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NO. 65743-7-1

Court of Appeals of the State of Washington

Division 1

Kuljit Singh

Appellant

VS

Moninder Pal

Respondent

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FILED
CLERK OF COURT
APPELLATE DIVISION
COURT OF APPEALS
STATE OF WASHINGTON

APPELLANT'S OPENING BRIEF

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Pro se

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Trial court no. 04-3-00537-1

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A Introduction

The parties got divorced in Nov 2005. Respondent was awarded \$20000 as the judgment amount for the property settlement. CP 264. After the divorce the appellant hardly had any money to survive and after consulting financial advisor he found that he had no other option except to file for chapter 7 bankruptcy (Case no 05-52174-PHB) in Washington State and granted a discharge by the United States Bankruptcy Judge on Feb 16, 2006. **CP 297.**

The judgment of \$20000 in favor of Moninder Pal was included in the bankruptcy and subsequialy appellant was given the discharge of this amount. This is a very clear cut case. **Respondent was prohibited by the bankruptcy court not to attempt to collect this debt from the appellant.** First respondent find an opportunity when I am fighting for life and death in the hospital to cleverly get an ex parte order on 9/28/2009 without mentioning any thing about my bankruptcy discharge. Respondent by twisting and bending it to mislead the trial court again on 4/28/2010. **Verbatim Report page 3 to 16.**

Respondent was prohibited in writing from collecting this discharged debt by the bankruptcy court by serving a notice to her

on Nov 17, 2005 “The creditor is not permitted to contact a debtor by mail, phone or otherwise, to file or continue a lawsuit, to attach wages or other property or to take any other action to collect a discharged debt from the debtor” **CP 297**

The Appellant respectfully asserts that the trial court should not have ignored the bankruptcy court ruling unless there has been a separate order by the bankruptcy court denying a discharge of this specific debt. The discharge under chapter 7 constitutes a permanent statutory injunction and cannot have any condition associated to collect this debt from any sources in future. A discharge releases the debtor from personal liability for discharged debts and prevents the creditors owed those debts from taking any action against the debtor. Any language asking to collect discharged amount from any resources is violation of federal bankruptcy law and beats the purpose of bankruptcy.

B. Assignments of Error

No.1 It was injustice by the trial court to issue ex parte order on 9/28/2009 even though court read my hospital letter that I am seriously sick and undergoing cancer treatment. **Verbatim report page 1, 2.** Also it was not ethical and fair for respondent Moninder

Pal (ex-wife) to file a motion when they knew I am very sick in the hospital and also hiding the fact that this amount has been discharged. **CP 273**

No. 2 It was error for the trial court by seriously violating federal bankruptcy rule by going against 362 of bankruptcy code in its order on 4/28/2010 by awarding discharged amount to the respondent. **CP 302**

No 3 The trial court did not have the authority to modify/reverse/manipulate the Federal bankruptcy court order.

No. 4 It was error for the trial court as a matter of law to award the bankruptcy discharged amount to the respondent based on invalid language in divorce decree by attaching it to the retirement fund.

No. 5 It was injustice for the trial court to award attorney fee to Moninder Pal's counsel.

No 6 It was injustice for the trial court to also award interest for the

discharged amount to the respondent.

C. Issues Pertaining to Assignments of Error

No 1 Did the trial court abide by the constitutional and statutory requirements of Bankruptcy law contained in Title 11 of the United States Code.

No 2 Did the trial court has the authority to grant the judgment as the United States, federal law always takes precedence over state laws because of the supremacy clause of the constitution.

No 3 Did trial court erred by collecting the discharged amount from appellant's retirement account. This in itself is a violation of Federal Bankruptcy law which supersedes any state laws.

No 4 Did trial court order wrongly reflects that as if there are two separate judgment orders One which is discharged through bankruptcy and the other is community assets from my retirement amount which is still due. **CP 302.**

D. Statement of the Case

This appeal comes to the court of appeal due to the fact that the trial court chose to overlook that the judgment amount for property settlement has been discharged under chapter 7 through the bankruptcy court under section 727, (Case no 05-52174-PHB) filed on 10/14/2010 and responded was prohibited from collecting this debt. **CP 297.**

This order wrongly reflects that as if there are two separate judgment orders. One which is discharged through bankruptcy and the other is community assets from the appellant's retirement amount which is still due. **CP 302**

First I bring it to the notice of this court that there is one judgment of \$20000 for the division of the property in my divorce decree.
(Attached)

This only Judgment for \$20000 has since been fully discharged by the Bankruptcy court and per the bankruptcy law once it is discharged it can never be collected through any means or any of the resources including savings.

