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ADR Case Update 2020 - 12

Federal Circuit Courts

- **VIOLATION OF A BANKRUPTCY COURT DISCHARGE ORDER IS NOT AN ARBITRABLE DISPUTE**

  Belton v. GE Capital Retail Bank
  2020 WL 3240593
  United States Court of Appeals, Second Circuit
  June 16, 2020

  Nyree Belton and Kimberly Bruce (debtors) opened credit card accounts with GE and Citi (Banks). When the debtors fell behind on payments, the Banks "charged off" their debt and sold it to third-party consumer debt purchasers. After the debtors filed for bankruptcy and the bankruptcy court entered orders discharging their debt, credit reports continued to reflect their debt as "charged off" without mention of the discharge. The debtors reopened their bankruptcy cases and sought a contempt citation and damages, alleging that the Banks' refusal to update their credit reports violated the bankruptcy court's orders. Both the bankruptcy court and the district court rejected the Banks' motion to enforce the mandatory arbitration clauses in the debtors' credit card agreements. The Banks appealed.

  The United States Court of Appeals for the Second Circuit affirmed. The question before the Court, whether a dispute concerning a violation of a bankruptcy discharge order was arbitrable, was nearly identical to that considered in *Anderson v. Credit One Bank.* Concluding that the Code's text offered little guidance on Congress's intentions in the context of contempt proceedings like those at issue here, and the legislative history of the relevant provisions to be similarly unenlightening, the Court held that circuit precedent of *Anderson* was clear. *Anderson* concluded that the Code was in "inherent conflict" with arbitration, which was enough to replace the Arbitration Act, finding that: the discharge injunction was integral to the bankruptcy process; the claim concerned an ongoing bankruptcy matter that required continuing

court supervision; and the equitable powers of the bankruptcy court to enforce its own injunctions were central to the structure of the Code.

California

- **AN ORDER DECERTIFYING A CLASS HAS NO PRECLUSIVE EFFECT ON ABSENT CLASS MEMBERS**

  Williams v. U.S. Bancorp Investments
  2020 WL 3053475
  Court of Appeal, First District, Division 4, California
  June 8, 2020

  Two lawsuits were at issue in this matter. The first, *Burakoff*, was a class action filed against Bancorp in 2005, with Subclass A (wage and hour claims) and Subclass B (business expense claims). When Williams joined Bancorp in 2007, he immediately became a member of the putative class in *Burakoff.* In 2010, Williams filed his own class action against Bancorp. Determining that Williams's case involved the same causes of action and substantially the same parties as *Burakoff*, the trial court stayed the case until proceedings in *Burakoff* concluded. A year later, the court decertified *Burakoff* Subclass A. The parties settled and the members of Subclass B released their claims. Williams participated in the settlement and received compensation as a member of Subclass B; however, he did not release his wage and hour claims. Bancorp then demanded that Williams drop his class claims and arbitrate his individual claims. The court denied the motion to compel and dismiss the remaining class claim. Bancorp appealed and a different panel (of this division) affirmed. On remand, the court granted Bancorp's motion to compel arbitration and dismissed Williams's class claims with prejudice. Williams appealed.

  The Court of Appeal, First District, Division 4, California reversed and remanded. The order was immediately appealable because of the death knell doctrine, which provides that an order allowing a plaintiff to pursue individual claims, but preventing claims as a class action is immediately appealable. The Court held that collateral estoppel did not bar Williams from pursuing an action that was identical to prior class action that was initially certified, but later decertified, in which he was an absent class member. The Court rejected the view that absent class members in *Burakoff* were parties for purposes of assessing that case's preclusive effects. The Court also rejected Bancorp's argument that Williams was adequately represented by class counsel in litigating whether *Burakoff*'s Subclass A was properly certified, noting that only final decisions have preclusive effect. Because *Burakoff's* Subclass A was, in the end, a rejected class, no judicial finding that the named plaintiffs adequately represented the absent members of that subclass survived to become final. The Court also disagreed with Bancorp and the lower court that Williams had an adequate opportunity to litigate class certification. Given that in *Burakoff*, the trial court ultimately determined the unnamed class members did not have the community of interest necessary for class certification, the Court noted that it would be odd if the court's originally mistaken ruling acted to bar Williams from bringing an action he otherwise was entitled to pursue.

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