrupt’s estate”).

jurisdiction that provide a broad general jurisdiction over “civil actions” of the type referenced in § 1367. (28 U.S.C. § 1367.) It is far less clear that section 1367 can appropriately be applied to extend the specialized jurisdiction of the district courts, and especially the bankruptcy courts, to administer cases and *in rem* “civil proceedings” (28 U.S.C. § 1334(b)) in bankruptcy.

The Second, Fourth, Sixth, Eighth, and Ninth Circuits, on the other hand, have permitted bankruptcy courts to go beyond the specific grant of jurisdiction under section 1334(b) to hear disputes over non-dischargeable state law claims based upon an alleged factual nexus between a bankruptcy proceeding and the underlying state law claim. That is, those circuits permit bankruptcy courts to exercise supplemental jurisdiction under section 1367, over claims which do not impact or affect a debtor’s estate in any way.⁴ In doing so, these courts have relied upon asserted interests of judicial economy and the bankruptcy courts’ “equitable jurisdiction,” and not on any finding that the debt could have any effect on the bankruptcy estate. *See, e.g., Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997) (“If it is acknowledged as beyond question that a complaint to

⁴ *See also Hall v. Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) (unpublished) (bankruptcy court has authority to enter money judgment on non-dischargeable debt because “to be non-dischargeable, the court must have found a debt to be due and owing”); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993) (amount of liability on non-dischargeable debt was “properly determined” by the bankruptcy court because “if it is acknowledged . . . that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment” (internal citations and quotations omitted)); *Abramowitz v. Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993) (“[t]he small step the bankruptcy court took between determining [debtor’s] liability for fraud and entering a money judgment against [debtor] as a result of that fraud was a logical exercise of related to jurisdiction”).

determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must also follow that the bankruptcy court may also render a money judgment . . . because equitable jurisdiction attaches to the entire cause of action . . .”).

Whether a bankruptcy court may exercise supplemental jurisdiction over a state-law dispute absent “related to” jurisdiction under section 1334, in order to enter judgment against a debtor following a determination that the claim is non-dischargeable, is thus currently dependent only upon the location of the court in which a debtor files his or her bankruptcy petition. The split among the circuits on this issue engenders conflicting rulings among the lower federal courts and prevents the creation of a uniform body of law upon which debtors can rely. This is an important consideration given Congress’ authority to establish “uniform laws on the subject of bankruptcies throughout the United States.” U.S. Const. art. I, § 8, cl. 4. This Court should grant Petitioner’s writ to resolve this issue.

II. REQUIRING A DEBTOR TO DEFEND AGAINST LITIGATION UNRELATED TO THE BANKRUPTCY ESTATE DURING THE COURSE OF A BANKRUPTCY CASE DEFEATS THE FUNDAMENTAL PURPOSES OF THE BANKRUPTCY CODE

A bankruptcy court’s dischargeability determination is a “question of federal law independent of the issue of the validity of the underlying claim.” *Grogan v. Garner*, 498 U.S. 279, 289 (1991). *See also Sill v. Sweeney (In re Sweeney)*, 276 B.R. 186, 195 (6th Cir. B.A.P. 2002) (Dischargeability is “a matter separate from the merits of the debt itself”). “A dischargeability action under [Section 523] encompasses ‘two distinct claims: (1)

whether the debtor owes a debt to the plaintiff and (2) whether the debt owed by the debtor to the plaintiff is nondischargeable.” *Sweeney*, 276 B.R. at 195 (quoting *Jorge v. Mannie (In re Mannie)*, 258 B.R. 440, 444-45 (Bankr. N.D. Cal. 2001).) The bankruptcy court’s inquiry thus consists exclusively of a summary examination of the *nature* of the debt sought to be exempted from discharge, and need not delve into the merits of the underlying state-law claim.

Forcing a debtor to engage in litigation during the course of his or her bankruptcy regarding a non-priority, non-dischargeable claim that, by definition, cannot impact the estate eliminates the very protections that filing a bankruptcy petition is meant to provide. Yet, this is precisely the outcome that results from a bankruptcy court’s exercise of “supplemental jurisdiction” over claims for which it otherwise lacks jurisdiction under section 1334. In particular, requiring debtors to defend, in bankruptcy court, litigation over an underlying state-law claim that cannot be discharged in bankruptcy works a significant hardship on debtors who, because of their limited resources, seek bankruptcy protection as a means of relief from creditor collection efforts and general financial pressures. The bankruptcy court is transformed from a sanctuary for debtors in dire financial straits into a means by which creditors can obtain expedited judgments against debtors who lack adequate resources to sufficiently defend against the claims. Such a result surely was not intended by Congress when it enacted the Bankruptcy Code.