The respondent collected the discharge amount by misleading the trial court by associating it with her interest in my retirement fund.

The discharge amount cannot be collected from any other source at any time in future.

The U.S. Bankruptcy Code requires that you reveal all assets and all debts when you file your bankruptcy petition. Bankruptcy court gave the appellant discharge after finding that appellee had not enough funds in any of his resources including retirement funds to pay for this amount. After 5 years when appellant saved this money in my retirement and collecting this discharged amount of \$20000 plus \$9600 interest from my retirement account clearly violates federal bankruptcy laws and is unconstitutional.

Respondent found the right opportunity to file a motion in the trial court after about 5 years to collect this debt when she found appellant saved enough money in my retirement account and is sick in Seattle cancer care alliance due to multiple myeloma and unable to defend. **CP 264**. She got the ex-parte order in their favor by stating the claim on my retirement fund. Later on I did contest in the trial court when I found from my employer Boeing that money from my retirement fund is being transferred to Moninder Pal.

Case was heard on 4/28/2010 in trial the court, court denied reconsideration motion on 6/1/10 and refused to hear review

motion on 7/23/2010.(**no recording made**)

Strict compliance is required to comply with the statutory requirements of the federal bankruptcy laws by not recovering the discharged amount from my retirement funds and impose sanction to the respondent.

Appellant and his present wife are being tortured mentally by the threatening calls by respondent and her attorney even though they know appellant is suffering from cancer and fighting for his life. Respondent had been openly violating the Fair Debt Collection Practices Act § 806.

By law under 362 of bankruptcy code, the discharge constitutes a permanent statutory injunction prohibiting creditors from taking any action, including the filing of a lawsuit, designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge injunction. The normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine. Respondent willfully violated the discharge injunction.

All actions against a debtor must cease after the discharge. Creditors cannot initiate or continue any lawsuits, wage garnishees, or even telephone calls demanding payments.

The Discharge Injunction: 11USC Sec 524. This provision states, among other things:

(a) A discharge in a case under this title--

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt.

Respondent in an effort to mislead the superior court put an invalid language in the divorce decree that in case I file bankruptcy the money should be collected from my retirement account. This language in itself is a violation of Federal Bankruptcy law which supersedes any state laws .

It defeats the purpose of bankruptcy if at any time any one can collect discharged amount from any of their resources including banks or retirement funds. Thus, the key feature of the bankruptcy code is to help the debtor in making a fresh start.

Bankruptcy court would have already paid this judgment amount to the respondent from any of my assets if I had this much value in my assets before giving me the discharge. Only Section 726 of the Bankruptcy Code governs the distribution of the property of the estate. Under Chapter 7 Creditors generally have 60 days after the

first creditors meeting to object to the discharge of a specific debt. If no objections are filed, the bankruptcy court issues the discharge order and the trustee collects and sells the assets then distribute the proceeds to the creditors under a predetermined schedule.

Respondent never filed an objection with the bankruptcy court. This trial court should not have heard this case as this amount has already settled through the federal bankruptcy court and fully discharged. The trial court apparently ignored this fact.

Attorney fee: Appellant received her initial motion in mail on 6th of Aug and filed timely response on 13th April even though it was just enough time for him to prepare response. Respondent extended the date on the pretext she did not have enough time to prepare. However, appellant did his part by replying in less than a week. If she wanted sufficient time, she should not have taken hearing date that soon. It is not that I responded late. But she did not realize that her response motion reached me on 22nd April and I had to file response next day on 23rd April. Based on any attorney fees should not be awarded at all. Moreover, this is unethical for the trial court honorable commissioner to advise Lisa Clark to ask for attorney fee in her response. This court considered respondent response and

refused to consider my response.

E. Summary of Argument

11 U.S.C. § 523(c); Bankruptcy Rule 4007(c)

Debts arising from a property settlement agreement incurred during or in connection with a divorce or separation are discharged unless a creditor timely files and prevails in an action to have such debts declared excepted from the discharge.

Bankruptcy court provided the respondent with sufficient time till Feb14, 06 to file an objection to the discharge of this amount and with clear explanation instruction not to try to collect debt from the Debtor.

Respondent's motion should have been filed at that time with bankruptcy court to object the discharge of this judgment amount but they never did so. Only Section 726 of the Bankruptcy Code governs the distribution of the property of the estate. Trial court does not have the authority on this matter

Federal Rule of Bankruptcy Procedure 4007(c) governs the time period for filing a complaint to determine the dischargeability of a debt and sets the deadline for filing such a complaint under 11 U.S.C. §523(c) as "60 days after the first date set for the meeting of

creditors under § 341(a).”

