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Introduction

Discharge is of singular importance to the individual in a Chapter 7 case. Discharge enables the debtor to begin a new financial life, and it provides the debtor with a fresh start. In order for this to happen, among other effects, section 524 of title 11 of the United States Code (the "Bankruptcy Code"), which addresses the effects of discharge, voids any judgment against the debtor subject to the discharge.[1] Section 524 also provides a statutory injunction against the continued prosecution of any action that would lead to liability on the claim subject to discharge.[2] Section 727 of the Bankruptcy Code provides the circumstances for when the court must grant a discharge to a chapter 7 debtor.[3] The applicability of discharge under section 727 is confined to chapter 7 cases.[4] Section 727 codifies that unless one or more of the specific grounds for denial of a discharge enumerated in paragraphs (1) through (12) of section 727(a) exists, the court must grant a discharge to a chapter 7 debtor.[5] In addition, unless excepted from discharge

[1] 11 U.S.C. § 524 (a)(1) (2012).
[2] 11 U.S.C. § 524 (a)(2)–(3) (2012).
[3] 11 U.S.C. § 727 (2012).
[4] 11 U.S.C. § 103(b) (2012).
[5] 11 U.S.C. § 727 (2012).

under section 523 of the Bankruptcy Code, section 727(b) specifically sets forth the extent of the discharge for a Chapter 7 debtor.[6]

Section 523(a) of the Bankruptcy Code expressly excepts various categories of debts from the discharge granted under section 727. Under section 523(a) there are twenty-one exceptions.[7] Section 523(a)(2)(A) provides that section 727 will not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."[8] The purpose of this provision is to ensure that relief goes solely to honest debtors. However, in order for the exception to apply, the debtor's fraud must result in a loss of property to the creditor.[9] Further, it is also necessary that the other party relied on the representation.[10]

The frauds included in section 523(a)(2)(A) are those that show moral turpitude or intentional wrong.[11] Courts have found that if the fraud is absent of bad faith or immorality, it is

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[6] 11 U.S.C. § 727 (b) specifically provides:

> 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 it such claim had arisen before the commencement of the case, whether or not a proof of claim is 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.

[7] 11 U.S.C. § 523(a) (2012).

[8] 11 U.S.C. § 523(a)(2)(A) (2012).

[9] *In re* Glunk, 343 B.R. 754 (Bankr. E.D.Pa. 2006).

[10] Field v. Mans, 516 U.S. 59 (1995). (Exploring party reliance, the Court held that the other party's reliance on the false representation must be "justifiable" under the circumstances. The Court's analysis focused on whether the falsity was readily apparent to the person to whom it was made). *Id.* at 77.

[11] *See* Thul v. Ophaug *(In re* Ophaug*),* 827 F.2d 340 (8th Cir. 1987); Driggs v. Black *(In re* Black*),* 787 F.2d 503 (10th Cir. 1986); Schweig v. Hunter *(In re* Hunter*),* 780 F.2d 1577 (11th Cir. 1986); *In re* Chavez, 140 B.R. 413 (Bankr. W.D.Tex. 1992).

not "false pretense of false representations" for the purposes of section 523(a)(2)(A).[12] Additionally, the Sixth Circuit has held that when determining whether a particular debt falls within the exception under 523(a)(2)(A), the statute should be construed against the objecting creditor and liberally in favor of the debtor.[13] This construction of the statute has been found to be consistent with the liberal spirit of the bankruptcy system.[14]

The liberal spirit of the bankruptcy system and the culpability of the debtors subject to a section 523(a)(2)(A) discharge was addressed by the Seventh Circuit in *Sullivan v. Glenn* (*In re Glenn)*.[15] The circuit court held that if the debt is the result of fraud, the court can discharge the debt in bankruptcy if the debtor was not complicit in the fraud.[16] The court also held that even if the debtor's agent committed the fraud, the court could still discharge the debt, provided, again, that the debtor was not complicit in the fraud.[17]

This article examines whether good faith is considered as a requirement to avoid the exception to discharge under section 523(a)(2)(A) of the Bankruptcy Code. Part I analyzes the implications of a debtor's bad faith when the court determines the dischargeability of a debt under section 523(a)(2)(A). Part II discusses how agent fraud affects dischargeability. Finally, Part III concludes with possible future implications.

