

APR 07 2009

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	CC-08-1258-MkHPa
7	CHARLES M. FRYE,)	BK No.	LA 06-16118-BB
8	Debtor.)	Adv. No.	LA 07-01150-BB
9	_____)		
10	CHARLES M. FRYE,)		
11	Appellant,)		
12	v.)	MEMORANDUM†	
13	EXCELSIOR COLLEGE,)		
14	Appellee.)		
	_____)		

Submitted Without Oral Argument
on January 6, 2009

Filed - April 7, 2009

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Sheri Bluebond, Bankruptcy Judge, Presiding

Before: MARKELL, HOLLOWELL and PAPPAS, Bankruptcy Judges.

†This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see FED. R. APP. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 **I. INTRODUCTION**

2 Debtor Charles M. Frye appeals from the bankruptcy court's
3 denial of his motion seeking a determination that Excelsior
4 College violated 11 U.S.C. § 524(a)(2).¹ Excelsior holds a non-
5 dischargeable judgment against Frye personally, and holds
6 judgments against two non-debtor entities for which Frye is (or
7 was) the main shareholder and principal. Frye filed his motion
8 in response to Excelsior's attempts to use post-judgment
9 discovery procedures to identify what assets may be available to
10 satisfy its judgments. In addition to alleging a violation of
11 the discharge injunction, the motion also requested that the
12 bankruptcy court prospectively define the permissible scope of
13 post-bankruptcy collection activities.

14 The bankruptcy court denied Frye's motion in its entirety.
15 The court found that Excelsior's actions did not violate the
16 discharge injunction based on any of the theories advanced by
17 Frye. The court also found that it would be improper to issue
18 the requested advisory opinion.

19 Frye appealed. He argues that the court misstated the law
20 with respect to exemptions in bankruptcy and the effect of
21 exemptions post-bankruptcy, and that, but for this error, the
22 court would have found that Excelsior violated the discharge
23 injunction. He also argues that certain claims held by
24 Excelsior have been discharged, and therefore its discovery
25 attempts violated the discharge injunction with respect to these

26
27 ¹Unless specified otherwise, all references are to the
28 Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules
of Bankruptcy Procedure, Rules 1001-9037.

1 claims. Finally, Frye continues to assert that an advisory
2 opinion regarding discovery is appropriate.

3 In response to Frye's appeal, Excelsior urges us to affirm
4 the order denying Frye's motion in all respects. It asserts
5 that it violated no provision of the Bankruptcy Code in
6 attempting to conduct post-judgment discovery, as authorized by
7 FED. R. CIV. P. 69, given that all of its claims against Frye,
8 personally, have been declared non-dischargeable, and that the
9 judgments it holds against Frye's corporations are not subject
10 to the discharge injunction because those entities are non-
11 debtors. Excelsior also requests that we affirm the bankruptcy
12 court's finding that it would be improper to issue an advisory
13 opinion.

14 For reasons set forth below, we AFFIRM.

15 **II. FACTS**

16 Frye filed a petition under chapter 7 of the Bankruptcy
17 Code on November 22, 2006.² At the time he filed bankruptcy,
18 Frye was one of three defendants in a copyright infringement
19 action that was brought by Excelsior College and being heard in
20 the United States District Court for the Southern District of
21 California.³ Excelsior v. Frye, 3:04-cv-00535. The other two
22

23 ²To facilitate the resolution of this matter, the panel has taken
24 judicial notice of the dockets of the bankruptcy court and the
25 district court where a copyright infringement action involving
26 Frye was heard. FED. R. EVID. 201 (made applicable by FED. R.
EVID. 1101).

27 ³The suit involved allegations of copyright infringement under
28 the Copyright Act, 17 U.S.C. §§ 1114 and 1125(a), along with
related statutory and common law claims.

1 defendants in the copyright infringement action were
2 Professional Development Systems School of Health Sciences
3 ("PDS") and West Haven University (collectively, the "Corporate
4 Defendants").⁴ Frye is (or was) the main stockholder of these
5 corporations.⁵

6 By order of the bankruptcy court entered February 14, 2007,
7 the automatic stay was modified to allow the copyright
8 infringement action to proceed to final judgment. On March 23,
9 2007, judgment was entered against Frye on counts I-IV and VI of
10 the first amended complaint, for a total judgment of \$6,564,985.