F. Argument

There is only one judgment amount awarded to the respondent in the divorce decree in the value of \$20000 as property settlement. This amount is not for respondent's interest in my retirement fund as claimed by the respondent. Respondent got the first order on 9/28/2009 by clearly misleading the court when I was helpless fighting between life and death and was in no way to present my case. This is exactly responded wanted to do.

This amount in the value of \$20000 has been fully discharged by the federal bankruptcy court and respondent properly informed by the bankruptcy court of this exact amount and the trial court erred in awarding \$20000 + \$960 interest to the respondent. Only Bankruptcy court has the authority to distribute the assets before granting discharge.

Reference

Moninder Pal vs. Kuljit Singh case no 04-3-00537-1, Page 1 of divorce decree, Snohomish County Superior court WA

Authority

Per orders of United state bankruptcy court Tacoma WA (Case no

05-52174-PHB) the debtor is granted discharged under 11U.S.C § 727 dated Feb 16. 2006.

Section 726 of the Bankruptcy Code governs the distribution of the property of the estate.

I had no assets available to me to pay for this judgment and forced to file the bankruptcy. And now after 5 years when I saved money in my retirement account this discharged amount cannot be collected from my retirement account at this time and anytime in future.

TITLE 11 > CHAPTER 5 > SUBCHAPTER II > § 524

Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the

debtor, whether or not discharge of such debt is waived.

The court erred in awarding attorney fee to respondent and it is wrong for the trial court to suggest for attorney fee to respondent when respondent herself voluntarily want to extend the hearing date.

G. Conclusion

Since judgment against the Appellant by the trial court for \$20000 in his divorce decree has been discharged under 11U.S.E 727. A discharge in a case under this title - voids any judgment at any time obtained, Under 362 of bankruptcy code, the discharge constitutes a permanent statutory injunction and cannot be recovered from appellant's retirement account on any other pretext.

In order to ensure that the discharge granted to appellate by the Federal bankruptcy court is not violated. I request this court to

- A Reverse the trial court order
- B Refund this amount totaling \$29650 in full to appellant within a period of two weeks.
- C Pay applicable 21% interest on this amount
- D Waive the attorney's fee imposed on appellant by the trial court.
- E Impose sanction to the respondent for harassment.

Statutes

TITLE 11 > CHAPTER 7 > SUBCHAPTER II > § 726

TITLE 11 > CHAPTER 7 > SUBCHAPTER II > § 727

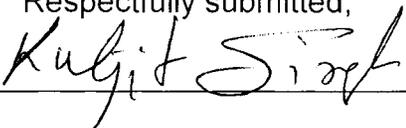
TITLE 11 > CHAPTER 7 > SUBCHAPTER I > § 704

Regulations and Rules

Rule 4004. Grant or Denial of Discharge

Rule 4007. Determination of Dischargeability of a Debt

Respectfully submitted,


_____ 1/19/2011

Kuljit Singh

Pro se

United States Bankruptcy Court
Western District of Washington
1717 Pacific Avenue
Suite 2100
Tacoma, WA 98402

Case No. 05-52174-PHB
Chapter 7

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Kuljit Singh
18307 121st Ave E
Puyallup, WA 98374

Social Security No.:
xxx-xx-5020

Employer's Tax I.D. No.:

DISCHARGE OF DEBTOR

The Debtor(s) filed a Chapter 7 case on October 14, 2005. It appearing that the Debtor is entitled to a discharge,

IT IS ORDERED:

The Debtor is granted a discharge under 11 U.S.C. § 727.

BY THE COURT

Dated: February 16, 2006

Philip H. Brandt
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are **not** discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes (applies to cases filed on or after 10/17/2005);
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans (applies to cases filed on or after 10/17/2005).

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

Rule 4004. Grant or Denial of Discharge

(a) TIME FOR OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED

In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

(b) Extension of time.

On motion of any party in interest, after hearing on notice, the court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be filed before the time has expired.

(c) Grant of discharge.

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual;

(B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor;

(C) the debtor has filed a waiver under § 727(a)(10);

(D) a motion to dismiss the case under § 707 is pending;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to

the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption has arisen under § 524(m) that a reaffirmation agreement is an undue hardship; or

(L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under § 521(f).

(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

(3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.