I. Debtor's Bad Faith Affects Dischargeability of Debt Under Section 523

[12] *Id.*
[13] *See* Pazdzierz v. First American Title Ins. Co. (In re Pazdzierz), 718 F.3d 582 (6th Cir. 2013).
[14] *See generally* COLLIER ON BANRUPTCY, ¶ 523.05 (Alan Resnick & Henry J. Sommer eds., 16th ed. 2009), *available* at LEXIS, 4-523 Collier on Bankruptcy P 523.05.
[15] 782 F.3d 378 (7th Cir. 2015).
[16] *Id.*
[17] *Id.*

Generally, in bankruptcy the fundamental goal is to afford a deserving debtor an economic rehabilitation or "fresh start" in life.[18] This fresh start policy is balanced by an equally important objective, that is, to prevent the dishonest "debtor's attempt to use the law's protections to shield his or her wrongdoing."[19] In balancing these two objectives, courts adhere to certain guiding principles in analyzing a discharge brought under section 523.[20] One of the guiding principles is that section 523 exceptions should be literally and strictly construed against the creditor and liberally in favor of the debtor.[21] A second principle places the burden of proof on the party challenging the dischargeability of a debt, which is consistent with the "fresh start policy."[22] The third principle is that the appropriate standard of proof for considering fraud-based dischargeability actions is the preponderance-of-the-evidence standard.[23]

To except a discharge under section 523, the false representations giving rise to the debt must have been knowingly and fraudulently made.[24] These codifications of section 523(a)(2)(A) are a result of case law as expressed in *Neal v. Clark*,[25] which interpreted "fraud" to mean actual or positive fraud rather fraud implied by law.[26] Due to the holding in *Clark*, to sustain a *prima facie* case of fraud under section 523(a)(2)(A), a plaintiff must establish that (1) the debtor made the representation; (2) at the time of the representation, the debtor knew the representation to be false; (3) the debtor made the representation with the intent and purpose of deceiving the

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[18] *See In re* Gans, 75 B.R. 474, 481 (Bankr. S.D.N.Y. 1987).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id. See also* Grogan v. Garner, 498 U.S. 279 (1991).
[24] *See* Century 21 Balfour Real Estate (*In re* Menna), 16 F.3d 7, (1st Cir. 1994); Longo v.McLaren (*In re* McLaren), 3 F.3d 958, (6th Cir. 1993); *see also In re* Allison, 960 F.2d 481 (5th Cir. 1992).
[25] 95 U.S. 704 (1877).
[26] *See* COLLIER ON BANRUPTCY, ¶ 523.08 (Alan Resnick & Henry J. Sommer eds., 16th ed. 2009), *available* at LEXIS, 4-523 Collier on Bankruptcy P 523.08.

plaintiff; (4) the plaintiff justifiably relied on the representation;[27] and (5) the plaintiff sustained a loss or damages as the proximate consequence of the representation having been made.[28]

Under section 523(a)(2)(A) there are many "false pretenses and false representations"[29] that may prevent a debtor from discharging debt. For example, where a debtor acquires certain monies with the condition that they are to be used only for restricted purposes, and the debtor has no intention to abide by such restrictions, "then a misrepresentation clearly exists upon which a debt can be properly held to be non-dischargeable."[30] It is also generally accepted that "under appropriate circumstances, the failure to disclose information may be characterized as a misrepresentation," within the meaning of section 523(a)(2)(A).[31] Typically, a debtor's overt misrepresentation would prevent a discharge from debt, but courts have held that an overt misrepresentation is not required to prevent a discharge from debt when the debtor's "hopeless insolvency" at the time monies were obtained would have made repayment impossible.[32] In contrast, overt oral misrepresentations as to the financial condition of the debtor or an insider are expressly *excluded* from non-dischargeability under section 523(a)(2)(A),[33] because section 523(a)(2)(B) requires that such misrepresentations must result from the "use of a statement in writing."[34]