11 Judgments were also entered against the Corporate Defendants,
12 as discussed below.

13 Excelsior then commenced an adversary proceeding seeking to
14 have the judgment against Frye declared non-dischargeable under
15 11 U.S.C. § 523(a)(6). On February 11, 2008, the bankruptcy
16 court entered summary judgment in favor of Excelsior, declaring
17 that the following claims against Frye were excepted from

18
19 ⁴Neither Professional Development Systems nor West Haven are
20 defendants/appellants in this appeal, and neither is a defendant
21 in the adversary proceeding below. However, the parties and the
22 bankruptcy court refer to these entities as the "Corporate
23 Defendants" because of their status in the copyright infringement
24 action, so the panel has retained this nomenclature.

25 ⁵Frye has alleged that the Corporate Defendants have been
26 dissolved, and thus he is no longer the principal of these
27 entities. It does not appear that either the bankruptcy court or
28 the district court hearing the copyright infringement action has
made a finding regarding the status of these entities. As will
be discussed below, we find that whether or not these entities
have been dissolved is not determinative of this appeal, because
even if these entities have been dissolved, the bankruptcy
court's conclusion that the discharge injunction was not violated
should be affirmed.

1 discharge:

- 2 ● A claim for willful infringement of copyrights in the
3 amount of \$450,000;
- 4 ● A claim for copyright infringement related to certain
5 exam questions in the amount of \$693,588;
- 6 ● A claim for prejudgment interest on the exam question
7 claim in the amount of \$138,717;
- 8 ● A claim for lost or diverted profits in the amount of
9 \$3,500,481;
- 10 ● A claim for prejudgment interest on the lost/diverted
11 profits claim in the amount of \$700,096; and
- 12 ● A claim for misappropriation of trade secrets in the
13 amount of \$1,082,101.

14 These non-dischargeable claims total \$6,564,985.⁶

15 The judgment for willful infringement of copyrights in the
16 amount of \$450,000 was entered jointly and severally against
17 Frye and West Haven, and the judgment for copyright infringement
18 related to exam questions, plus interest, in the amount of
19 \$832,305 and the judgment for misappropriation of trade secrets,
20 in the amount of \$1,447,733, were both entered jointly and
21 severally against Frye and PDS. The judgments against the non-
22 debtor Corporate Defendants total \$2,730,038.

23 After the bankruptcy court entered the order finding
24 Excelsior's claims against Frye to be non-dischargeable,
25

26 ⁶Frye appealed this judgment of non-dischargeability to this
27 court and the panel affirmed the bankruptcy court's judgment in
28 an unpublished disposition filed August 19, 2008 (BAP No. CC-08-
1055).

1 Excelsior commenced post-judgment discovery procedures to assist
2 it in enforcing its judgments against Frye and the Corporate
3 Defendants.⁷ See FED. R. CIV. P. 69 (permitting the use of, among
4 other things, FED. R. CIV. P. 33, relating to interrogatories,
5 and FED. R. CIV. P. 34, relating to document production, to aid
6 in the execution of a judgment). As part of these efforts,
7 Excelsior filed a "Motion to Compel Post-Judgment Discovery" in
8 the district court. The motion alleged that Frye had failed to
9 substantively respond to several discovery requests directed at
10 him, personally, and in his position as the principal of the
11 Corporate Defendants. The district court granted the motion as
12 against Frye.⁸

13 Frye found Excelsior's attempts to engage in post-judgment
14 discovery objectionable. On August 4, 2008, Frye filed the
15 motion that alleged violations of the discharge injunction and
16 requested an advisory opinion regarding post-bankruptcy
17 collection activities. The motion in the bankruptcy court set
18 forth two main arguments with respect to Excelsior's violation
19 of the discharge injunction.

20 Frye's first argument related to Excelsior's discovery
21 attempts and property that Frye had listed as exempt in his
22

23 ⁷As of the date of the submission of Excelsior's brief, it had
24 not collected any amounts owed by Frye or the Corporate
25 Defendants. Excelsior's post-judgment discovery procedures did
26 not violate the automatic stay, because Frye received a discharge
on July 23, 2007, and the entry of the discharge terminated the
stay. 11 U.S.C. § 362(c)(2)(C).

27 ⁸The motion to compel was granted with respect to Frye
28 personally, but denied with respect to the Corporate Defendants
because the motion was improperly served.

1 bankruptcy schedules. Frye's position was that the discharge
2 injunction protects against attempts to execute against exempt
3 property, and Excelsior's attempts at post-judgment discovery
4 constituted such attempts.

