NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-07-1448-MkMoD
JAN ERIC WEILERT and DEBORAH WEILERT,	Bk. No. 06-12896
Debtors.	Adv. No. 06-01077
JAN ERIC WEILERT,	
Appellant,	
v.	**MEMORANDUM**[*]
EUGENE PARKER,	
Appellee.	

Argued and Submitted on May 22, 2008
at Pasadena, California

Filed – September 2, 2008

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

Honorable Peter H. Carroll, Bankruptcy Judge, Presiding

Before: MARKELL, MONTALI and DUNN, Bankruptcy Judges.

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[*]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.

Eugene Parker ("Parker") paid $168,505 for a recreational vehicle ("RV") purchased from Jan Weilert RV Center and debtor, Jan Eric Weilert ("Weilert"). The RV never was delivered. After Parker sued in state court under several theories for relief, including fraud, the parties entered into a settlement agreement for $244,000. The settlement included the execution of a stipulation for judgment for $500,000 to be entered against Weilert if he defaulted under the Settlement Agreement. Parker received payments totaling $22,000 before Weilert defaulted. Weilert filed for bankruptcy protection under chapter 7,[1] and the stipulated judgment never was entered.

Parker sought to have the $500,000 debt under the stipulated judgment excepted from Weilert's discharge. Weilert raised the defense that all fraud and nondischargeability claims were waived by the terms of the Settlement Agreement. This appeal arises from the bankruptcy court's grant of summary judgment in favor of Parker on his § 523(a)(2)(A) claim. We AFFIRM.

FACTS

On July 15, 2002, Parker bought the RV from Jan Weilert RV Center and Weilert, for $160,355. Parker also ordered various upgrades costing $8,150, bringing the total purchase price to $168,505. When he signed the purchase contract, he made an initial down payment of $80,000, and he paid off the balance the following month, in August 2002.

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

Weilert never delivered the RV to Parker, and he never refunded the $168,505 that Parker paid.

Nearly two years later, on March 30, 2004, Parker sued Jan Weilert RV Center and Weilert in the Superior Court of California for Riverside County ("State Court Action") under several theories for relief, including fraud, breach of contract, deceit, conversion, constructive trust, civil conspiracy, and accounting.

On March 16, 2006, the parties settled the State Court Action by signing a Settlement Agreement and Release of Claims (the "Settlement Agreement"), under which Weilert was to pay Parker $244,000. The Settlement Agreement recited that it was "intended to fully and finally resolve all controversies between and among the Settling Parties which relate to the Agreement and the allegations in the Action." However, the Settlement Agreement provided that the State Court Action would be dismissed only "[a]t such time [as] all conditions of this Settlement Agreement are complied with fully."

The Settlement Agreement called for Weilert to make an initial payment to Parker of $10,000 and then pay him $3,000 a month beginning April 15, 2006, until the total amount of $244,000 was paid. It provided that if Weilert defaulted on his monthly payments to Parker, Parker could enter a judgment for $500,000 against Weilert, to which the parties had stipulated ("Stipulated Judgment").

In addition, the Settlement Agreement contained a broad mutual release of claims. The parties also expressly waived the protection of Cal. Civil Code § 1542, which specifies that general releases do not extend to unknown claims. The releases

of claims included in the Settlement Agreement were drafted to cover unknown claims.

Weilert paid Parker the $10,000 initial payment and made four monthly payments of $3,000 each, for a total of $22,000. He defaulted in or about November 2006.

On December 19, 2006, Weilert filed for bankruptcy relief under chapter 7. The Stipulated Judgment had not been entered before that date and, as far as the record shows, has never been entered.

