Part 1: Divorce Issues in Bankruptcy Often Make Handling Divorce Matters Advantageous

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Although numerous issues intertwining bankruptcy affect divorce claims, some divergent bankruptcy matters need to be brought to the attention of most domestic attorneys representing the party to whom obligations are owed: (1) your client's divorce-related debt will not be discharged and you do not need file an adversary proceeding to preserve the debt; (2) do not over-litigate your client's interest to a bankruptcy judge as the same will not be embraced; (3) many times you will not need stay relief to pursue divorce matters; (4) file a proof of claim; (5) be less concerned about a preference action against your domestic support obligation (DSO) client; and (6) your client's rights against homestead or other exempt assets improve in bankruptcy, particularly when the debtor resides in a debtor-friendly state such as Florida.

This article will be delivered in two parts. The first part will review the considerations given to the party owed alimony or child support. The second part will focus on the unique circumstance from which a creditor owed alimony or child support may have amplified rights of protection and collection should the nonpaying former spouse file for bankruptcy.

Term DSO

In 2005, the domestic creditor received great latitude. The Bankruptcy Code created a broad definition of what is now termed "domestic support obligation," or DSO.[1] A DSO is almost universally defined as any order entered by a domestic court in the appropriate jurisdiction of matters concerning matrimonial or parental responsibilities or divisions.[2] By another section of the Bankruptcy Code, 11 U.S.C. § 523(a)(5), a DSO debt is excepted from discharge.[3] More importantly, a DSO debt is nondischargeable without the necessity of the DSO creditor filing a complaint against the debtor to assert the same.[4]

To ensure that domestic claims (DSO debts) are taken seriously by the debtor/obligor, other bankruptcy provisions are provided to the DSO creditor, including (1) another nondischargeability clause,[5] (2) the highest-ranking priority clause for payment from the estate's assets (even ahead of taxes),[6] (3) immunity from preference actions filed by a debtor or trustee,[7] and (4) an exemption-busting provision that allows a DSO creditor to defeat a debtor's exemption protections — the latter two being topics of the second portion of this article, which will be published in the second installment of this article.[8]

Know Which DSO Applies to You

Often the attorneys involved in domestic actions have fees owed. Because fee awards in a domestic court are nondischargeable, domestic attorneys often do not fear a bankruptcy filing. A distinction lies when a fee award is owed to the opponent's attorney as opposed to the debtor's attorney. Fees that are owed to the opposing party's attorney are usually deemed to be associated with child support or alimony and are therefore deemed to be a DSO award, which would not be dischargeable. Alternatively, a fee award owed to counsel representing the debtor is often not deemed to be a DSO award and is dischargeable.[9]

Concurrent Jurisdiction

Uniquely, domestic matters can be heard *after* a bankruptcy filing without a need to obtain relief from the automatic stay.[10] The rule is simple: matrimonial obligations in the "nature of support" *do not* need stay relief.[11] So long as the property subjected to the DSO issues is not property of the estate, the DSO creditor may seek action in the matrimonial court without stay relief.[12] In addition, bankruptcy courts will often be lenient to the domestic creditor. Occasionally, a domestic creditor can be overly aggressive and unknowingly violate the stay, but such matters in the Eleventh Circuit will not usually deliver sanctions.[13] In short, bankruptcy courts seek to loosen their grip on disputes between the debtor and a domestic creditor — often delivering the matter to the "other" court.

Distinguishing Exception to Discharge from Denial of Discharge

There are two provisions in the Bankruptcy Code affecting the discharge of the debtor: exception to discharge and denial of discharge. The former excepts the discharge as to a particular creditor's claim against the debtor. In such a circumstance, all other claims would be discharged. In effect, the excepted creditor's abilities to collect improve as the debtor's ability to pay improves. Bankruptcy will have relieved all responsibilities of the debtor to pay discharged creditors, thereby allowing the debtor to focus on the excepted debts. Among the most obvious of such excepted debts are Internal Revenue Service debts,[14] DUI debts[15] or criminal activities that might have restitution awards associated with the adjudication of guilt.[16] Unknown to many domestic lawyers,

an award for a domestic debt is also excepted[17] — and that DSO excepted debt exists *without the necessity* of filing a dischargeability action.