5 Frye's second argument that the discharge injunction was
6 violated by Excelsior's discovery efforts related to the
7 Corporate Defendants. The motion stated that, by October 13,
8 2004 (a date which is both pre-petition and prior to the date
9 that judgment was entered against Frye and the Corporate
10 Defendants in the copyright infringement action), the Corporate
11 Defendants were dissolved, all of their assets were distributed
12 to Frye, and all of their liabilities were assumed by Frye.
13 Therefore, says Frye, Excelsior's only recourse with respect to
14 claims against the Corporate Defendants, under California law,
15 is against Frye personally.

16 It follows, according to Frye, that any discovery directed
17 at the Corporate Defendants is in reality discovery against
18 himself, personally, since he is the successor-in-interest to
19 the Corporate Defendants. He claims that Excelsior's attempts
20 at post-judgment discovery therefore violate the discharge
21 injunction, because any claim against Frye as successor-in-
22 interest to the Corporate Defendants arose pre-petition and was
23 discharged in Frye's bankruptcy case.

24 The bankruptcy court denied Frye's motion in its entirety.
25 The court found that it was "wholly appropriate" for Excelsior
26 to conduct discovery to ascertain what assets Frye and the
27 Corporate Defendants might have available to satisfy the
28 outstanding judgments. The court found that Excelsior's

1 discovery attempts did not violate the discharge injunction, and
2 that Frye's claimed exemptions were of no significance with
3 respect to Excelsior's conduct. Specifically, with respect to
4 the exemptions, paragraph four of the bankruptcy court's order
5 reads:

6 4. Successfully asserting an exemption with regard to a
7 particular asset in a bankruptcy case does not immunize
8 that asset from future collection efforts by judgment
9 creditors for all times and all purposes. If a debtor
10 lists an asset on the schedule of exemptions that he
11 files in his bankruptcy case, and no one objects to that
12 claim of exemption, the trustee will not administer that
13 asset for the benefit of creditors during the course of
14 that bankruptcy. **This is the only significance of
asserting an exemption with regard to an asset in
bankruptcy. Whether and to what extent that same asset is
immune from a judgment creditor's later efforts to
enforce obligations that have not been discharged is a
matter of nonbankruptcy law** and should be resolved by the
court that would otherwise be charged with overseeing the
enforcement of that judgment.

15 (Emphasis added.) Frye argues that paragraph four misstates the
16 law, and that but for this misstatement, the court would have
17 determined that Excelsior's actions violated the discharge
18 injunction. The bankruptcy court also noted that the proper
19 forum for discovery disputes was the district court in San Diego
20 that issued those judgments, and that it would be improper for
21 the bankruptcy court to issue an advisory opinion regarding what
22 types of collection actions are permissible.

23 Following the entry of the order denying Frye's motion, and
24 the denial of his subsequent motion for reconsideration, Frye
25 filed this appeal. With the consent of the parties and after
26 review of the briefs and the record, we unanimously determined
27 that oral argument was unnecessary.

1 **III. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.
3 §§ 1334 and 157(b)(2)(I) and (O). See also McGhan v. Rutz (In
4 re McGhan), 288 F.3d 1172, 1179 (9th Cir. 2002) (“[A]ctions
5 relating to the § 524 discharge injunction . . . constitute
6 ‘core’ proceedings.”). The order denying Frye’s motion was a
7 final order. Brown v. Wilshire Credit Corp. (In re Brown), 484
8 F.3d 1116, 1120-22 (9th Cir. 2007) (“We follow a ‘pragmatic
9 approach’ to finality in bankruptcy-‘a complete act of
10 adjudication need not end the entire case, but need only end any
11 of the interim disputes from which an appeal would lie.’”). We
12 have jurisdiction pursuant to 28 U.S.C. §§ 158(a)(1) and (c)(1).

13 **IV. ISSUES PRESENTED**

14 1. Did the bankruptcy court err in determining that the
15 discharge injunction was not violated, notwithstanding Frye’s
16 claimed exemptions, and notwithstanding Frye’s claim that the
17 Corporate Defendants have been dissolved?

18 2. Did the bankruptcy court err in declining to issue an
19 advisory opinion prospectively defining the scope of permissible
20 post-bankruptcy collection activities?

