

DEBT RELIEF



ATTY. LAWRENCE YANG

# Discharge denied because of intent to harm a creditor

If debtor acted with intent to harm one creditor, can another creditor raise this conduct to ask the Bankruptcy court to deny debtor's discharge even if creditor was not the target of debtor's actions? This was the question raised in *In Re Kent*. In this case, plaintiff sold his landscaping business to debtor in 2001 for \$625,000. Plaintiff financed \$100,000 of the purchase price. Debtor was doing well with the business for several years. Then he found out that his bookkeeper embezzled about \$100,000 from him and had not been paying his corporate or business taxes. Debtor then worked out an installment

payment plan with the IRS without knowing that he was paying little more than interest on the tax claim. He then made an offer in compromise and stopped making his installment payments. The IRS responded by serving a Notice of Intent to Levy. Debtor responded by operating under a new business name that was registered in the name of debtor's mother and transferring assets from the old business to the new business. Debtor's wife also transferred her interest in the real property back to her father. She had received an interest in the property, which was owned by her parents, after debtor bought the landscaping business.

By the foregoing exercise in transferring assets, debtor's intent was to hinder, delay or defraud the IRS. But plaintiff was not the IRS and was not the target of debtor's conduct. After debtor filed for bankruptcy, plaintiff asserted that debtor should be

*“The court shall grant debtor a discharge, unless “debtor with intent to hinder, delay or defraud a creditor or an officer of the estate charged with the custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed.”*

denied discharge because he transferred property with intent to hinder, delay, or defraud a creditor using Section 727(a)(2) as legal basis. That section states that the court shall grant debtor a discharge, unless “debtor with intent to hinder, delay or defraud a creditor or an officer of the estate charged with the custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated,

or concealed: A) property of the debtor, within one year before the date of the filing of the petition, or B) property of the estate, after the date of the filing of the petition.” The court said the facts of the case led to the inescapable conclusion that debtor acted with the necessary intent. Although the transfers were not made to hinder, delay, or defraud the plaintiff, Section 727(a)(2) did not require the plaintiff to prove that he was the target of the debtor's actions. In fact, he

was not even required to prove that he suffered actual damage. He only needed to prove that debtor intended to hinder, delay, or defraud some creditor. What I normally encounter are clients who decide by themselves to transfer title to houses where they lent their credit to another person to help that person buy the property. Client is placed on title as a joint tenant so that the other person can qualify with client to buy the property. However, the other person pays the entire downpayment, and all mortgage payments. When client decides to file for bankruptcy, the other person requires him to quitclaim title thinking that the prepetition transfer will protect the property from the jurisdiction of bankruptcy court, thus mistakenly thinking that the property is protected. But instead of solving the problem, a new problem is created by the transfer. An aggressive trustee may see the transfer

as a fraudulent transfer that may be avoided if debtor claimed the tax deduction for mortgage interest even once, or if debtor made a real estate tax payment even once. The problem is magnified if the property transferred has substantial equity. It may be seen as a transfer to hinder or delay the trustee. If debtor really has no interest in the property, the correct argument to adopt is that debtor holds the property in trust for the real owner, thus the property is not part of debtor's bankruptcy estate and not subject to the jurisdiction of the court.

If you need debt relief, contact my office. I will analyze your case personally.

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Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., Bldg. A-1 Suite 1125 Unit 58, Alhambra, CA 91803. (Advertising Supplement)

PROBLEM SOLVED



AGNIESZKA DOLINSKA

I LIKE being an immigration attorney. Amid economic chaos, uncertainty, governmental bureaucracy and incompetency, and the odds usually stacked up against my clients, I find my job as an immigration attorney exciting. Don't take me wrong. There are plenty of days where it seems like I am treading water and not moving forward because of a seemingly impenetrable maze the government calls the immigration system. However, there is nothing more rewarding and motivating than to see the lives of my clients changed for better when things work out in the end.

This is exactly what went through my mind last week when I ran into a client who was recently granted his green

card. My client looked radiant and happy. There was an aura of peace around him. He did not resemble or act like the person I met a year ago when he and his wife came in to my office to see about his immigration options. At that time, he was an angry and scared man. For more than a decade, he has been living in the United States illegally, in fear and constantly looking over his shoulder so he wouldn't be caught unawares by the immigration authorities. For more than 10 years, he has been supporting himself by working in the construction industry, where he could get away with having no social security card or a valid driver's license.