Alternatively, a denial of discharge annuls the discharge as to all creditors. The denial of discharge defeats the bankruptcy's purpose. If a discharge is denied under 11 U.S.C. § 727, the debtor effectively loses all benefits and none of the debt is discharged. Additionally, the debtor may lose numerous assets to the chapter 7 trustee's administration. When the latter circumstances arise, it is truly a lose/lose circumstance to the debtor. Any creditor seeking such recourse must file an adversary.

DSO Creditors Should Consider Not Being Overly Aggressive

Sometimes, the bitterness between the spouses cannot be exaggerated. In fact, the former spouse of a debtor tends to be one of the most reliable and useful tools for a chapter 7 trustee's discovery of hidden assets. But upon reviewing the above-recited freely granted exception to discharge to former spouses/parents, together with the first priority for payment in a bankruptcy, as well as the exemption-busting provision under 11 U.S.C. § 522(c)(1), DSO creditors must think about whether being overly aggressive is best for the client.

There have been cases where a former spouse, who already has had his or her debt excepted from discharge as stated above,[18] wants more. He or she wants *denial* of the discharge. Apparently exception to discharge is not enough. Before a former spouse files an adversary seeking denial of the entire discharge — for any of the allotted reasons[19] — domestic attorneys and their clients should understand one thing: Bankruptcy courts might not be receptive to handling domestic matters.[20] Bankruptcy courts already understand that the DSO creditor has the best of all worlds (allowing the debtor to be discharged of every other debt, which enables the debtor to more ably pay the DSO creditor). Bankruptcy courts, therefore, might not receptive to a denial of discharge action being filed by the already blessed nondischarged DSO creditor.

One bankruptcy court asserted that a former husband cannot[21] come before the court to seek a denial of discharge for the debt owed to all creditors.[22] In such denial, the bankruptcy court actually improved the abilities of that DSO creditor to seek collection after the bankruptcy filing and provided the DSO creditor a service. A domestic attorney is best advised to avoid filing nondischargeability actions under 11 U.S.C. § 727 for a few reasons: (1) You would allow other creditors, which would otherwise be enjoined from competing with you in collection, to potentially interfere with your collection; and (2) you would be asking for more than what lobbyists and Congress have already generously provided: framed discharge exceptions, payment priorities and other advantages for DSO creditors that other creditors can only look upon in envious manner.[23]

Enjoy the Privilege, and You'll Do Fine

Congress allowed DSO creditors to have their debt excepted from discharge without the need for filing an adversary proceeding. Congress has also allowed the DSO creditor to seek enforcement outside of bankruptcy without the need for stay relief. Congress further gave DSO creditors a first priority in payment from any recoveries made in the estate. Congress virtually emasculated the bankruptcy discharge in regard to the DSO creditor. In the second portion, this article will look into how Congress also made the DSO creditor virtually immune from trustee attack and provided heightened collection rights. In fact, the DSO creditor's rights to enforce pre-petition DSO debt may include the liquidation of the debtor's exempt assets — something even the federal government or the IRS cannot do.

Part 2: The Shield and the Sword: DSO Creditors' Collection Improves in Bankruptcy

The first portion of this article reviewed how a DSO creditor need not shudder if he or she discovers the DSO debtor has filed a bankruptcy. If a bankruptcy is filed, the DSO creditor knows the debt will not be discharged, the nondischargeable portion of the debt does not require a costly adjudication by adversary, and if the estate administers assets for the creditors, the DSO creditor will be paid as the first priority. This portion of the article focuses on how Congress has fortified the protections and collections for DSO creditors.