(4) In a chapter 11 case in which the debtor is an individual, or a chapter 13 case, the court shall not grant a discharge if the debtor has not filed any statement required by Rule 1007(b)(7).

(d) Applicability of rules in Part VII and Rule 9014.

An objection to discharge is governed by Part VII of these rules, except that an objection to discharge under §§ 727(a)(8), (a)(9), or 1328(f) is commenced by motion and governed by Rule 9014.

(e) Order of discharge.

An order of discharge shall conform to the appropriate Official Form.

(f) Registration in other districts.

An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.

(g) Notice of discharge.

The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.

Notes

Rule 4005. Burden of Proof in Objecting to Discharge

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.

Notes

Rule 4006. Notice of No Discharge

If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner provided by Rule 2002.

Notes

Rule 4007. Determination of Dischargeability of a Debt

(a) Persons entitled to file complaint.

A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.

(b) Time for commencing proceeding other than under § 523(c) of the Code.

A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) Time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case; notice of time fixed.

Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so

fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)

(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109 (h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522 (q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522 (q)(1)(A) or liable for a debt of the kind described in section 522 (q)(1)(B).

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c)

(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

(3) the debtor committed an act specified in subsection (a)(6) of this section; or

(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 586 (f) of title 28; or

(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586 (f) of title 28.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

§ 704. Duties of trustee

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521 (2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

(b)

(1) With respect to a debtor who is an individual in a case under this chapter—

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the

date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707 (b); and

(B) not later than 7 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707 (b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707 (b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)

(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

(A)

(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)

(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and



[RCWs](#) [Title 26](#) [Chapter 26.16](#) [Section 26.16.030](#)

[26.16.020](#) << [26.16.030](#) >> [26.16.040](#)

RCW 26.16.030

Community property defined — Management and control.

Property not acquired or owned, as prescribed in RCW [26.16.010](#) and [26.16.020](#), acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both, is community property. Either spouse or either domestic partner, acting alone, may manage and control community property, with a like power of disposition as the acting spouse or domestic partner has over his or her separate property, except:

(1) Neither person shall devise or bequeath by will more than one-half of the community property.

(2) Neither person shall give community property without the express or implied consent of the other.

(3) Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.

(4) Neither person shall purchase or contract to purchase community real property without the other spouse or other domestic partner joining in the transaction of purchase or in the execution of the contract to purchase.

(5) Neither person shall create a security interest other than a purchase money security interest as defined in *RCW [62A.9-107](#) in, or sell, community household goods, furnishings, or appliances, or a community mobile home unless the other spouse or other domestic partner joins in executing the security agreement or bill of sale, if any.

(6) Neither person shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses or both domestic partners participate in its management without the consent of the other: PROVIDED, That where only one spouse or one domestic partner participates in such management the participating spouse or participating domestic partner may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse or nonparticipating domestic partner.

[2008 c 6 § 604; 1981 c 304 § 1; 1972 ex.s. c 108 § 3; Code 1881 § 2409; RRS § 6892.]

Notes:

*Reviser's note: Article [62A.9](#) RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article [62A.9A](#) RCW.

Part headings not law – Severability – 2008 c 6: See RCW [26.60.900](#) and [26.60.901](#).

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[VII. JUDGMENT](#) > [Rule 60.](#)

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Rule 60. Relief from Judgment or Order

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(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under [Rule 59\(b\)](#);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing.

A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality.

The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief.

This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief under [28 U.S.C. § 1655](#) to a defendant who was not personally notified of the action; or

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(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished.

The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

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Syllabus

KONTRICK v. RYAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

No. 02-819. Argued November 3, 2003—Decided January 14, 2004

A creditor in Chapter 7 liquidation proceedings has "60 days after the first date set for the meeting of creditors" to file a complaint objecting to the debtor's discharge. Fed. Rule Bkrcty. Proc. 4004(a). The bankruptcy court may extend that period "for cause" on motion "filed before the time has expired." Fed. Rule Bkrcty. Proc. 4004(b). Reinforcing Rule 4004(b)'s restriction on extension of the Rule 4004(a) deadline, Rule 9006(b)(3) allows enlargement of "the time for taking action" under Rule 4004(a) "only to the extent and under the conditions stated in [that rule]," *i. e.*, only as permitted by Rule 4004(b).