On March 26, 2007, Parker filed a Complaint to Determine Dischargeability of Debt under § 523(a)(2)(A) in Weilert's bankruptcy case, which he amended on May 22, 2007. The amended complaint ("First Amended Complaint") sought to declare nondischargeable the $500,000 debt represented by the unentered Stipulated Judgment. Parker claimed that the entire $500,000, rather than the amount he had actually paid for the RV, was obtained by or attributable to fraud and was therefore nondischargeable.[2]

On September 11, 2007, Weilert filed a Motion to Dismiss Adversary Proceeding on the ground that the Settlement Agreement waivers precluded relief on the First Amended Complaint. Parker filed an opposition on September 21, 2007.

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[2]In the briefing on this appeal, Weilert claims that if summary judgment in Parker's favor was appropriate, then the court should not have awarded the $500,000 in the Stipulated Judgment. He claims that the bankruptcy court should have awarded the amount ($168,505) contracted and paid for the purchase of the RV, minus the amount ($22,000) that Weilert paid pursuant to the Settlement Agreement, i.e., "$146,606" [sic]. Appellant's Opening Brief at 30. This argument was not raised before the bankruptcy court.

On September 25, 2007, Parker filed a Motion for Summary Judgment on the First Amended Complaint seeking nondischargeability of the $500,000 debt, encompassing both the original debt and the agreed-to debt after default. Weilert replied on October 18, 2007 with a consolidated Opposition to Motion for Summary Judgment and Cross-Motion for Summary Judgment.

A hearing on all motions was held on November 8, 2007. The judge took the matters under submission, and at a hearing on November 16, 2007, he read the court's findings of fact and conclusions of law into the record. At that time, the bankruptcy court granted Parker's motion and denied Weilert's motions. It held that "[Weilert's] debt to [Parker] evidenced by this stipulated judgment is a debt for money or property obtained by fraud within the scope of section 523(a)(2)[A] and is nondischargeable."

Weilert timely appealed the bankruptcy court's orders entered November 20, 2007: 1) the "Order Granting Plaintiff's Motion for Summary Judgment" and 2) the "Order Denying Defendant's Motion for Summary Judgment."

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

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ISSUES

1) To what extent may a bankruptcy court look behind a settlement agreement to determine that the underlying debt was "obtained . . . by fraud" and is therefore nondischargeable?

2) Did the bankruptcy court properly enter a summary judgment in this case? That is, did Parker establish the required elements for nondischargeability, and if so, did Weilert adequately respond by presenting evidence raising a genuine issue of material fact?

3) Did the bankruptcy court abuse its discretion in overruling Weilert's evidentiary objections to Parker's declaration?

STANDARDS OF REVIEW

We review de novo the bankruptcy court's rulings on the cross-motions for summary judgment and the motion to dismiss. In re Garske, 287 B.R. 537, 541 (9th Cir. BAP 2002) (summary judgment); In re Laizure, 349 B.R. 604, 606 (9th Cir. BAP 2006) (motion to dismiss complaint). With regard to the bankruptcy court's grant of Parker's summary judgment motion, viewing the evidence in the light most favorable to the nonmoving party, we must determine "whether there are any genuine issues of material fact and whether the trial court correctly applied relevant substantive law." Tobin v. San Souci Ltd. P'ship (In re Tobin), 258 B.R. 199, 202 (9th Cir. BAP 2001).

We review a bankruptcy court's evidentiary rulings for abuse of discretion. In re Carolan, 204 B.R. 980, 984 (9th Cir. BAP 1996). The bankruptcy court's evidentiary rulings are not to be

reversed unless they are manifestly erroneous. Gen. Elec. Co. v. Joiner, 522 U.S. 136, 141 (1997). Under the abuse of discretion standard, we must have a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion that it reached before reversal is appropriate. S.E.C. v. Coldicutt, 258 F.3d 939, 941 (9th Cir. 2001); In re Black, 222 B.R. 896, 899 (9th Cir. BAP 1998).

