

Date signed December 12, 2006



*[Handwritten Signature]*

DUNCAN W. KEIR  
U. S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
at Baltimore**

In Re:	*	
DAVID V. BARSH, SR.	*	Case No. 03-50819DK
	*	Chapter 7
	*	
Debtor	*	
*****	*	
DAVID V. BARSH, SR.	*	
	*	
	*	
Plaintiff	*	
vs.	*	Adversary No. 03-5360DK
STATE OF MARYLAND CENTRAL	*	
COLLECTION UNIT	*	
	*	
Defendant	*	

**MEMORANDUM OF DECISION**

On December 3, 2004, this court (Derby, J.) entered a Memorandum Opinion and Order denying an Amended Motion to Dismiss Complaint filed by the Defendant, State of Maryland and granting final ruling on dischargeability of debt (the "Order"). By that Order, the court determined that the Motion to Dismiss adversary proceeding filed by the State of Maryland was denied, and the collection fees contained as a part of a judgment (the "Judgment") entered in the case of the State of Maryland v. Barsh, Civil Case No. 0203-0005814-2001 (D. Ct. of Md. for Wicomico County) in the amount of \$1,707.96 were dischargeable. The Order further provided that costs in the aforescribed Civil Action

before the District Court for Wicomico County in the amount of \$54.00 were dischargeable. Finally, the Order determined that the fines assessed as a part of the Judgment, in the amount of \$7,795.77, were not dischargeable.

Defendant appealed the Order to the United States District Court for the District of Maryland, Civil Number RDB-04-3997. The United States District Court affirmed the United States Bankruptcy Court and the matter was again appealed by the Defendant to the United States Court of Appeals for the Fourth Circuit.

On August 29, 2006, the Court of Appeals reversed the United States District Court for the District of Maryland for the reasons set forth in an unpublished opinion which may be found at 2006 WL 2485852 (4th Cir.)(Md). On or about November 9, 2006, the United States District Court for the District of Maryland, upon remand from the United States Court of Appeals, entered an Order reversing the United States Bankruptcy Court's entry of judgment in favor of the Plaintiff as to the attorneys fees and court costs and remanded the case to the United States Bankruptcy Court of the District of Maryland. Subsequent to the entry of the Order by the United States District Court for the District of Maryland, the Plaintiff has filed a document entitled "Question" protesting the outcome mandated by the United States Court of Appeals. A response in the form of a "line" has been filed by the Defendant.

For the reasons set forth hereinbelow, this court determines that a hearing will not aid in the determination of the issues before this court. For the reasons stated, this court is required to vacate the Order which denied the Defendant's motion to dismiss this adversary proceeding, vacate this court's determination that the amounts of \$1,307.96 and \$54.00 in collection costs and court costs respectively, were dischargeable and discharged in the Chapter 7 case of this Debtor, and enter a final order in this adversary proceeding declaring that, in addition to the fines in the amount of \$7,795.77, the collection costs in the amount of \$1,307.96 awarded as part of the Judgment and costs in the amount of \$54.00, are not dischargeable.

The United States Court of Appeals for the Fourth Circuit in its opinion determined that this court did not lack jurisdiction under the Rooker Feldman doctrine. However, for the reasons stated in that unpublished opinion, the Court of Appeals determined that the Order of the Maryland District Court for Wicomico County which rejected the Plaintiff's objection to a garnishment by the State of Maryland to collect a judgement for fines, collection costs and court costs, constituted an order entitled to matter preclusion as to this adversary proceeding. The Plaintiff had asserted in his objection to the garnishment, that the judgment debts were discharged in his bankruptcy case.

This court is absolutely bound by the determination of the Court of Appeals in this matter and must enter an order as required by the mandate and subsequent Order of the United States District Court. See e.g., Briggs v. Pennsylvania R.Co., 334 U.S. 304, 306, 68 S.Ct. 1039, 1040 (1948). Accordingly, this court will vacate the Order from which the appeal was taken and will enter a final order as described above.

Where the issue of non-dischargeability is presented by application of 11 U.S.C. § 523(a)(2), (4), (6), and (15) and for cases commenced prior to October 17, 2005, the federal court having jurisdiction over the bankruptcy case has exclusive jurisdiction to determine the dischargeability issue. The exclusive jurisdiction arises by operation of the effect of 11 U.S.C. § 523(c) and Federal Rule of Bankruptcy Procedure 4007. See Fed. R. Bankr. P. 4007, Advisory Committee Notes (1983) ("The bankruptcy court has exclusive jurisdiction to determine dischargeability of the [11 U.S.C. § 523(c)] debts. If a complaint is not timely filed, the debt is discharged." As to the remaining subsections of Section 523(a), in the cases of In re Stecklow, 144 B.R. 314 (Bankr. D. Md. 1992) and In re Harmon, 213 B.R. 805 (Bankr. D. Md. 1997), this court has held that at least after the closing of the bankruptcy case, the state court having jurisdiction over an action for the affected debt, has concurrent jurisdiction to determine whether or not that debt was dischargeable, or non-dischargeable and consequently was, or was not discharged by the discharge injunction granted in the bankruptcy case. This court notes that

the basis for a determination of non-dischargeability of the debt in this adversary proceeding was pursuant to 11 U.S.C. § 523(a)(7) and therefore was not under a subsection of Section 523(a) for which exclusive jurisdiction is mandated by the effect of 11 U.S.C. § 523(c) as stated above.

A distinction also must be drawn between a determination of a debt as non-dischargeable pursuant to a subsection of 523(a), and an assertion that actions taken by a creditor violate the Order of Discharge and the statutory injunction arising upon the entry of the Discharge Order pursuant to 11 U.S.C. § 524. Where the question is whether or not the creditor has violated the discharge injunction, it appears that the Bankruptcy Court, as the court which has issued the injunction, has exclusive jurisdiction over the issue of violation and enforcement. See Celotex v. Edwards, 514 U.S. 300, 306, 115 S.Ct. 1493, 1497 (1995). The distinction between determining the dischargeability of a debt pursuant to a subsection of Section 523 and the question of whether a violation of the discharge injunction has occurred, may be intertwined. See for example, Egleston v. Egleston, 448 F.3d 803 (5th Cir. 2006)

A debtor, faced with a post-discharge collection action by a creditor can seek to remove that state action to the bankruptcy court pursuant to 28 U.S.C. § 1452 and/or commence an adversary proceeding before the bankruptcy court seeking a restraining order against the creditor on the basis that the actions being taken by the creditor violate the discharge injunction. See e.g., In re Crawford, 183 B.R. 103, 106 (Bankr. W.D. Va. 1995). As clearly demonstrated by the outcome in this adversary proceeding, if the debtor does neither but instead permits the state court to determine the dischargeability other than pursuant to 11 U.S.C. § 523(a)(2), (4), (6), and for pre-BAPCPA cases (15), the question may be preclusively determined by final order of the state court.

cc: Plaintiff (Pro-Se)  
Michael Scott Friedman, Esq.  
Office of the Attorney General, Attorney for Defendant

**End Of Order**