A. Debtor Intent is Analyzed to Determine Debtor's Good or Bad Faith

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[27] Field v. Mans, 516 U.S. 59 (1995).
[28] *See In re* Perez, 155 B.R. 844 (Bankr. E.D.N.Y. 1993); *In re* Rifkin, 142 B.R. 61 (Bankr. E.D.N.Y. 1992); *see also In re* Ellis, 152 B.R. 211 (Bankr. E.D.Tenn. 1993).
[29] 11 U.S.C. § 523(a)(2)(A) (2012).
[30] *See In re* Jones, 50 B.R. 911, 921 (Bankr. N.D. Tex 1985); Matter of Pappas, 661 F.2d 82, 86 (7th Cir. 1981). *See also In re* Gans, 75 B.R. 474, 483 (Bankr. S.D.N.Y. 1987).
[31] *In re* Gans, 75 B.R. 474, 484 (Bankr. S.D.N.Y. 1987) (quoting *In re* Hunt, 30 B.R. at 439).
[32] *See* Matter of Boydston, 520 F.2d 1098, 1101 (5th Cir. 1975) (where "hopeless insolvency . . . . makes payment impossible, fraudulent intent may be inferred").
[33] *See* COLLIER ON BANRUPTCY, ¶ 523.08 (Alan Resnick & Henry J. Sommer eds., 16th ed. 2009), *available* at LEXIS, 4-523 Collier on Bankruptcy P 523.08.
[34] *Id.*

A fraud typically cannot be based on future statements or promises to perform in the future, without proof of knowledge.[35] Where a promise is made with an affirmative intent not to perform or if the promisor knew or should have known of his imminent inability to perform, the misrepresentation involving the promise may be fraudulent.[36] The court, under the totality of the circumstances, may infer requisite intent from the "proven facts" when a misrepresentation is coupled with deceptive conduct.[37] Further, intent to deceive can be inferred from the "totality of the circumstances," but there still must be evidence that substantiate an allegation of deceptive conduct.[38] Some specific acts from which courts have inferred an intent not to pay include: the time period between the debtor's incurrence of the obligation and the filing of the bankruptcy case; whether the debtor had the means to repay at the time the liability was incurred; and whether the debtor consulted with an attorney prior to obtaining the loan.[39]

1. The Intent of the Good Faith Debtor

Courts have held that when there is no intent to defraud, debtors are not subject to non-dischargeability under section 523. For example, in *In re Anastas*,[40] the Ninth Circuit held that because the court found no evidence of bad faith on the part of the appellant, the debt was dischargeable due to a lack of intent to defraud.[41] In reversing the district court's holding, the

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[35] *See In re* Schwartz, 45 B.R. 354, 357 (Bankr. S.D.N.Y. 1985).
[36] *See In re* Gans, 75 B.R. 474, 486 (Bankr. S.D.N.Y. 1987).
[37] *See In re* Lyon, 8 B.R. 152, 154 (Bankr. D.Me. 1981); *In re* Schlickmann, 6 B.R. 281, 282 (Bankr. D.Mass. 1980) (a "representation coupled with [the debtor's] conduct is sufficient to permit the court to infer the requisite intent").
[38] *In re* Leger, 34 B.R. 873, 878 (Bankr. D.Mass. 1983).
[39] *See, e.g.*, *In re* Blackburn, 68 B.R. 870, (Bankr. N.D.Ind. 1987); *In re* Cullen, 63 B.R. 33, 35 (Bankr. E.D.Miss. 1986); *In re* Shrader, 55 B.R. 608 (Bankr. W.D.Va. 1985); *In re* Senty, 42 B.R. 456 (Bankr. S.D.N.Y. 1984); *In re* Kramer, 38 B.R. 80 (Bankr. W.D.La. 1984); *In re* Griffis, 29 B.R. 110 (Bankr. D.Vt. 1983); Matter of Hutchinson, 27 B.R. 247 (Bankr. E.D.N.Y. 1983).
[40] Anastas v. Am. Sav. Bank (*In re* Anastas), 94 F.3d 1280 (9th Cir. 1996).
[41] *Id.*

Ninth Circuit noted that the appellant had a serious gambling problem, and although it may have been unlikely he would win back the money to be able to pay back the cash advances that financed the gambling, the appellant had a good faith intention to do so.[42] The court remanded the lower court's denial of discharge because there was "no basis in the record for a finding of the type of malicious and bad faith intent not to repay that is necessary for a finding of actual fraud under section 523(a)(2)(A).[43] The applicability of section 523(a)(2)(A) to bad faith dealings is discussed below in *In re Sheffield*.[44]

