NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-08-1258-MkHPa
	)	
CHARLES M. FRYE,	)	BK No. LA 06-16118-BB
	)	
Debtor.	)	Adv. No. LA 07-01150-BB
_____	)	
	)	
CHARLES M. FRYE,	)	
	)	
Appellant,	)	
	)	
v.	)	**MEMORANDUM**[†]
	)	
EXCELSIOR COLLEGE,	)	
	)	
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.

I. INTRODUCTION

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

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

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

[1]Unless specified otherwise, all references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

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

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

For reasons set forth below, we AFFIRM.

II. FACTS

Frye filed a petition under chapter 7 of the Bankruptcy Code on November 22, 2006.[2] At the time he filed bankruptcy, Frye was one of three defendants in a copyright infringement action that was brought by Excelsior College and being heard in the United States District Court for the Southern District of California.[3] Excelsior v. Frye, 3:04-cv-00535. The other two

---

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

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

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

By order of the bankruptcy court entered February 14, 2007, the automatic stay was modified to allow the copyright infringement action to proceed to final judgment. On March 23, 2007, judgment was entered against Frye on counts I-IV and VI of the first amended complaint, for a total judgment of $6,564,985. Judgments were also entered against the Corporate Defendants, as discussed below.

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

---

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

[5]Frye has alleged that the Corporate Defendants have been dissolved, and thus he is no longer the principal of these entities. It does not appear that either the bankruptcy court or 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.

discharge:

- A claim for willful infringement of copyrights in the amount of $450,000;
- A claim for copyright infringement related to certain exam questions in the amount of $693,588;
- A claim for prejudgment interest on the exam question claim in the amount of $138,717;
- A claim for lost or diverted profits in the amount of $3,500,481;
- A claim for prejudgment interest on the lost/diverted profits claim in the amount of $700,096; and
- A claim for misappropriation of trade secrets in the amount of $1,082,101.

These non-dischargeable claims total $6,564,985.[6]

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

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

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

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

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

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

---

[7]As of the date of the submission of Excelsior's brief, it had not collected any amounts owed by Frye or the Corporate Defendants. Excelsior's post-judgment discovery procedures did 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).

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

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

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

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

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

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

> 4. Successfully asserting an exemption with regard to a particular asset in a bankruptcy case does not immunize that asset from future collection efforts by judgment creditors for all times and all purposes. If a debtor lists an asset on the schedule of exemptions that he files in his bankruptcy case, and no one objects to that claim of exemption, the trustee will not administer that asset for the benefit of creditors during the course of 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.

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

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

III. JURISDICTION

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

IV. ISSUES PRESENTED

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

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

V. STANDARDS OF REVIEW

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

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

VI. DISCUSSION

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

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

A. Excelsior's Discovery Attempts Did Not Violate the Discharge Injunction, Notwithstanding Frye's Claimed Exemptions

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

discharge injunction.

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

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

---

[9]Thus, for example, in this case, Frye alleges that his corporate ownership interests are exempt pursuant to CAL. CIV. PROC. CODE § 703.140(b)(5) (West 2006), which allows a $925 exemption in any property. Frye's exemptions in his corporate ownership interests, each listed with a value of "unknown" or "$0," may be fully exempt, even if the value of these ownership interests is 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...)

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

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

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

---

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

Of course, assuming, without deciding, that Frye's ownership interests are fully exempt, that would not create an exemption in the assets owned by his corporations on the date of the petition. See, e.g., In re LaVelle, 350 B.R. 505, 512 (Bankr. D. Idaho 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).

[10]The bankruptcy court stated that the exemptions have no effect after bankruptcy. This observation was technically incorrect, 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.

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

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

---

[11]Excelsior's claims were declared non-dischargeable under section 523(a)(6). Section 522(c) has four sub-parts. Part one refers to domestic support obligations and certain tax debts, part two refers to debts secured by certain liens, and part four refers to debts owed to certain educational institutions for certain financial assistance obtained through fraud. Part three does except debts specified in section 523(a)(6), but only if those debts are owed "by an institution-affiliated party of an 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.

[12]We note that Frye's briefs suggest that he believes that he has exempted all of the assets of the Corporate Defendants. This is not the case. See supra note 9. Also, if Frye is correct that the Corporate Defendants were dissolved in 2004 and owned nothing on the date of the petition (see infra Part VI.1.B), the 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.

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

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

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

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

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

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

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

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

Section 524 governs the effect of a debtor's discharge. Subsection (a)(2) of section 524 states that a discharge in a case under title 11 "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 debt discharged under section 727] as a personal liability of the debtor, whether or not discharge of such debt is waived." Frye received a discharge prior to the events complained of, so this section is potentially applicable.

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

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

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

B. Excelsior's Discovery Attempts Did Not Violate the Discharge Injunction, Even Assuming that the Corporate Defendants Were Dissolved Pre-Petition

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

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

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

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

[13]Also, such claims are not automatically non-dischargeable 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).

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

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

---

[14]Further, all of Excelsior's judgments against the Corporate Defendants were entered jointly and severally against Frye, personally. Therefore, even if the claims against the Corporate Defendants cannot be collected because those entities have no assets and all claim liability has succeeded to Frye and been discharged, Excelsior will not be detrimentally affected, since 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.

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

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

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

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

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

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

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

> Article III of the Constitution limits federal-court jurisdiction to "Cases" and "Controversies." Those two words confine "the business of federal courts to questions presented in an adversary context and in a form 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.

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

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

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

VII. Conclusion

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