DISCUSSION

The first issue in this case is the dischargeability of a debt in bankruptcy where the debtor may have committed fraud but the alleged fraud claim has been settled before the debtor's bankruptcy filing. Interpreting the Stipulated Judgment and the Settlement Agreement in this case is complicated by the fact that the record indicates that the original drafts of the Settlement Agreement and Stipulated Judgment included language regarding fraud and nondischargeability of the debts. However, the parties struck that language before they signed.[3]

Weilert asserts that all fraud and nondischargeability claims were waived through the Settlement Agreement. In

[3]In the Settlement Agreement, the stricken language reads, "Certain disputes have arisen between Plaintiff and Releasees regarding the purchase of an RV including but not limited to 1) Breach of contract by Releasees, 2) Fraud by Releasees, 3) Misappropriation by Releasees, and 4) Conversion and Conspiracy to Defraud by Releasees." Most of the stricken-out language in the Stipulated Judgment is unreadable, except for the following: "no part of the Judgment whatsoever shall be dischargeable under any title of the Federal Bankruptcy laws, nor can any elements of any of the causes of action be litigated in the Bankruptcy courts of the United States of America."

Weilert's view, the Settlement Agreement completely replaced and superseded all previous transactions and their attending circumstances.

However, in two decisions, Archer v. Warner, 538 U.S. 314 (2003), and Brown v. Felsen, 442 U.S. 127 (1979), the Supreme Court concluded that a bankruptcy court can look behind a settlement agreement to the underlying facts to determine whether the original debt was obtained by fraud and whether that original fraud so infects the debt as settled as to render it nondischargeable.

I. Archer v. Warner allows a court to look behind a settlement agreement when determining the dischargeability of a fraud claim.

a. The holding in Archer v. Warner

Archer v. Warner settled a circuit split regarding the treatment of settlement agreements in nondischargeability proceedings. 538 U.S. at 318-19. In Archer, under factual circumstances substantially similar to the present case, the Archers sued the Warners for fraud in connection with the sale of a manufacturing company. The parties settled the lawsuit for $300,000 payable from the Warners to the Archers. In exchange, the Archers released the Warners from "any and every right, claim, or demand," presently held or that might later accrue. The Warners paid $200,000 and executed a promissory note for the balance of $100,000. When the Warners failed to make the first payment on the promissory note, the Archers filed a lawsuit in state court. The Warners subsequently filed a chapter 7 bankruptcy petition. The Archers filed a complaint for nondischargeability of the debt on the promissory note under

§ 523(a)(2)(A). The bankruptcy court ruled that the settled debt was dischargeable, and the Fourth Circuit affirmed. The matter was appealed to the Supreme Court. Id.

At the Supreme Court, the majority of the justices agreed with the Fourth Circuit that the settlement debt was the "only . . . relevant debt." However, they went on to hold that the settlement debt could "also amount to a debt for money obtained by fraud." Id. at 318-19 (emphasis in original). The Fourth Circuit had relied on a "novation theory" to conclude that the settlement debt entirely replaced the original debt. While stating that the Archers' settlement agreement "may have worked a kind of novation," the Supreme Court ultimately determined that, "[a]s a matter of logic, . . . the Fourth Circuit's novation theory cannot be right," relying on the earlier decision in Brown v. Felsen. Id. at 320, 323.

The factual circumstances in Brown were the following:

> (1) Brown sued Felsen in state court seeking money that (Brown said) Felsen had obtained through fraud; (2) the state court entered a consent decree embodying a stipulation providing that Felsen would pay Brown a certain amount; (3) neither the decree nor the stipulation indicated the payment was for fraud; (4) Felsen did not pay; (5) Felsen entered bankruptcy; and (6) Brown asked the Bankruptcy Court to look behind the decree and stipulation and to hold that the debt was nondischargeable because it was a debt for money obtained by fraud.

Id. at 319 (citing Brown, 442 U.S. at 128-29).