On April 4, 1997, petitioner Kontrick filed a Chapter 7 bankruptcy petition. After gaining three successive time extensions from the Bankruptcy Court, respondent Ryan, Kontrick's creditor, filed a complaint on January 13, 1998, objecting to Kontrick's discharge. Ryan alleged that Kontrick had transferred property, within one year of filing his petition, with the intent to defraud creditors, and therefore did not qualify for discharge under 11 U. S. C. §§ 727(a)(2)-(5). Ryan filed an amended complaint on May 6, 1998, with leave of court, but without seeking or gaining a court-approved time extension. The amended complaint alleged with particularity that Kontrick had fraudulently transferred money to his wife, first by removing his own name from the family's once-joint checking account, then by continuing regularly to deposit his salary checks into the account, from which his wife routinely paid family expenses (the "family-account" claim). Kontrick's June 10, 1998, answer to the amended complaint did not raise the untimeliness of the family-account claim; on the merits, the answer admitted the transfers to the family account but denied that Kontrick had violated § 727(a)(2)(A). In response to Ryan's summary judgment motion, which appended a statement of material facts, Kontrick cross-moved to strike portions of Ryan's summary judgment filings, but did not ask the court to strike the amended complaint's family-account allegations. On February 25, 2000, the Bankruptcy Court awarded Ryan summary judgment on the family-account claim, concluding that Kontrick was not entitled to discharge because his transfers to the family account were

made with intent to defraud at least creditor Ryan. Kontrick then moved for reconsideration. For the first time, Kontrick urged that the court was

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SUPERIOR COURT OF WASHINGTON COUNTY OF SNOHOMISH

In re the Marriage of:

NO. 04-3-00537-1

MONINDER PAL,

Petitioner,

DECREE OF

and

DISSOLUTION

KULJIT SINGH,

(DCD)

Respondent

I. JUDGMENT SUMMARY

1.1 Restraining Order Summary:

Does not apply.

1.2 Real Property Judgment Summary:

Does not apply.

1.3 Money Judgment Summary:

A.	Judgment Creditor	<u>Moninder Pal</u>	
B.	Judgment Debtor	<u>Kuljit Singh</u>	
C.	Principal judgment amount	<u>\$ 20,000.00</u>	
D.	Interest to date of Judgment		\$ 0.00
E.	Attorney's fees		\$ 0.00
F.	Costs		\$ 0.00
G.	Other recovery amount		\$ 0.00
H.	Principal judgment shall bear interest at <u>12%</u> per annum starting July 18, 2005 if not paid in full by September 16, 2005.		
I.	Attorney's fees, costs and other recovery amounts shall bear interest at <u>12%</u> per annum.		
J.	Attorney for Judgment Creditor	<u>Lisa K. Clark</u>	
K.	Attorney for Judgment Debtor	<u>Steven Blanchard</u>	

END OF SUMMARIES

II. BASIS

Findings of Fact and Conclusions of Law have been entered in this case.

III. DECREE

IT IS DECREED:

DECREE
WPF DR 04.0400 (6/2000)
RCW 26.09.030; .040; .070 (3)

Lisa K. Clark, Attorney at Law
2803 Boylston Avenue East
Seattle, WA 98102
(425) 776-1608

1 3.1 STATUS OF THE MARRIAGE.

2 The marriage of the parties is dissolved.

3
4 3.2 PROPERTY TO BE AWARDED THE HUSBAND.

5 The husband is awarded as his separate property as follows:

6 Husband's personal effects which have been in his possession since November 21,
7 2003, including but not limited to, house wares, household furnishings, electronics,
8 furniture, clothing, and jewelry.

9 1997 Toyota Camry WA license #: _____

10 All bank, IRA, and non-IRA investment accounts held in husband's name;

11 All retirement, pension, and annuity benefits accrued by husband through past or
12 present employment, including but not limited to any and all 401(k) and/or 403(b)
13 retirement accounts, Keough accounts, in husband's name, including but not limited
14 to, Boeing VIP and FSP accounts in husband's name, and Boeing Pension fund in
15 husband's name: **EXCEPT THAT**, should the husband not satisfy the judgment on
16 page one of this order, the judgment may be paid in full, including interest owing,
17 from these assets;

18 All life insurance policies upon husband's life, all insurance policies insuring any
19 assets awarded to the husband herein or belonging to the husband, and all
20 insurance in the name of the husband not specifically referred to herein relating to
21 medical, hospitalization, and dental care;

22 Except as otherwise provided in this agreement, any and all rights and benefits
23 derived as a result of husband's past or present employment, union affiliation,
24 United States or other citizenship and/or residency within a state, all of which
25 include, but are not limited to: various forms of insurance, rights to social security
26 payments, (each party shall retain whatever benefits or eligibility for benefits each
27 presently has; and accordingly, nothing contained herein shall be construed in any
28 way to be a waiver or release by either party of any entitlement they have or might
29 have to benefits administered through the Social Security Administration), welfare
30 payments, unemployment compensation payments, disability payments, Medicare
31 and Medicaid payments, retirement benefits, profit-sharing benefits, contributed
32 savings benefits, stock option benefits, sick leave benefits, educational benefits and
33 grants, and all other legislated, contractual, and/or donated benefits, whether
34 vested or nonvested, and/or directly or indirectly derived through the activity of that
35 specific party.