2. The Intent of the Bad Faith Debtor

In *Sheffield*, the defendant exercised bad faith when he violated his client's interests in drawing up usurious notes in loans made to him by his client when they were in an attorney-client relationship.[45] The defendant did not disclose his financial plight to the plaintiff, all the while, he was fully aware that he could not pay and that his collateral was useless.[46] The bankruptcy court issued a judgment in favor of the plaintiff, decreeing that all amounts due under the judgment were non-dischargeable because the defendant acted willfully and maliciously in violation of the interests of his client, the plaintiff.[47]

II. Innocence Exculpates a Principal-Debtor from Agent Fraud

Many courts have found that fraud committed by an agent would render a debt non-dischargeable as to a debtor-principal under section 523(a)(2)(A).[48] Agency is a legal concept

[42] *Id.*
[43] *Id.* at 1287.
[44] *In re* Sheffield, 180 B.R. 814 (Bankr. W.D.La. 1995).
[45] *Id.*
[46] *Id.* at 833.
[47] *Id.*
[48] *See In re* Paolino, 75 B.R. 641, 648 (Bankr. E.D.Penn. 1987).

which depends on the existence of the following factual elements: (i) the manifestation by the principal that the agent shall act for him; (ii) the agent's acceptance of the undertaking; and (iii) the understanding of the parties that the principal is to be in control of the undertaking.[49] Generally, a principal is liable to third persons for all acts done by his agent on his behalf of the agent's act is within the scope of his agency.[50] Also, the principal is estopped from denying the agent's apparent authority where the principal has placed the agent in a situation where the agent may be presumed to act for her.[51] But, the power of an agent is not unlimited. "The control or right to control needed to establish agency may be very attenuated and there may even be an understanding between the master and the servant that the employer shall not exercise control."[52] Because principals are generally held responsible for the actions of their agents, courts have held that a debtor who has not, himself, made any false representations may nonetheless be responsible for the fraud of an agent acting within the scope of that agent's authority.[53]

A. Principal's Knowledge or Reckless Indifference is Required to Impute Bad Faith to a Principal-Debtor

The fraud of an authorized agent, without more, is sufficient to find a debtor's debt is non-dischargeable; however, a principal's knowledge or reckless disregard of the fraud must be proven in order to deny the principal-debtor's discharge in bankruptcy.[54] But, there is a distinction in the case law between denial of a discharge and non-dischargeability of a particular

[49] *See* Restatement (Second) Agency § 220 comment d. *See also In re* Smith, 98 B.R. 423, 426 (Bankr. C.D.Ill. 1989).
[50] *See In re* Brown, 412 F. Supp. 1066, 1071 (W.D.Okla. 1975).
[51] *See* Kalman v. Bertacchi, 373 N.E.2d 550, 556 (1978) (citing Faber-Musser Co. v. Dee Clay Manufacturing Co., 126 N.E. 186 (1920)); Elmore v. Blume, 31 Ill.App.3d 643, 647, 334 N.E.2d 431, 434 (1975)).
[52] *Id.*
[53] *See* In re Maloof, 2 F.2d 373 (N.D.Ga. 1924); National Bank of North America v. Newmark, 20 B.R. 842 (Bankr. E.D.N.Y. 1982). *See also* Matter of Walker, 53 B.R. 174, 182 n. 17 (Bankr. W.D.Mo. 1985).
[54] *In re* Smith, 98 B.R. 423, 426–27 (Bankr. C.D.Ill. 1989).

debt and how both relate to a principal's liability for an agent's fraud.[55] An agent's fraud may not be imputed to the principal on the issue of dischargeability of a particular debt when the issue is entitlement to a general discharge.[56]