21 **V. STANDARDS OF REVIEW**

22 “We review the bankruptcy court’s conclusions of law and
23 questions of statutory interpretation de novo.” Village
24 Nurseries v. Gould (In re Baldwin Builders), 232 B.R. 406, 410
25 (9th Cir. BAP 1999) (citations omitted). “The applicability of
26 the discharge injunction is a question of law, reviewed de
27 novo.” Watson v. Shandell (In re Watson), 192 B.R. 739, 745
28 (9th Cir. BAP 1996).

1 We review findings of fact under the clearly erroneous
2 standard, giving due regard to the opportunity of the bankruptcy
3 court to judge the credibility of the witnesses. FED. R. BANKR.
4 P. 8013. "A factual finding is clearly erroneous if the
5 appellate court, after reviewing the record, has a firm and
6 definite conviction that a mistake has been committed." Wall
7 St. Plaza, LLC v. JSJF Corp. (In re JSJF Corp.), 344 B.R. 94, 99
8 (9th Cir. BAP 2006); see also Cooter & Gell v. Hartmarx Corp.,
9 496 U.S. 384, 400-401 (1990).

10 VI. DISCUSSION

11 ***1. Did the bankruptcy court err in determining that Excelsior did***
12 ***not violate the discharge injunction, notwithstanding Frye's***
13 ***claimed exemptions, and notwithstanding Frye's claim that the***
14 ***Corporate Defendants have been dissolved?***

15 Frye offers two arguments that he believes support his
16 position that Excelsior violated the discharge injunction.
17 First, Frye claims that the bankruptcy court erroneously stated
18 the law in its discussion of the significance of exemptions,
19 and, but for this error, he would have prevailed on the motion.
20 Second, Frye argues that he is the successor-in-interest to the
21 now-dissolved Corporate Defendants, and therefore Excelsior's
22 attempts at discovery were attempts to collect on discharged
23 debts, in violation of the discharge injunction.

24 ***A. Excelsior's Discovery Attempts Did Not Violate the Discharge***

25 ***Injunction, Notwithstanding Frye's Claimed Exemptions***

26 Frye's first argument, which relates to his claimed
27 exemptions, conflates section 522 of the Bankruptcy Code, which
28 governs exemptions, and section 524, which sets out the

1 discharge injunction.

2 When a bankruptcy case is commenced, section 541 creates an
3 estate, composed of all of the debtor's property (with some
4 limited exceptions). Section 522 allows the debtor to exempt
5 certain property from his bankruptcy estate. Section 522(1)
6 requires the debtor to create and file a list of property
7 claimed as exempt. Although subsection (b) purports to
8 constrain what may be included on the debtor's list of exempt
9 property, section 522(1) states that "[u]nless a party in
10 interest objects, the property claimed as exempt on such list is
11 exempt."

12 The Supreme Court has reviewed section 522(1) and
13 determined that it is unambiguous and should therefore be
14 applied as written. Taylor v. Freeland & Kronz, 503 U.S. 638
15 (1992). If a party in interest fails to file an objection to a
16 claimed exemption within the 30-day period stated in FED. R.
17 BANKR. P. 4003(b), the property claimed as exempt on the debtor's
18 list is exempt. Id. at 642. This is so even if the debtor did
19 not have "a colorable statutory basis for claiming" the
20 exemption.⁹ Id. at 643. The Supreme Court has explained that

22 ⁹Thus, for example, in this case, Frye alleges that his corporate
23 ownership interests are exempt pursuant to CAL. CIV. PROC. CODE
24 § 703.140(b)(5) (West 2006), which allows a \$925 exemption in any
25 property. Frye's exemptions in his corporate ownership
26 interests, each listed with a value of "unknown" or "\$0," may be
27 fully exempt, even if the value of these ownership interests is
28 actually greater than \$900. However, this issue is not before
us, because Frye's motion did not place this issue before the
bankruptcy court. O'Rourke v. Seaboard Sur. Co. (In re E.R.
Fegert, Inc.), 887 F.2d 955, 957 (9th Cir. 1989); Franchise Tax

(continued...)

1 although the Bankruptcy Code has several provisions that may
2 penalize a debtor for claiming exemptions in bad faith, there is
3 nothing inherent in section 522(1) that limits a debtor to
4 exemptions claimed in good faith. Id. at 644-45.