36 Any and all separate/individual causes of action, and rights of inheritance and other
37 beneficial interests arising from family members or others.

1 3.3 PROPERTY TO BE AWARDED TO THE WIFE.

2 The wife is awarded as her separate property the following:

3 Wife's personal effects which have been in her possession since November 21, 2003,
4 including but not limited to, housewares, household furnishings, electronics,
5 furniture, clothing, and jewelry.

6 1996 Ford Windstar, WA license #: _____.

7 All bank, IRA, and non-IRA investment accounts held in wife's name, except those
8 awarded to the husband above;

9 All retirement, pension, and annuity benefits accrued by wife through past or
10 present employment, including but not limited to any and all 401(k) and/or 403(b)
11 retirement accounts, Keough accounts, cash, or stock or stock options;

12 All life insurance policies upon wife's life, all insurance policies insuring any assets
13 awarded to the wife herein or belonging to the wife, and all insurance in the name of
14 the wife not specifically referred to herein relating to medical, hospitalization, and
15 dental care;

16 Except as otherwise provided in this agreement, any and all rights and benefits
17 derived as a result of wife's past or present employment, union affiliation, United
18 States or other citizenship and/or residency within a state, all of which include, but
19 are not limited to: various forms of insurance, rights to social security payments,
20 (each party shall retain whatever benefits or eligibility for benefits each presently
21 has; and accordingly, nothing contained herein shall be construed in any way to be a
22 waiver or release by either party of any entitlement they have or might have to
23 benefits administered through the Social Security Administration), welfare
24 payments, unemployment compensation payments, disability payments, Medicare
25 and Medicaid payments, retirement benefits, profit-sharing benefits, contributed
26 savings benefits, stock option benefits, sick leave benefits, educational benefits and
27 grants, and all other legislated, contractual, and/or donated benefits, whether
28 vested or nonvested, and/or directly or indirectly derived through the activity of that
29 specific party.

Any and all separate/individual causes of action, and rights of inheritance and other
beneficial interests arising from family members or others.

The sum of \$20,000.00 payable by the husband to the wife. Said amount represents
a property equalizing payment, and must be paid in full no later than September 16,
2005. If husband does not pay said amount to the wife in full by September 16,
2005, the principal shall accrue interest at a rate of 12% per annum until the
amount is paid in full and the wife shall be able to collect said judgment from the
Boeing assets awarded to husband above. See also money judgment summary,
Section 1.3 above.

1 3.4 LIABILITIES TO BE PAID BY THE HUSBAND.

2 The husband shall pay the following community or separate liabilities:

- 3 1. Any and all credit cards in the name of the husband and wife incurred during
4 the marriage, November 21, 2003. Said accounts shall include but not be limited
5 to the following (these were detailed in husband's financial declaration dated
6 March 22, 2004, and offered as Exhibit 40 for trial):
7 a. Balance on Bank of America Visa credit account.
8 b. Balance on Providian Visa credit account.
9 c. Balance on Household Bank credit account.
10 d. Balance on Dell Computer Credit line.
11 e. Balance on Sears Credit account.
12 f. Balances on Bon Macy's, Target, and Mervyn's credit accounts.
- 13 2. Any and all IRS debt for tax years prior to marriage and subsequent to
14 separation, November 21, 2003.
- 15 3. All liabilities incurred by the husband since the date of separation, November
16 21, 2003 including all residual balances on credit cards in husband's name.
- 17 4. All indebtedness incident to any assets awarded to the husband per this
18 agreement including underlying obligation(s) on vehicles, real property, and
19 assets awarded herein including but not limited to any and all obligations to the
20 Boeing Pension, FSP, or VIP accounts in husband's name.
- 21 5. The sum of \$20,000.00 to be paid by the husband to the wife as a property
22 equalization payment, subject to the provisions in Sections 1.3 and 3.2 above.

23 3.5 LIABILITIES TO BE PAID BY THE WIFE.