Preferences

"Preferences are integrally a part of a collective proceeding (bankruptcy, composition, receivership, and such proceedings that marshal the assets of a debtor)…."[24] "By definition, a preference involves a transfer on account of an antecedent debt, and there is no question as to the reinstatement of the debt if there is a recovery by the trustee or debtor."[25] To this definition numerous exceptions exist, including immunity to the DSO creditor who receives payment within 90 days of the petition.[26] The exception provided to the DSO creditor is so unambiguously written that a review by this author cannot find one published case in which a trustee and DSO creditor fought over such a DSO payment being preferential.

After all of the above-referenced post-bankruptcy collection abilities remain in place because of the protections afforded under the exception to discharge for DSO creditors in the Bankruptcy Code (topic of Part 1) and the immunity to preferential attack by a trustee, perhaps the most important aspect of a bankruptcy filing (in a DSO creditor's perspective) is that the bankruptcy may *improve* the collection efforts for the DSO creditor — including rights that would not exist outside of bankruptcy. For example, Florida, unlike most other states, allows the entire homestead to be exempt. The Florida homestead exemption is limited to 162 acres and its residence[27] or one-half acre[28] and its residence[29] — and only three exceptions are provided by the Florida Constitution.[30] The constitutional protection for the Florida homestead is so vast that even fraudulent transfers into a homestead property[31] cannot defeat the exempt nature of the Florida homestead.[32]

Inside of bankruptcy, this may not be true. DSO creditors may have greater rights — and may even be able to liquidate the Florida homestead!

The 2005 amendments to the Bankruptcy Code added numerous provisions to benefit DSO creditors. Specifically, the Code provides that exempt property will not be liquidated during or after the case to pay creditors *unless* that exempt property is trying to avoid payment for a DSO award.[33] Only the DSO creditor, not the trustee, can assert such claims against the exempt property.[34] On initial review of the issue, a bankruptcy court prohibited a trustee from liquidating the exempt asset to pay the DSO creditor.[35] This particular issue was subsequently brought to the bankruptcy court's attention in the Southern District of Florida in a case called *Quezada*, which also prohibits the panel trustee from liquidating exempt assets for the benefit of the DSO creditor.[36]

Hence, when the debtor files bankruptcy, what must the DSO creditor do, if anything? First, file a proof of claim as DSO creditors are paid as first priority. Second, a prudent thing is to prohibit there being an adjudication that the otherwise-exempt property is exempt. In bankruptcy, absent timely objection to the exemption within 30 days of the date set for the first meeting of creditors ("341 meeting"), the property is deemed exempt.[37] Even though the above-described language of § 522(c) of the Bankruptcy Code appears to assert that the exemption will not permit post-bankruptcy collection against the otherwise-exempt property, it may be advisable to get a comfort order from the bankruptcy court stating that under § 522(c)(1), the otherwise-exempt property is not deemed to be exempt as to the DSO creditor as provided by the Bankruptcy Code.[38] Thereafter, the creditor could take that bankruptcy court order to the state court when executing against homestead or other exempt properties, from which the state court judges or sheriffs will better understand why DSO creditors are executing against properties that would otherwise be deemed *prima facie* exempt from creditor attack.

The better practice would be to have the liquidation or administration in the bankruptcy court. The *Quezada* court hints that it may not deny a DSO creditor's motion that parallels the denied motion filed by the *Quezada* trustee.[39] The denial in *Quezada* arose because the movant was not the DSO creditor or lacked standing. Had a DSO creditor come to the *Quezada* bankruptcy court requesting liquidation of the debtor's homestead, the *Quezada* motion might have been granted by the court. And if that motion had been granted, a more immediate liquidation and payment would possibly arise. Bankruptcy courts, unlike state courts, allow rapid liquidation and transfer of cash to the DSO creditor that is often not often provided by state court remedies. For this reason, DSO creditors owed pre-petition debt should contact bankruptcy professionals to review such an issue.