The years of living in the shadows have left him distrustful of the government. He has gone to great lengths to avoid any dealings with the authorities, even when it was necessary to do so. In fact, he was so wary of the government that he had allowed a prior theft-

related arrest become an arrest warrant because he failed to show up in court to answer the charges. He simply had no hope that things would ever work out for him in this country.

Yet, things did change for him. He met a United States citizen and fell in love. Because of her support and love, he put aside his fears and apprehension, and reached out to me for help. It was difficult for him, especially since he had to deal with obtaining a new passport and taking care of his prior arrest. I don't think he truly believed that he could get his green card until the work permit arrived in the mail. This was truly a breakthrough for him and hope gave way to fear and anxiety.

On the day I phoned my client to let him know that he was granted his green card, he cried, long and hard. While this big and tall grown man cried on the other line, I was very happy for him and was so hon-

## There is hope

ored I could share this tender moment with him. A few weeks later, he was able to board a plane and fly to his native country in Africa to see his dying mother. This was his first trip home after many years of living in America like a prisoner.

While I did not see my client's face when he arrived in his native country, I was able to see his countenance upon his return to the United States. His was a face of happiness and serenity even though his mother is still very ill and may die at any time. However, my client is at peace because he was able to go home where he paid his respect and said his goodbyes. This experience will stay with him for the rest of his life.

Now I realize that not every client of mine can be this fortunate. Not every client can marry or be sponsored by a United States citizen. Some clients have committed crimes or serious immigration violations that are stopping them from obtaining permanent benefits in the

United States. Some have to wait a very long time before they can become green card holders. Many of them have not been home or seen their families for years, sometime decades. Some of them will only be able to legally remain in the United States if the law changes.

However, no matter what the circumstances are for you, I hope I can offer some words of encouragement. Please do not lose hope that things cannot change. They can. Consider the story of my client—he never thought or believed he could stay in the United States. For years he saw no light at the end of the tunnel. Yet, his fortune finally turned. Just like for my client, your situation can improve too. Your family situation can change. New and favorable laws can be passed. New opportunities can arise.

In the meantime, do not be tempted to hire an immigration consultant or notario who will prey upon the uninformed

and promise you a quick, but often short-lived solution to your problems. It has been my experience that it is better, and often cheaper, to learn about immigration options, even if there are none, from an experienced immigration attorney than try to undo what unscrupulous immigration consultations have done. Don't squander your opportunity by taking a shortcut.

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Agnieszka (Aggie) Dolinska is an associate attorney with Wilner & O'Reilly, APLC. Ms. Dolinska is admitted to both the State Bar of California and the State Bar of Utah.

She is also admitted to practice law before the United States District Court for the Central District of California and the US Court of Appeals for the 9th Circuit. Ms. Dolinska's immigration practice involves all areas of Immigration and Nationality Law, including family and employment-based immigration, non-immigrant visas, deportation defense, litigation, and asylum law. She is also a member of the Orange County Bar Association and J. Reuben Clark Law Society, Orange County Chapter.

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The Habashy Law Firm is a full service law firm with a diverse array of practice areas. Mr. Habashy attended the University of Southern California Law Center on a full scholarship. He worked on former Los Angeles Mayor Richard Riordan's business team and spent a year working in the West Wing of the White House under former President Bill Clinton. Mr. Habashy also worked for Sol Price, founder of the Price Club, where he developed and evaluated commercial real estate proposals and consulted on the company's community social programs.

More recently, Mr. Habashy has represented private equity funds, private lenders, develop-



Elbert Medina  
Case manager



ers and homeowners in connection with a wide variety of debt, equity, and development transactions. In his practice, Mr. Habashy covers a broad spectrum of private equity, financial, commercial and real estate transactions, including modifying over 4,000 home mortgages.

The Firm also has associated outside counsel based in Las Vegas, Nevada and New Orleans, Louisiana. Additionally, they offer services of affiliated counsel in New York, Florida and Texas as well.

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YOUR LEGAL OPTIONS



ATTY. JOHNNY ASCANO

DEAR Johnny, I am closely following your recent articles on loan modification and foreclosure litigation. I understand what a loan modification can result in. However, I am not certain as to what will happen to a borrower in case he decides to resort to foreclosure litigation. What does foreclosure litigation achieve?