In Brown, as in Archer, the Supreme Court confronted a split among the circuits. The issue was whether res judicata, i.e., claim preclusion, prevented bankruptcy courts in exception to discharge litigation from looking behind a settlement incorporated in a state court judgment "to uncover the nature of

the claim" that led to the entry of the subject judgment. Archer, 538 U.S. at 319. The Supreme Court unanimously held that, "[c]laim preclusion did not prevent the Bankruptcy Court from looking beyond the record of the state-court proceeding and the documents that terminated that proceeding . . . in order to decide whether the debt at issue . . . was a debt for money obtained by fraud." Id. at 320 (citing Brown, 442 U.S. at 138-39).

As noted above, although in Archer the Supreme Court stated that the settlement agreement between the parties "may have worked a kind of novation," conceptually, it is perhaps more appropriate to consider a settlement agreement incorporating releases and/or waivers of claims as an accord and satisfaction in the context of discharge litigation. In the event of a breach of an accord and satisfaction, the nonbreaching party may enforce either the accord or the original obligation, because the original obligation is not superseded until the accord is fully performed. RESTATEMENT (SECOND) OF CONTRACTS § 281. In contrast, a novation in contract law supersedes the original obligation, making it unenforceable. See, e.g., Glazer v. Lehman Bros., Inc., 394 F.3d 444, 460 (6th Cir. 2005). As the Supreme Court apparently recognized, the contract law concept of a novation is not necessarily a comfortable fit when invoked to characterize the transformation of a fraud claim through a settlement. In any event, the conclusion reached by the Supreme Court in Archer was that in federal bankruptcy law exception to discharge litigation under § 523(a)(2)(A), a settlement agreement entered into before the debtor's bankruptcy filing did not preclude the bankruptcy

court from considering fraud claims, even where the settlement agreement "completely addressed and released each and every underlying state law claim." Archer, 538 U.S. at 318-19.

b. Defenses remanded for consideration in Archer

The Supreme Court remanded Archer for determination of two defenses raised by Mrs. Warner: First, she argued that the Archers promised in the settlement agreement not to make "the present claim of nondischargeability for fraud" in her bankruptcy case. Id. at 322. In the case before us, neither the Settlement Agreement nor the Stipulated Judgment includes such a promise, and Weilert does not argue that Parker ever made any such promise. Second, Mrs. Warner argued that dismissal of the underlying state court litigation between the Archers and the Warners with prejudice barred relitigation of the Archers' fraud claims against her, because under North Carolina law, such a dismissal barred the Archers from pursuing their fraud claims in bankruptcy court based on collateral estoppel, i.e., issue preclusion. In this appeal, the Settlement Agreement specifically provided that Parker was not obligated to execute a "Request for Dismissal of the Action with Prejudice" until all conditions of the Settlement Agreement had been complied with fully, and there is no evidence in the record before us that the State Court Action between Parker and Weilert has been dismissed. Accordingly, the two defenses that the Supreme Court excepted from its ruling in Archer do not apply in this case.

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c. Weilert's alleged dispositive defense

What Weilert does argue is that the bankruptcy court disregarded his undisputed testimony "that it was his intent that all claims other than those arising in the Settlement Agreement were waived and that he intended to perform under the Settlement Agreement." Appellant's Opening Brief at 12. He emphasizes in his argument that among the release provisions of the Settlement Agreement was a specific waiver of the provisions of California Civil Code § 1542, which provides that general releases do not extend to unknown claims.[4]

We do not doubt that Weilert intended to obtain a complete release of any and all of Parker's claims against him through the Settlement Agreement, but that is beside the point. As noted by the dissent in Archer, the settlement agreement in that case used "the broadest language possible, to release [the parties] from 'any and every right, claim, or demand . . . arising out of' a fraud action filed by petitioners in North Carolina state court." Archer, 538 U.S. at 323 (Thomas, J., dissenting). Yet, the Supreme Court held that the all-encompassing release terms of the settlement agreement did not preclude the bankruptcy court from looking behind the settlement agreement to determine whether the Archers' claim should be excepted from Mrs. Warner's bankruptcy discharge based on underlying fraud. In other words, the broadest possible release and waiver of state law claims language in the

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[4]California Civil Code § 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

settlement agreement did not avail Mrs. Warner in her efforts to preclude the Archers from asserting a § 523(a)(2)(A) claim for fraud against her.

