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**The Dischargeability of Money Judgements Versus Property Interests in Arbitration
Awards for Domestic Contributions in the Context of Unmarried Couples**

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Cite as: *The Dischargeability of Money Judgements Versus Property Interests in Arbitration Awards for Domestic Contributions in the Context of Unmarried Couples*, 15 ST. JOHN'S BANKR. RESEARCH LIBR. NO. 18 (2023).

Introduction

A debt which arises prior to the filing of the petition for discharge in bankruptcy is dischargeable unless it can be categorized as one of the statutory exceptions to discharge listed in section 523(a) of title 11 of the United States Code (the "Bankruptcy Code").¹ Section 523(a)(5) of the Bankruptcy Code prohibits the discharge of awards of domestic support due to a debtor's spouse, former spouse, or child.² Accordingly, maintenance, alimony, and child support, often awarded in divorce proceedings, fall under the federal bankruptcy law statutory exceptions to discharge for domestic support obligations.³

When an unmarried couple separates and individuals are unable to obtain relief through the traditional channel of divorce law, awards for domestic contributions, as determined in arbitration proceedings, are not protected by the statutory exceptions to discharge afforded to previously married individuals. Federal bankruptcy law governs the dischargeability of debts in bankruptcy proceedings and bankruptcy courts must examine the language of the award to

¹ 11 U.S.C. § 523(a) (2018).

² See *Harshaw v. Harshaw (In re Harshaw)*, 26 F.4th 768, 776 (7th Cir. 2022).

³ See *Brown v. Pitzer*, 249 B.R. 303, 307 (S.D. Ind. 2000).

determine whether an award is dischargeable in bankruptcy proceedings.⁴ If an award calls for the transfer of property, the award is a property interest which is not dischargeable in bankruptcy.⁵ However, if the award requires the payment of a specific sum of money, the award is a money judgement which is dischargeable in bankruptcy.⁶

This article explores when a court may classify an award for domestic contributions as a money judgement which is dischargeable in bankruptcy, or as a property interest which is not dischargeable in bankruptcy. Part I analyzes the legal standard for classification of the language of an arbitration award as granting either a money judgement or a property interest. Part II focuses on dischargeability of debts in bankruptcy proceedings, including governing federal bankruptcy law, the authority of arbitrators, and the jurisdiction of bankruptcy courts and state courts to determine the dischargeability of debts.

Discussion

I. The Text of an Arbitration Award may Determine Whether a Money Judgement or Property Interest is Awarded

A. An Arbitration Award Requiring the Payment of a Specific Sum of Money is a Money Judgement

A money judgement is conveyed by an arbitration award when language requiring payment of a specific sum of money is contained in the text of the award. According to Black's Law Dictionary, the term "money judgement" is defined as a "judgement for damages subject to immediate execution, as distinguished from equitable or injunctive relief."⁷ At a federal level, courts have generally looked to "whether the judgment at issue required a party to pay a fixed

⁴ *See id.*

⁵ *Id.* at 772.

⁶ *Id.* at 773.

⁷ *Money Judgments*, BLACK'S LAW DICTIONARY (11th ed. 2019).

sum” to determine whether a money judgement has been awarded.⁸ Further, the United States Court of Appeals for the Ninth Circuit held “a money judgment consists of two elements: ‘(1) an identification of the parties for and against whom judgment is being entered, and (2) a definite and certain designation of the amount which plaintiff is owed by defendant.’”⁹

Indiana courts have held that the language of an arbitration award fits the criteria for classification as a money judgement when the award requires the payment of a specific sum of money. In 2009, the Indiana Court of Appeals held that “any order that requires the payment of a sum of money and states the specific amount due, whether labeled as a mandate or a civil money judgment, is a ‘judgment for money.’”¹⁰ The “certain and definite” statement of a monetary amount to be awarded is the critical factor which must be satisfied to classify an arbitration award as a money judgement.¹¹

In *Harshaw v. Harshaw (In re Harshaw)*, the Seventh Circuit held that an arbitration award to a debtor’s former wife, with whom he had reunited but not remarried, for the sum of \$435,000, plus post-judgement interest, to be paid through assignment of his pension and/or retirement benefits by Qualified Domestic Relations Order, or in any other manner acceptable to both parties, was a money judgement dischargeable in the debtor’s bankruptcy proceedings.¹² In deciding the threshold issue of whether the award of the arbitrator constituted a money judgement, the court looked to the language of the award and controlling federal bankruptcy law and found that the arbitrator awarded a money judgement because the award did not contain “property-division language” and instead required “the payment of a sum of money” stating “the

⁸ *Eaves v. Cnty. of Cape May*, 239 F.3d 527, 533 (3d Cir. 2001).