5 The fact that a debtor declares certain property exempt has
6 significant consequences for some creditors with claims that are
7 not discharged in bankruptcy. Section 522(c) specifies that,
8 “[u]nless the case is dismissed, property exempted under this
9 section is not liable during **or after the case** for any debt of
10 the debtor that arose . . . before the commencement of the
11 case.” 11 U.S.C. 522(c) (emphasis added).¹⁰

12 There are a limited number of exceptions to section 522(c).
13 In this case, Excelsior’s claims based on copyright infringement
14 do not fall within any of these exceptions, even though its
15
16
17

18 ⁹(...continued)
19 Bd. v. Roberts (In re Roberts), 175 B.R. 339, 344-45 (9th Cir.
20 BAP 1994) (citing Rothman v. Hosp. Serv. of S. Cal., 510 F.2d
956, 960 (9th Cir. 1975)).

21 Of course, assuming, without deciding, that Frye’s ownership
22 interests are fully exempt, that would not create an exemption in
23 the assets owned by his corporations on the date of the petition.
24 See, e.g., In re LaVelle, 350 B.R. 505, 512 (Bankr. D. Idaho
25 2005) (“[I]t is a debtor’s partnership interest, not the assets
of the partnership, that becomes property of the bankruptcy
estate when an individual partner files for bankruptcy.”)
(citations omitted).

26 ¹⁰The bankruptcy court stated that the exemptions have no effect
27 after bankruptcy. This observation was technically incorrect,
28 but as we indicated earlier, this error was harmless and does not
affect the propriety of the bankruptcy court’s decision to deny
Frye’s motion.

1 claims were declared non-dischargeable.¹¹ Therefore, the
2 property that Frye listed as exempt is not liable for
3 Excelsior's non-dischargeable claims.¹² S&C Home Loans, Inc. v.
4 Farr (In re Farr), 278 B.R. 171, 177 (9th Cir. BAP 2002)
5 ("§ 522(c) performs . . . a protective function, by preserving
6 the exemption if nondischargeable claims other than those
7 specifically excepted by § 522(c) are sought to be enforced
8 against exempt property.").

9 Therefore, had Excelsior attempted to execute on property
10 that Frye claimed exempt, it likely would have violated section
11 522(c). However, there is no evidence or allegation that
12 Excelsior has attempted to satisfy its non-dischargeable
13

14 ¹¹Excelsior's claims were declared non-dischargeable under
15 section 523(a)(6). Section 522(c) has four sub-parts. Part one
16 refers to domestic support obligations and certain tax debts,
17 part two refers to debts secured by certain liens, and part four
18 refers to debts owed to certain educational institutions for
19 certain financial assistance obtained through fraud. Part three
20 does except debts specified in section 523(a)(6), but only if
21 those debts are owed "by an institution-affiliated party of an
22 insured depository institution to a Federal depository
institutions regulatory agency acting in its capacity as
conservator, receiver, or liquidating agent for such
institution." 11 U.S.C. § 522(c)(3). Excelsior is not such an
institution-affiliated party.

23 ¹²We note that Frye's briefs suggest that he believes that he has
24 exempted all of the assets of the Corporate Defendants. This is
25 not the case. See supra note 9. Also, if Frye is correct that
26 the Corporate Defendants were dissolved in 2004 and owned nothing
27 on the date of the petition (see infra Part VI.1.B), the
28 exemptions he relies on, again assuming they refer to corporate
ownership interests, are likely either valueless or a nullity, as
one cannot own an interest in an entity that does not exist, and
a debtor may not claim exemptions in property he does not own.
See LaVelle, 350 B.R. at 512.

1 obligation with property claimed exempt on Frye's amended
2 Schedule C. All that has occurred is that Excelsior has
3 questioned Frye about his property, and some of the property
4 asked about may have been property that Frye claimed exempt in
5 his bankruptcy schedules. As explained next, we find that this
6 is not impermissible under section 522(c).

7 Section 522(c) merely creates a permanent exemption in
8 certain property with regard to certain pre-petition claims. To
9 determine if it is impermissible to ask questions or otherwise
10 discover information about property declared exempt, the
11 relationship between exemptions and discovery procedures must be
12 ascertained. On this point, FED. R. CIV. P. 69(a) instructs that
13 both state and federal law are relevant. Thus, if either the
14 state law of California (which is the state in which the court
15 overseeing the discovery procedures sits), or federal law, would
16 disallow questions about exempt property, then section 522(c)
17 may have been violated. FED. R. CIV. P. 69(a).