1. Debt is Non-Dischargeable When Principal-Debtor Shows Reckless Indifference to the Fraud of its Agent

In *In re Futscher*,[57] the court found in favor of the plaintiff and held that the defendant's debt was not dischargeable because the defendant was recklessly indifferent to the acts of her agent.[58] The defendant owned a car repair company and hired a manager to oversee the day-to-day operations of the business.[59] Shortly after hiring the manager, the defendant expressed concerns about the integrity and honesty of the manager to others, yet did nothing about her concerns.[60] Further, the defendant witnessed a disagreement between the manager and the plaintiff over an engine that the plaintiff paid for, but never received.[61] The court held that this debt arose from wrongful acts because the manager never intended to give the plaintiff the engine that she paid for.[62] In coming to its conclusion, the *Futscher* court relied heavily on *In re Walker*.[63] The Walker Court reasoned that something more than merely the existence of a principal-agent relationship must be shown before a debtor/principal will be held liable for the

[55] *See* Matter of Walker, 53 B.R. at 177–178.
[56] *See Id.*
[57] 58 B.R. 14 (Bankr. S.D.Ohio 1985).
[58] *Id.*
[59] *Id.*
[60] *Id.* at 16.
[61] *Id.*
[62] *Id.* at 17.
[63] *See In re* Walker, 53 B.R. 174 (Bankr. W.D.Mo. 1985). (The court reasoned that something more than merely the existence of a principal-agent relationship must be shown before a debtor/principal will be held liable for the fraud of his agent. It must further be shown that the debtor knew or should have known of the fraud of the agent. Moreover, *Walker* holds, it will be sufficient for a holding of non-dischargeability to show that debtor was recklessly indifferent to the acts of his agent.

fraud of his agent. Additionally, it must also be shown that the debtor knew or should have known of the fraud of the agent. Moreover, *Walker* held that it would be sufficient for a holding of non-dischargeability to show that debtor was recklessly indifferent to the acts of his agent.[64]

The *Futscher* court found that the defendant was recklessly indifferent to the acts of her agent because prior to the fraudulent conduct in question, she expressed suspicion of the honesty and integrity of her agent. The court concluded that when the defendant thereafter permitted her agent to continue to operate her business, she was being "recklessly indifferent" to the acts of her agent.[65] When the defendant turned a blind-eye to the fraudulent acts of her agent, she conducted herself in a manner that required a holding of non-dischargeability.[66]

2. Debt is Dischargeable When there is no Evidence that an Innocent Party had Knowledge of Partner's Fraud

In *In re Anderson*,[67] the court found that the defendant's debt was dischargeable where the defendant lacked intent to deceive (given that the fraudulent representations were made by a co-debtor without defendant's knowledge), the fraudulent representations were immaterial, and the plaintiff's reliance on the representation was unreasonable.[68] In coming to its conclusion, the court addressed whether an "innocent" partner can be held liable for a materially false statement given by the debtor's partner to obtain credit for the business, and whether that partner's intent to deceive can be imputed to the debtor.[69] Early courts generally would not impute the fraud of a guilty partner to an "innocent" bankrupt partner's discharge.[70] In order to deny the discharge, additional factors must exist that indicate that the bankrupt knew of, or acquiesced in the

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[64] *See In re* Futscher*,* 58 B.R. 14, 16 (Bankr. S.D.Ohio 1985).
[65] *Id.*
[66] *Id.*
[67] 29 B.R. 184 (Bankr. N.D.Iowa 1983)
[68] *Id.*
[69] *Id.*
[70] *See In re* Lovich, 117 F.2d 612 (2d Cir. 1941).

fraudulent statement.[71] And that "[t]he debtor's failure to notify the creditors of the falsity . . . . would be evidence of an intent to deceive."[72]

In *Anderson*, the court found the reasoning of the early courts was persuasive because "[t]he clear legislative policy of discharging the honest debtor would be negated by imputing the deceptive intent of one partner to an honest, innocent debtor partner."[73] The defendant was "innocent" because he was not in a position to know that the fraudulent information was false.[74] Additionally, the defendant notified the creditor as soon as he discovered that the information was fraudulent.[75] Also, the defendant had a reputation for honesty and integrity among his creditors and therefore it was unlikely that the defendant was not an "innocent" party.[76] These facts led the court to conclude that the defendant took no part in intentionally defrauding his creditors, and so his partner's intent to defraud should not be imputed to him, the "innocent" partner.[77]