Conclusion

A DSO creditor has many protections and priorities. Sometimes those protections permit DSO creditors to seek remedies that might not be provided to other creditors. First, there is concurrent jurisdiction — so many actions to handle divorces may be pursued without stay relief. Second, the discharge of a DSO debt will be excepted *without the necessity of filing* a bankruptcy adversary — thereby saving significant costs. Third, because the exception to discharge provided for DSO creditors is strong — together with the priority status and exemption-busting provision of § 522(c)

— it may be ill-advised to file a denial of discharge action under § 727 on behalf of the DSO creditor. Fourth, the priority for the pre-petition nonpayment of DSO debt alerts the attorney to file a proof of claim for the client, as any recovery will likely benefit the DSO creditor, which holds first-priority status. Fifth, concerns about being subjected to preferential attack are addressed by the Bankruptcy Code, which provides immunity for the DSO creditor. Lastly, a DSO creditor in a debtor-friendly state (like Florida), and to the extent such remedies are available, might want to file motions in the bankruptcy court to liquidate the debtor's valuable exempt assets (residence, pension plans, life insurance policies or other assets that could amount to large payments) to provide for quick liquidation and delivery of cash to the DSO creditor's benefit without the necessity of going through the procedural difficulties often experienced in state collection matters. In any event, a DSO creditor's representative should be aware of such opportunities and might want to alert a bankruptcy attorney so as to obtain an expert analysis of whether or not the bankruptcy will deliver expedient and permissible remedies that might otherwise not be afforded to that same creditor outside of bankruptcy.[40]

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1. 11 U.S.C. § 101(14A) provides an expanded definition for "domestic support obligation."

2. The Bankruptcy Code defines as DSO as follows:

101 (14A) The term "domestic support obligation" means a debt that accrues before, on or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(I) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(I) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

3. There is a second exception under 11 U.S.C. § 523(a)(15)

4. 11 U.S.C. §§ 523(a)(5) and 1328(a)(2).

5. § 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

6. § 507. Priorities

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

7. 11 U.S.C. § 547(c)(7) states:

(c) The trustee may not avoid under this section a transfer—

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation...

8. Section 522(a)(c). Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph)….

9. "Section 523(a)(5) of the Bankruptcy Code can and should be applied to debts in the nature of support payable to third parties if, and only if, at the time of the debtor's bankruptcy, the former spouse is also obligated to the third party. In that instance, discharge of the debt would leave the former spouse liable and the exception would properly be applied to protect her. By contrast, where, as in this proceeding, *any obligation by the Former Spouse has been extinguished, neither sound statutory construction nor the policy underlying the statute support application of the exception since excepting the debt from discharge would benefit only the third party professional*." *Simon, Schindler & Sandberg LLP v. Gentilini (In re Gentilini)*, 365 B.R. 251, 259 (Bankr. S.D. Fla. 2007) (emphasis added).

10. 11 U.S.C. § 362.

11. "In particular, we noted that the state divorce court had concurrent jurisdiction with the bankruptcy court to determine whether the divorce obligation was 'in the nature of support' for purposes of § 523(a)(5), and we ruled that the bankruptcy court should await the divorce court's clarification of its intent regarding the amount of support provided in its award." *Cummings v. Cummings (In re Cummings)*, 277 Fed. Appx. 946, 947 (11th Cir. Fla. 2008).

12. 11 U.S.C. § 362(b)(2)(B) provides that the holder of a DSO claim may levy on non-estate assets without violating the automatic stay.

13. "In *Carver v. Carver*, 954 F.2d 1573, 1579-80 (11th Cir. 1992), we held that in some narrow circumstances, bankruptcy courts ought to abstain from imposing sanctions for violations of the automatic stay where the underlying actions involved domestic support obligations." *Russell v. Caffey (In re Caffey)*, 384 Fed. Appx. 882, 885 (11th Cir. Ala. 2010).

14. 11 U.S.C. § 523(a)(1).

15. 11 U.S.C. § 523(a).

16. 11 U.S.C. § 523(a)(13).

17. 11 U.S.C. § 523(a)(5) and (15).