24 The wife shall pay the following community or separate liabilities:

- 25 1. Any and all credit cards in the name of the wife only incurred during the
26 marriage or after the date of separation, November 21, 2003, except those
27 assigned to the husband above.
- 28 2. Any and all IRS debt for tax years prior to marriage and subsequent to
29 separation, November 21, 2003.
- 30 3. All liabilities incurred by the wife since the date of separation, November 21,
31 2003 including all residual balances on credit cards in wife's name.
- 32 4. All indebtedness incident to any assets awarded to the wife per this agreement,
33 including underlying obligation(s) on vehicles, real property, and assets awarded
34 herein.

35 3.6 HOLD HARMLESS PROVISION.

36 Each party shall hold the other harmless from any collection action relating to
37 separate or community liabilities set forth above, including attorney's fees and costs
38 incurred in defending against any attempts to collect an obligation of the other
39 party.

1 3.7 SPOUSAL MAINTENANCE.

2 Spousal maintenance is not ordered for either party.

3
4 3.8 CONTINUING RESTRAINING ORDER.

5 Does not apply.

6
7 3.9 PARENTING PLAN.

8 The parties shall comply with the Final Parenting Plan signed by the Court on
9 this date. The Final Parenting Plan is approved and incorporated by reference as
10 part of this Decree.

11 3.10 CHILD SUPPORT.

12 Child support shall be paid in accordance with the Final Order of Child Support
13 signed by the Court on July 18, 2005. This order is incorporated by reference as
14 part of this Decree of Dissolution of Marriage.

15 3.11 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

16 Each party shall pay their own fees and costs in this action.

17
18 3.12 NAME CHANGES.

19 Does not apply.

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21 3.13 OTHER:

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25 Dated: _____

11/4/05

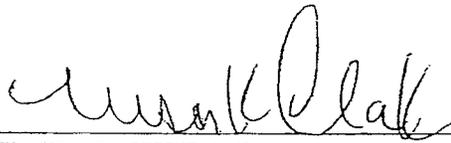


26 Judge Eric Lucas

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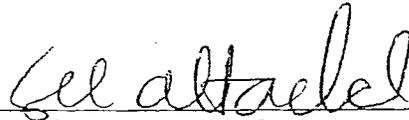
Presented by:

Approved for entry:
Notice for presentation waived:



Lisa K. Clark, WSBA #25512
Attorney for Petitioner

Steven Blanchard, WSBA#
Attorney for Respondent



Moninder Pal, Petitioner

Kuljit Singh, Respondent

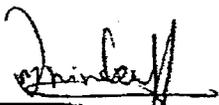
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Presented by:

Approved for entry:
Notice for presentation waived:

Lisa K. Clark, WSBA #25512
Attorney for Petitioner

Steven Blanchard, WSBA#
Attorney for Respondent



Moninder Pal, Petitioner

Kuljit Singh, Respondent

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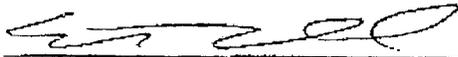
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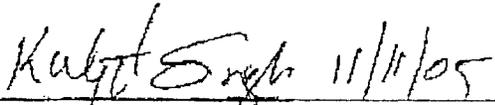
Presented by:

Approved for entry:
Notice for presentation waived:

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Steven Blanchard, WSBA# 12294
Attorney for Respondent

Moninder Pal, Petitioner


Kuljit Singh, Respondent

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RCW 26.09.040: 040: .070 (3)

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TITLE 11 > CHAPTER 7 > SUBCHAPTER II > § 726

§ 726. Distribution of property of the estate

- (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
- (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—
 - (A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or
 - (B) the date on which the trustee commences final distribution under this section;
 - (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—
 - (A) timely filed under section 501 (a) of this title;
 - (B) timely filed under section 501 (b) or 501 (c) of this title; or
 - (C) tardily filed under section 501 (a) of this title, if—
 - (i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501 (a) of this title; and
 - (ii) proof of such claim is filed in time to permit payment of such claim;
 - (3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501 (a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;
 - (4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;
 - (5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and
 - (6) sixth, to the debtor.
- (b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507 (a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1112, 1208, or 1307 of this title, a claim allowed under section 503 (b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503 (b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.
- (c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541 (a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:
- (1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541 (a)(2) of this title, or from other property of the estate, as the interest of justice requires.
 - (2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:
 - (A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541 (a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.
 - (B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541 (a)(2) of this title that is solely liable for debts of the debtor.
 - (C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under

1/18/2011 .