⁹ *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1101 (9th Cir. 2011) (quoting *Penn Terra Ltd. v. Dep’t of Env’t Res.*, 733 F.2d 267, 275 (3d Cir.1984)).

¹⁰ *Hilliard v. Jacobs*, 916 N.E.2d 689, 694 (Ind. Ct. App. 2009).

¹¹ *United Farm Bureau Mutual Insurance Co. v. Ira*, 577 N.E.2d 588, 593 (Ind. App. 1991).

¹² 26 F.4th 768, 776 (7th Cir. 2022).

specific amount due.”¹³ Additionally, under Indiana law, the award of post-judgment interest is only granted in the case of money judgments.¹⁴ Accordingly, when post-judgment interest is awarded, courts consequently find that a money judgment has been awarded.

B. An Arbitration Award Containing Property-Division Language Provides a Property Interest

A property interest is conveyed by an arbitration award when property-division language is contained in the text of the award. Financial obligations dischargeable under federal bankruptcy law must be classified as debts, as defined by the Bankruptcy Code.¹⁵ A property interest is not a financial obligation which may be considered a debt under the Bankruptcy Code, and accordingly, a property interest award is not affected by bankruptcy proceedings or subject to discharge.¹⁶ While the Bankruptcy Code provides insight into the dischargeability of debts, it fails to provide a comprehensive list of financial obligations which are not dischargeable debts, and accordingly, “terms such as ‘property’ and ‘interests in property’ are creatures of state law.”¹⁷ Courts have held that language of awards for financial obligations indicating the transfer of property, signals categorization of the award as an interest in property, rather than a money judgment.¹⁸ When an award issues sole and separate property, which is an award of interest belonging only to one party, the award recipient’s interest in that property is not a debt subject to discharge in the debtor’s bankruptcy.¹⁹ A property interest is likely vested in an award recipient when the order specifies the exact source of funds to be awarded and does not allow the debtor to

¹³ *Id.* at 771–73.

¹⁴ *See* Ind. Code § 24-4.6-1-101; *see also* Hilliard, 916 N.E.2d at 694.

¹⁵ *See* Brogan v. Brogan, 31 Va. App. 769, 774, (2000); *see also* 11 U.S.C. § 101(5), (12) (2018).

¹⁶ *See* Brogan, 31 Va. App. at 777.

¹⁷ Brown v. Pitzer, 249 B.R. 303, 307 (S.D. Ind. 2000).

¹⁸ *See* Paxton v. Paxton, 709 N.E.2d 31, 33 (Ind. Ct. App. 1999).

¹⁹ *See* Brogan, 31 Va. App. at 776.

choose the source of payment, which is a more specific requirement as compared to solely requiring a statement of the certain monetary sum due.²⁰

In *Brown v. Pitzer*, the United States District Court for the Southern District of Indiana examined the language of a divorce decree and determined that the award constituted an interest in property.²¹ The court considered various factors which pointed towards the classification of the award as a property interest, including the language of the decree calling for the transfer of property through an in-kind asset allocation of a portion of the marital pension, specifying the source of funds and preventing the debtor from choosing the source of payment.²² The language of the decree conveyed a specific interest in separate property, which could not be discharged as a prepetition debt.²³ Accordingly, the court found that the assignment of an interest in a portion of the marital pension fund constituted a property interest, which is not a debt dischargeable in bankruptcy proceedings.²⁴

II. Federal Bankruptcy Law, not the Text of an Arbitration Award, is Controlling in Determining the Dischargeability of Debts in Bankruptcy

A. Federal Bankruptcy Law Governs the Dischargeability of Debts in Bankruptcy Proceedings

Federal bankruptcy law is the controlling authority in determining the dischargeability of debts in bankruptcy proceedings. While the substantive language of arbitration awards is critical to determining whether an award grants a money judgement or a property interest, language in arbitration awards stating the authority of the arbitrator themselves is not controlling. Arbitrators do not have the authority to determine conclusively which awards may or may not be

²⁰ See *Brown*, 249 B.R. at 308.

²¹ See *id.*

²² See *id.*

²³ See *id.* at 309.

