

**Second Circuit Holds Arbitration of Alleged Violation of Discharge Injunction
Conflicts with Purposes of Bankruptcy Code**

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By Kevin C. Maclay, Todd E. Phillips and Kevin M. Davis

Recently, in *Anderson v. Credit One Bank, N.A.*,¹ the Second Circuit affirmed the denial of a credit card issuer's attempt to compel arbitration of a discharged Chapter 7 debtor's putative class action to enforce the bankruptcy discharge injunction. The Second Circuit found that arbitration of an action to enforce a discharge injunction severely conflicts with the purposes of the Bankruptcy Code, as "the bankruptcy court alone has the power to enforce the discharge injunction."²

Background

The debtor-plaintiff, Orrin Anderson ("plaintiff"), had his Credit One Bank, N.A. ("Credit One") credit card debt discharged in his Chapter 7 bankruptcy.³ Nonetheless, the plaintiff's credit report showed the debt as "charged off"—i.e., written off as a loss—rather than "discharged in bankruptcy," indicating that the debt was still due and payable.⁴ Despite the plaintiff's requests, Credit One failed to correct the report.⁵

Subsequently, the plaintiff successfully moved to reopen his bankruptcy case in the United States Bankruptcy Court for the Southern District of New York for the purpose of filing a putative class action against Credit One.⁶ His complaint alleged that it was Credit One's policy not to update the credit reports of Chapter 7 debtors so as to coerce them into paying discharged debts in order to clear up their credit reports.⁷ The complaint claimed that this policy violated 11 U.S.C. § 524(a)(2),⁸ which enjoins "an[y] act . . . to collect, recover or offset any . . . [discharged] debt." The plaintiff sought damages under that provision related to Credit One's failure to correct his credit report and the credit reports of other discharged debtors.⁹

In response to the complaint, Credit One moved the bankruptcy court to stay the proceedings and to compel arbitration under the Federal Arbitration Act (FAA). The cardholder agreement provided Credit One with the right to compel mandatory arbitration of any dispute.¹⁰ But the bankruptcy court denied the motion.¹¹ On appeal, the district court affirmed; Credit One then appealed to the Second Circuit.

The Court of Appeals Decision

The Second Circuit held that the plaintiff's cause of action directly implicated the discharge injunction, "the foundation upon which all other portions of the Bankruptcy Code are

built.”¹²

The successful discharge of debt is not merely important to the Bankruptcy Code, it is its principal goal. An attempt to coerce debtors to pay a discharged debt is thus an attempt to undo the effect of the discharge order and the bankruptcy proceeding itself. Because the issue strikes at the heart of the bankruptcy court’s unique powers to enforce its own orders, we affirm the district court decision below.¹³

Finding the discharge so central to bankruptcy, the Second Circuit held that “the bankruptcy court alone has the power to enforce the discharge injunction.”¹⁴ As such, arbitration of the plaintiff’s claim would “seriously jeopardize a particular core bankruptcy proceeding,” thus overriding the congressional preference for arbitration.¹⁵ Further, the Court of Appeals noted that the fact that the suit was a putative class action had no effect on its analysis because each class member’s alleged injury concerned a violation of the discharge injunction.¹⁶

In coming to this conclusion, the Second Circuit distinguished its prior holding in *MBNA America Bank, N.A. v. Hill*,¹⁷ which concerned a motion to arbitrate a putative class action alleging violations of the automatic stay in fully administered and closed bankruptcy cases. In *Hill*, the Second Circuit found that, even though the automatic stay “is surely an important provision of the Bankruptcy Code,” the class members’ bankruptcies had all been closed and thus arbitration would not affect the objectives of the automatic stay, which is in place only in open cases.¹⁸ In contrast, the plaintiff’s discharge injunction was ongoing and, thus, arbitration could interfere with the purposes of the injunction even after his case had been closed.¹⁹

Conclusion

The *Anderson* decision represents a major obstacle to the arbitrability of actions regarding the effects of a bankruptcy discharge. Another case currently on appeal, *In re Belton*, will give the Second Circuit a chance to further refine its analysis, if warranted.²⁰

[Kevin C. Maclay](#) and [Todd E. Phillips](#) are Members of [Caplin & Drysdale’s Bankruptcy](#) and [Complex Litigation](#) practice groups. [Kevin M. Davis](#) is an Associate in both groups.

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1 *Anderson v. Credit One Bank, N.A. (In re Anderson)*, 884 F.3d 382 (2d Cir. 2018).

2 *Id.* at 391.

3 *Id.* at 385.

4 *Id.* at 386.

5 *Id.*

6 *Id.*

7 *Anderson*, 884 F.3d at 386.

8 11 U.S.C. § 524(a)(2).

9 *Anderson*, 884 F.3d at 386-87.

10 *Id.* at 387.

11 *Id.*

12 *Id.* at 389.

13 *Id.* at 386.

14 *Id.* at 391.

15 *Anderson*, 884 F.3d at 392.

16 *Id.* at 390.

17 *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006).

18 *Id.* at 110.

19 *Anderson*, 884 F.3d at 390.

20 *In re Belton*, No. 15-CV-1934, 2015 WL 6163083 (S.D.N.Y. Oct. 14, 2015). Credit One has requested that the Supreme Court review the *Anderson* decision. See Petition for a Writ of Certiorari, *Credit One Bank, N.A. v. Orrin S. Anderson*, No. 17-1652 (U.S. June 5, 2018).