18. 11 U.S.C. § 523(a)(1)(5).

19. Those reasons include: failure to provide requested tax documents; failure to complete a course on personal financial management; transfer or concealment of property with intent to hinder, delay or defraud creditors; destruction or concealment of books or records; perjury and other fraudulent acts; failure to account for the loss of assets; and violation of a court order or an earlier discharge in an earlier case commenced within certain time frames before the date the petition was filed.

20. In fact, the concurrent jurisdiction of domestic actions with bankruptcy court jurisdiction leads the courts to freely abstain (not leave the matter before bankruptcy court, but rather send it back to the divorce court) so as to permit the "other" court to handle the dispute between the parties.

21. 11 U.S.C. § 523(a)(5) and (15).

22. *Rosenfeld v. Rosenfeld, (In re Rosenfeld*), 558 B.R. 825 (E.D. Mich. 2016), citing "[w]hen — for whatever reason — the dispute discontinues or [the court is] no longer able to grant meaningful relief to the prevailing party, the action is moot, and we must dismiss for lack of jurisdiction." *United States v. Blewett*, 746 F.3d 647, 661 (6th Cir. 2013) (Moore, J., concurring) (citing *Knox v. Serv. Emp. Int'l Union*, 132 S. Ct. 2277, 2287, 183 L. Ed. 2d 281 (2012)).

23. Pigs are cute; hogs get slaughtered.

24. *Perkins v. Petro Supply Co. (In re Rexplore Drilling)*, 971 F.2d 1219, 1226 (6th Cir. 1992).

25. *Tronox Inc. v. Kerr McGee Corp. (In re Tronox Inc.),* 503 B.R. 239, 330 (Bankr. S.D.N.Y. 2013).

26. 11 U.S.C. § 547(c)(7).

27. Interestingly, if not in a municipality, the exemption includes the residence "and improvements thereon."

28. In incorporated areas of Florida or in a "municipality."

29. In incorporated areas of Florida or in a "municipality."

30. Article X, § 4 of the Florida constitution states, in pertinent part:

There shall be exempt from for sale under process of any court, and no judgment, decree, or execution shall be a lien thereon, except for the payment of taxes and assessments thereon,

obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field, or other labor performed on the realty, the following property owned by a natural person: (1) a homestead....