Likewise, in this case, the broad terms of the release and waiver of claims in the Settlement Agreement, whatever Weilert intended them to effect, did not preclude the bankruptcy court from applying Archer and looking behind the Settlement Agreement to determine if Parker's claim against Weilert was excepted from his discharge based on fraud. We conclude that the bankruptcy court did not err in denying Weilert's motions to dismiss and for summary judgment.

II. In response to Parker's motion for summary judgment, Weilert did not present any evidence to raise a genuine issue of material fact.

Parker's adversary complaint against Weilert asserted a claim under § 523(a)(2)(A). Section 523(a)(2)(A) excepts from a debtor's discharge any debt for money obtained by false pretenses, a false misrepresentation or actual fraud. In order to prevail on a § 523(a)(2)(A) cause of action, a creditor must establish five separate elements by a preponderance of the evidence:

> (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

Ghomeshi v. Sabban (In re Sabban), 384 B.R. 1, 5 (9th Cir. BAP 2008) (citing Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000)). Fraud may be established through circumstantial evidence or evidence of a

pattern of conduct consistent with the fraud alleged. See, e.g., Devers v. Bank of Sheridan, Montana (In re Devers), 759 F.2d 751, 754 (9th Cir. 1985).

Parker moved for summary judgment, arguing that there was no genuine issue of material fact as to Weilert's fraud. In support of his motion, Parker submitted his declaration addressing each of the elements of a § 523(a)(2)(A) claim as follows: Parker declared that the only person he dealt with at the Jan Weilert RV Center with respect to purchase of the RV was Weilert. Weilert told him that "he was authorized to sign sales contracts on behalf of Jan Weilert RV Center . . . which was in the business of selling new and used motorhomes . . . ." Parker declared that he entered into the contract to purchase the RV on or about July 15, 2002 for a purchase price of $160,355 and paid $80,000 for the RV on that date. He declared that he paid a further $80,000 for the purchase of the RV in August 2002. He declared that he ordered upgrades for the RV and made further payments totaling $8,150. He declared that Weilert told him that the RV would be delivered to Parker "within 30 days from the date of the Contract." Parker further declared that Weilert "advised him on more than one occasion that he was having difficulty obtaining the Motorhome I ordered." In addition, Parker declared that Weilert "made multiple oral representations to me of his and [Jan Weilert RV Center's] ability to cause the timely delivery of the Motorhome which I ordered, starting 15 July 2002 and on various dates thereafter." Parker also declared:

> I made numerous demands to [Weilert] for delivery of the Motorhome. In October 2002 [Weilert] orally represented to me that Debtor/RV would soon deliver the

> Motorhome. During my multiple follow-up calls, [Weilert] advised me that the delays in delivery were caused by another dealer or that the manufacturer alone was responsible for the delays. However [Weilert] continued to promise delivery.

Finally, Parker declared that he never received the RV or a return of the money that he paid for the RV.

Weilert did not file any declaration that presented countervailing evidence as to the substantive elements of Parker's fraud claim under § 523(a)(2)(A). Instead he submitted a declaration saying that he intended the Settlement Agreement and the Stipulated Judgment to encompass a waiver and release of all of Parker's claims.

Weilert's response to Parker's motion for summary judgment was inadequate under Fed. R. Civ. P. 56(e)(2) (incorporated and made applicable in adversary proceedings in bankruptcy by Fed. R. Bankr. P. 7056), which states that:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The Ninth Circuit has determined that "[i]n opposing summary judgment, a nonmoving party must go beyond the pleadings and, by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Bias v. Moynihan, 508 F.3d 1212, 1218 (9th Cir. 2007) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (internal quotation

marks omitted)). See also Estate of Tucker ex rel. Tucker v. Interscope Records, Inc., 515 F.3d 1019, 1033 n.14 (9th Cir. 2008); Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007).

