

No Nationwide Class Action for Violation of the Bankruptcy Discharge Injunction

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The Second Circuit's recent decision in *Bruce v. Citigroup, Inc.*, 2023 WL 4919496, at *1 (2nd Cir. Aug 2, 2023) appears to be the second Circuit Court of Appeals (joining the Fifth Circuit) to specifically hold that a plaintiff may not maintain a nationwide class action in a bankruptcy court for violation of the bankruptcy discharge injunction. The Second Circuit in *Bruce* first noted the Supreme Court's 2019 decision on the discharge injunction in *Taggart v. Lorenzen*, which found that the bankruptcy discharge injunction statute – 11 U.S.C. § 524(a) – brings with it the “old soil” that has long governed how injunctions are enforced. The court then found that that this “old soil” contained the “long-standing” equitable principle that the judge issuing an injunction is solely responsible for punishing the conduct that violated it. The court noted that the plaintiff had failed to cite a single case of a court “exercising its civil contempt authority on behalf of another court’s injunction.” While the plaintiff argued that a bankruptcy court’s discharge “injunction” is normally a simple form using brief and boilerplate language and enforces a statutory and not judge-crafted injunction, the court rejected this argument as it previously had in similar decisions. Thus, the general rule that a class action for violation of the discharge injunction may be maintained in a single federal district in certain circumstances but not nationwide still appears to hold.

Bruce will likely not be the end of litigation on the issue of nationwide class certification in bankruptcy courts for violation of the discharge injunction. First, only two circuits (the Second and the Fifth) now have held that a nationwide class may not be maintained. Second, the reasoning in *Bruce* that a form discharge order using brief boilerplate language (“A discharge under 11 U.S.C. § 727 is granted to [the debtor]”) that enforces a federal statutory injunction is somehow unique to the bankruptcy judge entering it may not win the day in other courts. Indeed, the First Circuit already has held in a somewhat related context that the rule that the judge issuing the injunction is the only judge who can properly interpret and enforce it does not apply in the bankruptcy discharge injunction context. In short, defendants may need to focus less on this point and more on others in order to defeat attempts at nationwide class actions for violations of the bankruptcy discharge injunction.

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