31. In 1999, this was an issue delivered to the Eleventh Circuit. "Federal courts attempting to interpret Florida law regarding this issue have reached contrary conclusions. Compare *In re Mesa*, 232 B.R. 508 (Bankr. S.D. Fla. 1999) (imposing equitable lien on homestead); *In re Kravitz*, 225 B.R. 515 (Bankr. D. Mass. 1998) (denying homestead exemption when debtor acted with actual fraudulent intent); *In re Bandkau*, 187 B.R. 373 (Bankr. M.D. Fla. 1995) (denying homestead exemption to extent that it was purchased with nonexempt money); *In re Thomas*, 172 B.R. 673, 674 (Bankr. M.D. Fla. 1994) (granting objection to claimed homestead exemption under Fla. Stat. § 220.30); *In re Coplan*, 156 B.R. at 92 (limiting homestead exemption when homestead was acquired in fraud of creditors); *In re Grocki*, 147 B.R. 274, 278 (Bankr. S.D. Fla. 1992) (imposing equitable lien on homestead); *In re Gherman*, 101 B.R. 369, 370 (Bankr. S.D. Fla. 1989) (sustaining objection to homestead exemption where debtor used fraudulently converted funds to purchase homestead), with *Bank Leumi*, 898 F. Supp. at 887 (refusing to create nontextual exception to homestead exemption based on fraudulent intent of debtor); *In re Hendricks*, 237 B.R. at 825 (allowing homestead exemption); *In re Young*, 235 B.R. 666 (Bankr. M.D. Fla. 1999) (holding that homestead exemption could not be disallowed because nonexempt assets were used to acquire homestead even if debtor fraudulently converted nonexempt assets with intent to defeat creditor's claims); *In re Lazin*, 221 B.R. 982, 988 (Bankr. M.D. Fla. 1998) (finding that conversion of nonexempt assets into homestead with intent to hinder, delay or defraud creditors is not exception to homestead exemption); *In re Lee*, 223 B.R. 594 (Bankr. M.D. Fla. 1998) (finding debtor's intent to defraud creditors did not constitute basis for disallowing Florida homestead exemption); *In re Statner*, 212 B.R. 164 (Bankr. S.D. Fla. 1997) (allowing homestead exemption); *In re Clements*, 194 B.R. 923 (Bankr. M.D. Fla. 1996) (holding that debtor is entitled to keep homestead as exempt even if it was acquired in fraud of creditors); *In re Miller*, 188 B.R. 302 (Bankr. M.D. Fla. 1995) (upholding homestead exemption even though its purchase was fraudulent transfer as to creditors); *In re Popek*, 188 B.R. 701 (Bankr. S.D. Fla. 1995) (allowing homestead exemption); *In re Lane*, 190 B.R. 125 (Bankr. S.D. Fla. 1995) (allowing homestead exemption)." *Havoco of Am. Ltd. v. Hill (In re Hill)*, 197 F.3d 1135, 1141-1142 (11th Cir. Fla. 1999). The Eleventh Circuit sent the following issue to the Florida Supreme Court: "Does Article X, Section 4 of the Florida Constitution exempt a Florida homestead, where the debtor acquired the homestead using non-exempt funds with the specific intent of hindering, delaying, or defrauding creditors in violation of Fla. Stat. § 726.105 or Fla. Stat. §§ 222.29 and 222.30?" *Havoco of Am. v. Hill*, 790 So. 2d 1018, 1019 (Fla. 2001). The Florida Supreme Court concluded, "Accordingly, we answer the certified question in the affirmative, holding that a homestead acquired by a debtor with the specific intent to hinder, delay, or defraud creditors is not excepted from the protection of article X, section 4. Having answered the certified question, we return this case to the United States Court of Appeals for the Eleventh Circuit for further proceedings." *Havoco of Am. v. Hill*, 790 So. 2d 1018, 1030 (Fla. 2001).

32. This is without any reference to 11 U.S.C. § 522(o).

33. 11 U.S.C. § 522(c)(1), which states that "a debt of a kind specified in paragraph (1) [tax] or (5) [DSO debt] of section 523(a) ... shall be liable for a debt of a kind specified in such paragraph…."

34. *In re Covington*, 2006 Bankr. LEXIS 2485, 56 Collier Bankr. Case 2d 1110, 2006 WL 2734253 (Bankr. E.D. Cal. 2006).

35. *In re Ruppell*, 368 B.R. 42, (Bankr. D. Or. 2007).

36. *In re Quezada*, 513 B.R. 621, (Bankr. S.D. Fla. 2007).

37. 11 U.S.C. § 522(l) and Fed. R. Bankr. P. 4003(b)).

38. Judge Mark hints at such in *Quezada* when he wrote, "New § 522(c) (1) creates a federal right entitling DSO creditors to execute against exempt assets even if those assets would be protected from execution under state law. Although, in theory, a state court judge is perfectly capable of applying federal law, in practical terms, it appears awkward for a DSO creditor to seek relief in state court to pursue assets which are exempt from execution under state law." *In re Quezada*, 368 B.R. 44, 49 (Bankr. S.D. Fla. 2007).

39. "Without question, BAPCPA enhances the protections to and rights of DSO creditors. These rights include the right under § 522(c)(1) to pursue assets claimed as exempt in a bankruptcy case to satisfy a DSO debt, even if the asset would be protected from execution under state law." *In re Quezada*, 368 B.R. 44, 50 (Bankr. S.D. Fla. 2007).

40. For instance, liquidating the homestead of the former spouse is not permitted. While in bankruptcy, as provided under 11 U.S.C. § 522(c)(1), the opposite is provided.