As admitted by counsel for appellant at oral argument in this case, Parker's declaration set forth evidence as to all the elements of his claim for relief under § 523(a)(2)(A). Because Weilert focused almost exclusively on his argument that the releases and waivers of claims contained in the Settlement Agreement precluded Parker from pursuing his underlying claim for fraud, in spite of Archer, he did not respond to the points made in Parker's declaration. That was a fatal error, because after the bankruptcy court ruled against Weilert on the application of Archer, the only remaining relevant issues were whether Parker had made a prima facie case with respect to the required elements under § 523(a)(2)(A). We agree with the bankruptcy court that Parker submitted adequate evidence in his declaration to establish each of the required § 523(a)(2)(A) elements in his declaration and other submissions. Weilert failed to present any controverting evidence. Without an adequate response from Weilert, summary judgment naturally and appropriately followed. In addition, based on the Supreme Court's conclusion in Archer that the unpaid balance of the settlement agreement was the only relevant debt (538 U.S. at 319), we conclude that the bankruptcy court did not err as a matter of law in determining that the debt excepted from Weilert's discharge is the default amount specified in the Stipulated Judgment, negotiated as part of the settlement between the parties.

III. The bankruptcy court did not abuse its discretion in overruling Weilert's evidentiary objections to Parker's declaration.

Weilert raised evidentiary objections to Parker's declaration, based on relevance, hearsay, lack of foundation and best evidence grounds. At the outset of the hearing on the parties' opposing motions, the bankruptcy court overruled Weilert's evidentiary objections to Parker's declaration and admitted it "for its full probative value and [gave] Mr. Parker's testimony that is contained in the declaration appropriate weight in determining the issues on the motion for summary judgment." Tr. of November 8, 2007 Hearing, at 1.

On appeal, Weilert argued only his relevance and hearsay objections to Parker's declaration. As to relevance, Weilert's argument is that since all claims relating to fraud in the underlying transaction were released and waived through the Settlement Agreement, the statements contained in Parker's declaration regarding the underlying transaction do not tend to prove or dispute any facts relevant to the resolution of the subject adversary proceeding. As to hearsay, Weilert argues that the statements that he allegedly made, according to Parker, were out of court statements offered to prove the truth of the matters asserted.

The bankruptcy court's decisions as to the admissibility of evidence are reviewed for abuse of discretion. See, e.g., Montiel v. City of Los Angeles, 2 F.3d 335, 341 (9th Cir. 1993). Although the bankruptcy court did not articulate specific reasons for its evidentiary rulings at the hearing on the parties' motions, we may affirm the bankruptcy court on any basis

supported by the record. Pollard v. White, 119 F.3d 1430, 1433 (9th Cir. 1997). In light of our conclusions with respect to the application of Archer in this case, Parker's statements in his declaration relating to Weilert's underlying fraud clearly were relevant in the adversary proceeding between the parties. As to Weilert's hearsay argument, the above-cited statements from Parker's declaration regarding Weilert's alleged statements and representations concerning the RV purchase transaction appear to fall outside the definition of hearsay under the Federal Rules of Evidence as admissions by a party opponent. See Fed. R. Evid. 801(d)(2). Based on the record before us in this appeal, we do not have a definite and firm conviction that the bankruptcy court erred in its evidentiary rulings.

CONCLUSION

Under the Supreme Court's decisions in Brown and Archer, a bankruptcy court may look behind a settlement agreement when making exception to discharge determinations as to fraud in bankruptcy.

In looking behind the Settlement Agreement in this case, Parker asserted and established all of the elements for nondischargeability under § 523(a)(2)(A), and in opposition, Weilert merely repeated his assertion that he had intended the Settlement Agreement and Stipulated Judgment release and waiver provisions to encompass all of Parker's claims. Weilert did not present evidence raising a genuine issue of material fact as to any of the elements of fraud with respect to Parker's claim.

As a result, the bankruptcy court properly granted summary judgment in Parker's favor, and we AFFIRM.