18 With regard to state law, in California, judgment creditors
19 seeking to determine what assets may be available to satisfy a
20 judgment are afforded a broad scope of inquiry at a judgment
21 debtor examination. Hooser v. Super. Ct., 101 Cal. Rptr. 2d 341,
22 345 (Cal. Ct. App. 2000). To avoid disclosure regarding exempt
23 property, a judgment debtor like Frye must specifically claim an
24 applicable privilege or apply for a protective order from the
25 court overseeing the post-judgment discovery - the California
26 federal district court. Id.; Lee v. Swansboro Country Prop.
27 Owners Ass'n, 151 Cal. App. 4th 575, 581 (Cal. Ct. App. 2007);
28 see also CAL. CIV. PROC. CODE § 708.200 (providing for protective

1 orders). A judgment debtor examination under California law is
2 not itself an attempt to levy on exempt property or otherwise
3 apply such property to the satisfaction of a judgment. See CAL.
4 CIV. PROC. CODE §§ 703.050, 703.090, 703.100; see generally
5 Enforcement of Judgments Law, CAL. CIV. PROC. CODE. §§ 680.010 -
6 724.260.

7 With regard to federal law, neither FED. R. CIV. P. 33, 34,
8 69, nor any other federal discovery rule, indicates that a party
9 utilizing post-judgment discovery may not ask questions about
10 exempt property. It would be improper for us to read a
11 restriction into the Federal Rules that Congress has not found
12 cause to impose, as that would undermine the uniformity and
13 consistency that Congress has sought to achieve by enacting
14 these rules. See Burlington N. R. Co. v. Woods, 480 U.S. 1, 5
15 (1987).

16 Accordingly, in the absence of a protective order (see FED.
17 R. CIV. P. 26(c), 37), questions about exempt property are
18 permissible under federal law. See Alcalde v. NAC Real Estate
19 Invs. & Assignments, Inc., 580 F. Supp. 2d 969, 970-71 (C.D.
20 Cal. 2008); see also Fed. Deposit Ins. Co. v. LeGrand, 43 F.3d
21 163, 172 (5th Cir. 1995) ("The scope of post-judgment discovery
22 is very broad to permit a judgment creditor to discover assets
23 upon which execution may be made.").

24 Thus, it does not appear that a violation of section 522(c)
25 has occurred, given that neither relevant state nor federal law
26 prohibits the examination of a judgment debtor with respect to
27 property that may be exempt, no order preventing disclosure of
28 such information has been entered, and no privilege has been

1 claimed (or appears applicable on the record presented). Our
2 inquiry, however, does not end with section 522, given that Frye
3 has alleged a violation of the discharge injunction, which is
4 set forth in section 524.

5 Section 524 governs the effect of a debtor's discharge.
6 Subsection (a) (2) of section 524 states that a discharge in a
7 case under title 11 "operates as an injunction against the
8 commencement or continuation of an action, the employment of
9 process, or an act, to collect, recover or offset [any debt
10 discharged under section 727] as a personal liability of the
11 debtor, whether or not discharge of such debt is waived." Frye
12 received a discharge prior to the events complained of, so this
13 section is potentially applicable.

14 By its terms, section 524 is only applicable to discharged
15 debts. See Espinosa v. United Student Aid Funds, Inc., 553 F.3d
16 1193, 1200 (9th Cir. 2008) (stating that the discharge
17 injunction is "an equitable remedy precluding the creditor, on
18 pain of contempt, from taking any actions to enforce [a]
19 *discharged* debt") (emphasis modified). Excelsior's judgment
20 against Frye was declared non-dischargeable. Thus, the
21 discovery methods that Excelsior attempted to use to ascertain
22 what assets Frye has to satisfy its non-dischargeable judgment
23 did not violate the discharge injunction, as that injunction was
24 not applicable under the plain terms of section 524. Watson v.
25 Shandell (In re Watson), 192 B.R. 739, 749 n.7 (9th Cir. BAP
26 1996) ("Section 524 does not enjoin actions of creditors who
27 have successfully invoked § 523 by receiving a judgment
28 declaring their debts to be nondischargeable."); Aldrich v.

1 Imbrogno (In re Aldrich), 34 B.R. 776, 779 (9th Cir. BAP 1983)
2 (“[T]he provisions of 11 U.S.C. Section 524 would not enjoin
3 actions of creditors who successfully invoke 11 U.S.C. Section
4 523.”).

5 Therefore, in making its determination that Excelsior did
6 not violate the discharge injunction, the bankruptcy court
7 properly focused on the fact that the claims held by Excelsior
8 have been declared non-dischargeable. The fact that Frye has
9 claimed certain property as exempt was irrelevant to the court’s
10 determination on this point. Accordingly, we find that the
11 bankruptcy court did not err in denying Frye’s motion,
12 notwithstanding his claimed exemptions.