Congress’ intent to shield debtors from collection efforts and general financial pressures during the course of a bankruptcy case is illustrated by its enactment of the automatic stay provision set forth in 11 U.S.C. § 362, “[o]ne of the fundamental debtor protections provided by the bankruptcy laws.” S.Rep. No. 95-989, 95th Cong., 2d Sess. 54-55 (1978),

reprinted in 1978 U.S.C.C.A.N. 5787, 5840-41. The automatic stay evinces Congress' view that a debtor requires "a breathing spell from its creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." *Id.* See also *In re Zinchiak*, 406 F.3d 214, 219 n.2 (3d Cir. 2005) ("The automatic stay serves several purposes, including 'providing debtor a breathing spell from creditors by stopping all collection efforts . . .' as well as protecting 'creditors by preventing particular creditors from acting unilaterally to obtain payment from a debtor to the detriment of other creditors'" (quotation omitted); *Winters By and Through McMahon v. George Mason Bank*, 94 F.3d 130, 133 (4th Cir. 1996) ("The purpose of the automatic stay. . . is to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding") (citing *In re Stringer*, 847 F.2d 549 (9th Cir. 1988)).

These important protections provided by the automatic stay no longer exist if a bankruptcy court may exercise "supplemental jurisdiction" under section 1367 and force a debtor to expend additional resources to litigate the merits of a claim underlying a non-dischargeable debt. Allowing creditors to litigate the merits of claims that are unrelated to the bankruptcy estate (and thus could be handled once the bankruptcy case has been closed) perpetuates increased litigation and collection efforts on the part of creditors during the pendency of a bankruptcy case, contrary to the "breathing spell" from collection efforts intended by the Bankruptcy Code. Typical consumer debtors simply lack the financial means to engage in protracted litigation – one reason for seeking bankruptcy protection in the first place. Low and moderate-income debtors have reason to be particularly concerned with such litigation, as they

may ultimately be coerced into settling claims they cannot afford to pay during the course of their bankruptcy case, on terms less favorable than the debtor might obtain once it has received a “fresh start” from the remainder of its debts.

Limiting a bankruptcy court’s ability to enter judgments against a debtor based on non-dischargeable state law claims does not give debtor a “free pass” from the debt – rather, debtor must ultimately face the music post-bankruptcy, when the creditor seeks to obtain a judgment (or to enforce a pre-petition state court judgment) against debtor in a court of competent jurisdiction with respect to the state law claim, which (if entered) debtor must pay from post-bankruptcy assets. But such a scenario is preferable to one in which debtors drowning in debt and seeking, with bankruptcy court assistance, a means to satisfy creditors of the estate from their limited assets, must also concern themselves during the course of the bankruptcy case with collection efforts by creditors whose claims should not impact the bankruptcy.

The overall objective of the Bankruptcy Code – the “prompt and effectual administration of the estate of all bankrupts within a limited period” (*Katchen v. Landy*, 382 U.S. 323, 328-29 (1966)) – is likewise not served by permitting bankruptcy courts to exercise supplemental jurisdiction in this circumstance. Resolving state law claims underlying a non-dischargeable debt are irrelevant to the administration of a bankrupt’s estate. Thus, scarce federal judicial resources are needlessly expended as bankruptcy judges address matters that Congress intended should be left to the state courts. Moreover, permitting litigation of such claims in bankruptcy court serves only to prolong the duration of a bankruptcy case, to the detriment of creditors who await recovery from the bankruptcy estate. Finally, debtors and the

bankruptcy court will suffer as their attention is turned from core matters attendant to case administration, such as marshaling assets and developing a plan for paying creditors of the estate, to dealing with matters that have no impact on the estate at all.

CONCLUSION

Certiorari is appropriate where, as here, a division among the courts of appeal regarding the extent of a bankruptcy court's jurisdiction has created a situation where certain debtors, by virtue of the circuit where they file a bankruptcy petition, may lose the primary benefit of seeking bankruptcy relief: a "breathing spell" from the debtor's creditors and relief from the financial pressures that drove the debtor into bankruptcy. The petition for writ of certiorari should be granted.

Respectfully submitted,

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