²⁴ See *id.* at 312.

dischargeable in bankruptcy proceedings.²⁵ In *In re Harshaw*, the language of the arbitration award stated, “this judgment should not be dischargeable in bankruptcy.”²⁶ The court determined that this language used by the arbitrator was not controlling in determining the dischargeability of the award in the context of bankruptcy proceedings.²⁷ The court disregarded this statement of the arbitrator’s authority, concluding that federal bankruptcy law is the controlling authority in governing which debts may or may not dischargeable.²⁸

Section 523(a) of the Bankruptcy Code provides the statutory exceptions to discharge.²⁹ Debts are traditionally dischargeable unless they can be classified under one of these statutory exceptions to discharge.³⁰ Section 523(a)(5) of the Bankruptcy Code offers an exception from discharge for domestic support obligations traditionally awarded in divorce decrees.³¹ Domestic support obligations include debts owed to or recoverable by “a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative.”³² The rationale behind this exception is to protect alimony, maintenance, and support awards due to a debtor’s current or former spouse or child from becoming debts dischargeable in a debtor’s bankruptcy proceedings.³³

While section 523(a)(5) provides a statutory protection for domestic support obligations due to those engaged in traditionally protected family relationships, including spouses and children, individuals engaged in nontraditional relationships are excluded from the statutory protections in the Bankruptcy Code for awards owed to them. Unmarried individuals do not

²⁵ See *In re Harshaw*, 26 F.4th 768, 775–76 (7th Cir. 2022).

²⁶ *Id.* at 772.

²⁷ See *id.* at 775.

²⁸ See *id.* at 776; see also 11 U.S.C. § 523(a) (2018).

²⁹ See 11 U.S.C. § 523(a) (2018).

³⁰ See *Brown*, 249 B.R. at 307.

³¹ See 11 U.S.C. § 523(a)(5) (2018).

³² 11 U.S.C. § 101(14A) (2018).

³³ See *Brown*, 249 B.R. at 307.

enjoy the same relationship-based protections under the Bankruptcy Code.³⁴ For this reason, it is critical that the language of the award is carefully crafted to reflect the nature of the interest awarded, whether it be a money judgment subject to discharge in bankruptcy, or a property interest to be protected from discharge. As illustrated in *In re Harshaw*, arbitration awards for domestic contributions when a couple was cohabitating but not married are not protected by statutory exceptions to discharge, including domestic support obligations.³⁵ Accordingly, the Seventh Circuit looked to the language of the award to determine the type of interest awarded to the debtor's wife and whether that interest was excepted from discharge as a property interest since the statutory exceptions to discharge were unavailable due to the circumstances of the parties' relationship.³⁶ For those debts not fitting under the statutory exceptions, issues arising as to dischargeability are decided by bankruptcy and state courts.

B. Bankruptcy Courts Have Exclusive Jurisdiction to Decide the Dischargeability of Debts Under 11 U.S.C. §§ 523 (a)(2), (a)(4), and (a)(6) and Exercise Concurrent Jurisdiction with State Courts for the Remaining Exceptions to Discharge

For debts that fall under Bankruptcy Code exceptions to discharge, including sections 523(a)(2), (a)(4), and (a)(6), bankruptcy courts hold exclusive jurisdiction over deciding whether those debts are dischargeable in bankruptcy proceedings.³⁷ The three sections of statutory exceptions to discharge under the exclusive jurisdiction of bankruptcy courts include debts “for money, property, services, or an extension, renewal, or refinancing of credit” obtained by false pretenses or representation, or actual fraud, debts “for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny,” and debts “for willful and malicious injury by the

³⁴ See *In re Harshaw*, 26 F.4th 768, 776 (7th Cir. 2022).

³⁵ *Id.*

³⁶ See *id.* at 771.

³⁷ See *id.* at 776.

debtor to another entity or to the property of another entity.”³⁸ For the remaining exceptions to discharge of section 523(a) of the Bankruptcy Code, “bankruptcy courts and state courts exercise concurrent jurisdiction to determine whether a debt is dischargeable.”³⁹ However, if a court has previously resolved the issue of dischargeability, bankruptcy courts must give “full faith and credit” to the decision of the prior court if the requirements for issue preclusion under state law are met.⁴⁰

Conclusion

Section 523(a)(5) of the Bankruptcy Code protects awards to a debtor’s spouse, former spouse, or child for domestic support from discharge in a debtor’s bankruptcy proceedings. However, awards for domestic contributions issued by arbitrators in the separation of unmarried couples, which do not fall under the statutory exceptions to discharge, may be dischargeable in bankruptcy proceedings. If an arbitration award contains language of a certain sum of money to be paid by the debtor, a court is likely to hold that the award is a money judgement, which is subject to discharge in bankruptcy proceedings. If an arbitration award contains property-division language, a court is likely to hold the award is a property interest, which is protected from discharge in bankruptcy proceedings. It is critical to look closely at the language of an arbitration award to determine what kind of award is granted and whether awards for domestic contributions may be protected from the threat of potential bankruptcy proceedings.

³⁸ 11 U.S.C. § 523(a) (2018).

³⁹ See *In re Harshaw*, 26 F.4th at 776 (citing to NORTON BANKRUPTCY LAW AND PRACTICE § 57:70 (3d ed. 2018)).

⁴⁰ *Id.*