13 ***B. Excelsior’s Discovery Attempts Did Not Violate the Discharge***
14 ***Injunction, Even Assuming that the Corporate Defendants Were***
15 ***Dissolved Pre-Petition***

16 Frye has advanced an alternative argument that Excelsior
17 violated the discharge injunction. He essentially argues that
18 his pre-petition assumption of the Corporate Defendants’ assets
19 and liabilities lead to the discharge of any claims that
20 Excelsior has against the Corporate Defendants. Even if this
21 successor-in-interest argument is correct, no showing has been
22 made that Excelsior attempted to collect those claims as a
23 personal liability of Frye, and therefore we find that the
24 bankruptcy court properly denied Frye’s motion.

25 The premise of Frye’s argument is that when the district
26 court entered judgments against the Corporate Defendants in the
27 copyright infringement action, it was merely liquidating a claim
28 against Frye, the liability for which Frye had already assumed

1 pre-petition. This is plausibly correct. See 11 U.S.C.
2 § 101(5) ("The term 'claim' means-(A) right to payment, whether
3 or not such right is reduced to judgment, liquidated,
4 unliquidated, fixed, contingent, matured, unmatured, disputed,
5 undisputed, legal, equitable, secured, or unsecured."); Boeing
6 N. Am., Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018, 1022 (9th
7 Cir. 2005) ("[A] claim arises, for purposes of discharge in
8 bankruptcy, at the time of the events giving rise to the
9 claim."). Since these claims were not declared non-
10 dischargeable prior to Excelsior's attempts to conduct post-
11 judgment discovery, Frye asserts that these claims were
12 discharged and that any discovery related to them is a violation
13 of the discharge injunction.¹³

14 Assuming, without deciding, that Frye's successor-in-
15 interest argument is correct, he still has not proven a
16 violation of the discharge injunction. The discharge injunction
17 is violated when a party attempts to collect a discharged debt
18 as a **personal liability** of the debtor. 11 U.S.C. § 524
19 (emphasis added). Excelsior has only sought discovery against
20 the Corporate Defendants. It has a judgment against those
21 entities, and is able to conduct post-judgment discovery to
22 determine if those entities have any remaining assets with which
23 Excelsior may satisfy its judgment, even if those entities have
24 been legally dissolved. See CAL. CORP. CODE § 2011(a)(1)(A)

26
27 ¹³Also, such claims are not automatically non-dischargeable
28 pursuant to section 523(a)(3)(A) or (B) because Excelsior had
timely notice of the bankruptcy filing. See McGhan v. Rutz (In
re McGhan), 288 F.3d 1172, 1176 (9th Cir. 2002).

1 (permitting causes of action to be enforced against a dissolved
2 corporation to the extent of undistributed assets); FED. R. CIV.
3 P. 69. Engaging in such discovery procedures is not an attempt
4 to collect the claims against the Corporate Defendants from Frye
5 personally, assuming arguendo that liability on those claims
6 ultimately runs to him, and is not impermissible merely because
7 Frye has received a discharge.¹⁴ See Paul v. Iglehart (In re
8 Paul), 534 F.3d 1303, 1307 (10th Cir. 2008) (“[R]equiring a
9 debtor to bear such collateral burdens of litigation as those
10 relating to discovery (as opposed to the actual defense of the
11 action and potential liability for the judgment), does not run
12 afoul of § 524(a)(2).”).

13 In short, Excelsior’s post-judgment discovery activity, by
14 itself, did not violate the discharge injunction. Moreover, to
15 the extent Excelsior conceivably could violate the discharge
16 injunction by in the future pursuing collection of the claims
17 against the Corporate Defendants, Excelsior has no need to
18 pursue collection of these claims. The claims against the
19 Corporate Defendants that Frye assumed are exactly the same
20

21
22 ¹⁴Further, all of Excelsior’s judgments against the Corporate
23 Defendants were entered jointly and severally against Frye,
24 personally. Therefore, even if the claims against the Corporate
25 Defendants cannot be collected because those entities have no
26 assets and all claim liability has succeeded to Frye and been
27 discharged, Excelsior will not be detrimentally affected, since
28 Frye remains personally liable, to the same dollar amount, for
claims that were declared non-dischargeable. Therefore, if
Excelsior did determine that its only recourse with respect to
the claims against the Corporate Defendants is Frye, it may
simply abandon those claims at no detriment to itself, since it
may only obtain one recovery on the joint and several claims.