Ms. Closely Following

Dear Miss Closely Following, Before we go to foreclosure litigation, we have to determine whether there were violations of federal law that attended the loan packaging and processing. If there is indeed a violation, then the borrower may go to court and ask complete relief from the predatory loan. This is what we call a loan rescission, which

## Foreclosure litigation may be a better option

means that the court shall order the lender to take back the predatory loan and to credits back to the borrower all interest made on payments, including loan origination fees, lenders fees, penalties and attorney's fees.

Among the common grounds for rescission are: constructive fraud, actual fraud and negligent misrepresentation, and breach of contract. (We have discussed some other grounds in our previous articles.)

Most of the time, the case is settled by way of a loan modification or a new affordable loan. This means that the borrower may end up with a new loan with a smaller principal, with an affordable mortgage.

In all cases, there is need for us to look into your loan documents in order to find the violations. Sometimes, we need to do a forensic audit to establish a clear cause of action. In order for us to assist you, we appreci-

ate to meet with you for a FREE INITIAL CONSULTATION. Please call us at our 24/7 number (213) 248-1726 to set an available date and time.

Very truly yours,  
Johnny

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Please be informed that The Law Offices of Johnny S. Ascano is in the process of winding down the affairs of its Panorama City branch. Any transactions involving the said branch should be coursed thru our office at 3550 Wilshire Blvd. 17th Floor, Los Angeles CA 90010 or (213) 637-5609.

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The content of this column is not a disclosure of any confidential information acquired in the course of an attorney-client relationship, but a mere academic discussion to illustrate a legal issue. It does not profess to apply to any particular legal case nor should be construed as a legal advice. For your particular immigration problem, you are encouraged to personally seek legal advice from a licensed immigration attorney or to visit us at our law office.

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## Pag-ibig, kasal at green card

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immigration benefits ay mga heterosexual couples at hindi yung mga same-sex couples. Ito ay dahil ang immigration law ay bahagi ng federal law at hindi ng state law.

Halimbawa, sa Massachusetts, ang same-sex marriage ay kinikilala. Sa California, kinilala rin ang same-sex marriage sa limitadong panahon. Noong May 15, 2008, ang California Supreme Court ay nag-overtorn ng ban sa same-sex marriage at ito ay naging effective noong June 16, 2008. Dahil dito, ang California ang pangalawang estado, sunod sa Massachusetts, na nag-legalize ng same-sex marriage. Ngunit dahil hindi naipasa ang Proposition 8 noong November 2008, hindi na ulit legal ang same-sex marriage sa California. Ngunit lahat ng mga ikinasal sa California noong may bisa pa ang same-

sex marriage, katulad nila Ellen DeGeneres at Portia De Rossi ay valid pa rin ang kasal hanggang ngayon. Ang kasal na valid sa state laws ay nagbibigay ng civil rights at property rights sa mag-asawa, ayon sa state laws. Para sa immigration benefits, ang kinikilala lamang ng federal law ay yung kasal ng heterosexual couples.

Kung ang mga requirements na nakasaad sa taas ay magagampanan, ang pag-ibig at kasal ay maaaring makapagbigay rin ng green card sa isang dayuhan.

Happy Valentine's Day sa Lahat!

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Si Attorney Rhea V. Samson ay abogado dito sa California at sa Pilipinas. Nagtapos siya ng kanyang Juris Doctor Degree sa Ateneo de Manila University Law School. Siya ay nagturo sa Ateneo De Manila University ng Essentials of Philippine Business Law,

Obligations and Contracts, Corporation Law, Partnership Law at Labor Laws and Social Legislation. Siya rin ay nagkatha ng librong, "Working With Labor Laws, A Comprehensive Guide on Conditions of Employment, Employee Benefits Under Special Laws, Termination and Retirement" na inilathala ng Ateneo de Manila University Press at University of Hawaii Press. Itong libro niya ay kasalukuyang textbook sa kursong Labor Laws and Social Legislation ng Ateneo de Manila University. Siya ay humuhugot ng inspirasyon mula sa kanyang mga magulang na sina Engr. Roger Samson at Gng. Bella Valle Samson, na tubong Batangas. Si Attorney Samson ay mahilig mag-kape at manood ng The Filipino Channel.

Nagbibigay si Attorney Samson ng free initial consultation sa kanyang opisina, Samson Law Corporation, 3550 Wilshire Boulevard, Suite 1765, Los Angeles, CA 90010; telephone no: (213)637-5630; fax no: (213)637-5637; email address: samson@samsonlawcorp.com; website: www.samsonlawcorp.com.

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