United States Code: Title 11,726. Distri...

subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541 (a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

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TITLE 11. BANKRUPTCY · UNITED STATES CODE

Chapter 5. Creditors, the Debtor and the Estate

Subchapter II. Debtor's Duties and Benefits

11 USC § 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--

(1) for a tax or a customs duty--

(A) of the kind and for the periods specified in [section 507\(a\)\(3\)](#) or [507\(a\)\(8\)](#) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required--

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

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(B) use of a statement in writing--

- (i) that is materially false;
- (ii) respecting the debtor's or an insider's financial condition;
- (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive; or

(C)

(i) for purposes of subparagraph (A)--

- (I) consumer debts owed to a single creditor and aggregating more than \$500 [\$550] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
- (II) cash advances aggregating more than \$750 [\$825] that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

[Dollar amounts in subsections 523(a)(2)(C)(i) and (ii) are adjusted on April 1 every 3 years by [section 104](#). Adjusted amounts effective 4-1-07 are in brackets.]

(ii) for purposes of this subparagraph--

- (I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and
- (II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.

(3) neither listed nor scheduled under [section 521\(1\)](#) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in [paragraph \(2\)](#), [\(4\)](#), or [\(6\)](#) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in [paragraph \(2\)](#), [\(4\)](#), or [\(6\)](#) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

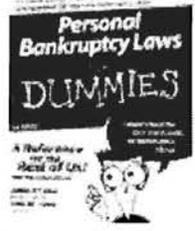
(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty--

(A) relating to a tax of a kind not specified in [paragraph \(1\)](#) of this subsection; or



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- (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;
- (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for-

(A)

- (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
- (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(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;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership



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interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under--

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that--

(A) is for--

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from--

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health

Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

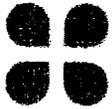
(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

[Rev. 5-8-05]

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December 3, 2009

RE: KULJIT SINGH
IMPAC #: 012816
DOB: 09/22/1954

To Whom It May Concern:

Mr. Singh has been a patient of mine since March 2009 for treatment of an aggressive, life-threatening malignancy. Mr. Singh has just completed an autologous stem cell transplant at the Seattle Cancer Care Alliance and, at the present time, is completely disabled. The patient is weak, neutropenic and immunocompromised. Additionally, he suffers from severe lumbosacral instability, which will require neurosurgery, which has not been attempted because of his recovery from his stem-cell transplant procedure.

At this time, Mr. Singh is completely disabled and unable to provide adequate support for his wife and family. At this point, it is impossible to determine at what point he will be able to return to gainful employment. My estimation is that it will be at least 9 to 12 months.

I appreciate your considerations on his behalf. If you have further questions, please contact me.

Sincerely,

James E. Congdon, D.O.
Providence Regional Cancer Partnership

STTS Voice File#: 834733

THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Pub. L. 109-351, §§ 801-02, 120 Stat. 1966 (2006)

As a public service, the staff of the Federal Trade Commission (FTC) has prepared the following complete text of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p.

Please note that the format of the text differs in minor ways from the U.S. Code and West's U.S. Code Annotated. For example, this version uses FDCPA section numbers in the headings. In addition, the relevant U.S. Code citation is included with each section heading. Although the staff has made every effort to transcribe the statutory material accurately, this compendium is intended as a convenience for the public and not a substitute for the text in the U.S. Code.

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- § 818 Exception for certain bad check enforcement programs operated by private entities
- § 819 Effective date

15 USC 1601 note

§ 801. Short Title

This title may be cited as the “Fair Debt Collection Practices Act.”

15 USC 1692

§ 802. Congressional findings and declaration of purpose

- (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
- (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.
- (e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 USC 1692a

§ 803. Definitions

As used in this title—

- (1) The term “Commission” means the Federal Trade Commission.
- (2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

-
- (4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—
- (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only

for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

- (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
- (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
 - (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - (ii) concerns a debt which was originated by such person;
 - (iii) concerns a debt which was not in default at the time it was obtained by such person; or
 - (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- (7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.
- (8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information

15 USC 1692b

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection

15 USC 1692c

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the

consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
 - (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.
- (b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.
- (c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—
- (1) to advise the consumer that the debt collector's further efforts are being terminated;
 - (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

-
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

- (d) For the purpose of this section, the term “consumer” includes the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 806. Harassment or abuse

15 USC 1692d

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)¹ of this Act.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller’s identity.

1. Section 604(3) has been renumbered as Section 604(a)(3).

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of—
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
 - (A) lose any claim or defense to payment of the debt;
or
 - (B) become subject to any practice prohibited by this title.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.