3. Debtor Innocence Prevails as a Safeguard Against Section 523 Exclusions to Discharge

The "innocence" of the debtor was further explored by the 7th Circuit in *Sullivan v. Glenn (In re Glenn)*.[78] In *In re Glenn*, a creditor's argument that section 523(a)(2)(A) provides that a debt is non-dischargeable if it was a product of fraud, notwithstanding the debtor's complete

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[71] *See Id.*; Hardie v. Swafford Bros. Dry Goods Co., 165 F. 588 (5th Cir. 1908) (fraud of one partner will not be imputed to an honest, innocent partner to bar his discharge so long as the innocent partner did not participate in and had no knowledge of the fraudulent act.)
[72] *See* In the Matter of Gray, 22 B.R. 676, 680 (Bkrtcy. W.D.Wisc. 1982). *See also In re* Anderson, 29 B.R. 184, 191 (Bankr. N.D. Iowa 1983).
[73] *In re* Anderson, 29 B.R. 184, 191 (Bankr. N.D.Iowa 1983).
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] Sullivan v. Glenn (*In re* Glenn), 782 F.3d 378 (7th Cir. 2015).

innocence, was rejected.[79] The creditor relied on a "debt not the debtor" theory of imputing liability.[80] This theory focuses on the lack of "innocence" of the debt and takes no account of the debtor's intent.[81] The court, finding that the theory makes no sense, explained that "[i]t would be a form of attainder: an innocent person punished for the misdeed of an ancestor, or in this case an assignor."[82]

The creditor also relied on an alternative theory based on the law of agency.[83] This theory was based on the law that the misdeeds of the agent within the scope of the agency are imputed to the principal.[84] Additionally, that "the principal is liable for a misrepresentation made by its agent if the person to whom the representation was made would have no reason to doubt that it was a true statement, authorized by the principal."[85] The court rejected this theory because of the debtor's innocence in this case.[86] The debtor innocently relied on the fraudulent acts of its agent and had no reason to doubt that his agent was not acting honestly.[87] In addition, the creditor in this case did not even exercise "slight care" in giving the loan and therefore he could not have justifiably relied on the fraudulent acts of the debtor's agent.[88] *In re Glenn* further memorialized the bankruptcy theory that "innocent" and deserving debtors should be afforded a fresh start through debt discharge.[89]

III. Conclusion

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[79] *Id.*
[80] *Id.* at 380.
[81] *Id.*
[82] *Id.*
[83] *Id.* at 381.
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.* at 382.
[88] *Id.*
[89] *In re* Gans, 75 B.R. 474, 481 (Bankr. S.D.N.Y. 1987).

Imposing liability for benefiting innocently from a fraud would encourage debtors to police their agents more carefully.[90] But, it would also increase the cost and complexity of commercial transactions.[91] Debt discharge creates a form of limited liability in bankruptcy, which encourages parties to conduct business.[92] Although the Bankruptcy Code allows limited liability and a fresh start for debtors in order to encourage business transactions, section 523(a)(2)(A) limits it by excluding a debtor's fraudulent conduct from discharge. This implies that the intent of the debtor in incurring the debt is taken into account when determining whether he or she should be allowed a fresh-start. A fresh-start resulting from a section 727 discharge is intended to relieve debtors from harrowing debt so that they can become productive members in the economy. It was not intended to exculpate bad-faith debtors from dishonesty.

In re Glenn further insulates the debtor from the bad acts of others. A positive implication of *In re Glenn* is that deserving debtors will get a fresh-start and will not be punished for the actions of others. The holding focuses on the actions of the debtor and creditor, and not the debt itself, suggesting that bankruptcy courts will focus the inquiry on the debtor itself. A far-reaching implication of this decision is that debtors might use agents to incur debt in order to further insulate themselves from non-dischargeability. Debtors could turn a blind-eye to the acts of their agents in order to make sure that they do not become aware of the fraudulent acts perpetrated by their agents. However, courts will likely tackle this implication by denying discharge when the debtor "should have known" about the fraudulent acts of it agent. Therefore, flagrant disregard will not be confused for innocence and the bad faith of the debtor will be taken into consideration, complying with the spirit of the Bankruptcy Code.

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[90] *Id.*
[91] *Id.*
[92] *Id.*