1 claims that were entered against Frye personally. Contrary to
2 Frye's arguments, his pre-petition assumption of these severally
3 liable claims does not provide him with any increased
4 protection, given that the claims for which he is personally
5 liable have been declared non-dischargeable. To the extent that
6 the assumed claims are viewed as existing independently after
7 the date of their assumption, they may simply be abandoned by
8 Excelsior, as explained *supra* in note 14.

9 Accordingly, we affirm the bankruptcy court's determination
10 that Excelsior has not violated the discharge injunction.

11 **2. Did the bankruptcy court err in declining to issue an**
12 **advisory opinion regarding what types of post-judgment**
13 **collection activity is permissible?**

14 Frye also argues that the bankruptcy court erred by
15 refusing to provide him with an advisory opinion indicating what
16 types of post-bankruptcy collection activities Excelsior may
17 conduct. We affirm the bankruptcy court's decision to decline
18 to issue such an advisory opinion, given that the court was
19 likely without jurisdiction to prospectively decide the matter
20 and it was within the bankruptcy court's discretion to determine
21 that the matter was not ripe for adjudication, for prudential
22 reasons.

23 Although bankruptcy courts are not "Article III" courts
24 because they are constituted as units of the district courts
25 pursuant to Congress' legislative powers, jurisdictional
26 considerations that limit the power of courts to exercise
27 authority pursuant to Article III of the Constitution also limit
28 the power of bankruptcy courts. N. Pipeline Const. Co. v.

1 Marathon Pipe Line Co., 458 U.S. 50, 63-64 (1982); 28 U.S.C.
2 § 151. This is so because bankruptcy court jurisdiction is
3 derivative, in that 28 U.S.C. § 1334(a) and (b) grant
4 jurisdiction to the district courts with respect to all cases
5 under title 11, as well as all civil proceedings arising under
6 title 11, or arising in or related to cases under title 11, and
7 all such matters are referred to bankruptcy courts by means of
8 28 U.S.C. § 157.

9 One such limitation on the jurisdiction of Article III
10 courts, and derivatively, bankruptcy courts, is that a dispute
11 may not be adjudicated if there is not a "controversy"
12 sufficient to confer jurisdiction. Massachusetts v. Env'tl.
13 Prot. Agency, 549 U.S. 497 (2007). As the Supreme Court has
14 explained:

15 Article III of the Constitution limits federal-court
16 jurisdiction to "Cases" and "Controversies." Those two
17 words confine "the business of federal courts to
18 questions presented in an adversary context and in a form
19 historically viewed as capable of resolution through the
judicial process." . . . It is therefore familiar
learning that no justiciable "controversy" exists when
parties seek . . . an advisory opinion.

20 Id. at 516 (citing Hayburn's Case, 2 Dall. 409, 2 U.S. 408
21 (1792), and Clinton v. Jones, 520 U.S. 681, 700 & n.33 (1997)).
22 In this case, any dispute regarding post-judgment discovery was
23 sufficiently prospective and indefinite to fail to constitute a
24 "controversy." Furthermore, even if an Article III controversy
25 did exist regarding future post-judgment collection activity,
26 the bankruptcy court was within its discretion to decline to
27 address such a controversy as a declaratory matter, for reasons
28 of prudential ripeness. Reno v. Catholic Social Servs., Inc.,

1 509 U.S. 43, 57 n.18 (1993) (stating that the "ripeness doctrine
2 is drawn both from Article III limitations on judicial power and
3 from prudential reasons for refusing to exercise jurisdiction,"
4 and explaining that "[e]ven when a ripeness question in a
5 particular case is prudential, [a court] may raise it on [its]
6 own motion, and 'cannot be bound by the wishes of the
7 parties'").

8 Therefore, we affirm the bankruptcy court's decision to
9 decline to issue an opinion advising Frye and Excelsior of the
10 permissible scope of post-bankruptcy collection activities.

11 **VII. CONCLUSION**

12 We affirm the bankruptcy court's denial of Frye's claims
13 that Excelsior has violated the discharge injunction by
14 conducting post-judgment discovery, and we also affirm the
15 bankruptcy court's decision to decline to prospectively
16 determine the scope of permissible post-bankruptcy collection
17 activities.