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Thursday, January 18, 2001

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

PAUL and VEDA GARSKE,

No. 98-13427

[Debtor](#)  (s).

VEDA GARSKE, et al.,

[Plaintiff](#)  (s),

v.

A.P. No. 00-1139

ARCADIA FINANCIAL, LTD.,

[Defendant](#)  (s).

Memorandum on Motion for Reconsideration

On November 4, 2000, this court issued a written decision that there is a private right of

action for violation of the bankruptcy [discharge](#) injunction provided by § 524 of the [Bankruptcy Code](#). The court noted that several other courts had addressed the issue, so that it was neither necessary nor appropriate for this court to re-invent the wheel. Rather, its first task was to determine whether binding authority has addressed the issue. Malone v. Norwest Financial California, Inc., 245 B.R. 389, 395 (E.D.Cal. 2000). In this district, Judge Conti's decision in Rogers v. Nationscredit Financial Services Corp., 233 B.R. 98 (N.D.Cal. 1999) appeared binding and dispositive, so the court followed it. On December 7, 2000, the Bankruptcy Appellate Panel published its decision in In re Bassett, - B.R. - (9th Cir. BAP 2000). The court in Bassett carefully considered the issue, noted that Rogers was a minority position, and concluded that there is no private right of action under § 524. Defendant Arcadia Financial, Ltd., has moved the court for reconsideration based on Bassett. Both sides framed the issue on reconsideration to be the effect of the doctrine of *stare decisis*. Arcadia argues that the court should not defer to the district court decision in Rogers because it was not an appellate decision. Plaintiff Garske argues that the court must follow Rogers because it is an Article III court decision, and therefore must be preferred over the rule of the Article I judges of the Appellate Panel. The court finds neither argument persuasive.

Without digressing into the dispute over the binding effect of district court decisions, the court sees no basis for disregarding a published district court decision just because it was issued as a trial court and not while sitting as an appellate court. It is the decision of a higher court, no matter how rendered. Unless there is a compelling reason, bankruptcy courts should not create conflicts of law. In re Mulvania, 214 B.R. 1, 9 (9th Cir. BAP 1997); In re Berg, 188 B.R. 615, 620 (9th Cir. BAP 1995). If Rogers were the only word on the issue in this district, the court would follow it without regard to whether it was made as a trial court or an appellate court. On the other hand, the court sees no merit to the argument that district court decisions are entitled to more deference than appellate panel decisions because of district courts are Article III courts. Both courts have equal power to review bankruptcy court decisions. Both courts are subject to review by the Court of Appeals. There is no meaningful basis for the bankruptcy court to give more weight to either court's decisions. It is not unusual in the world of jurisprudence for a lower court to be faced with the conflicting decisions of two appellate courts of equal jurisdiction. As this court has previously noted, in such cases the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions. In re Donaldson, 156 B.R. 51, 54 (Bkrcty.N.D.Cal.1993), citing Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 456, 20 Cal.Rptr. 321, 369 P.2d 937 (1962). After considering the reasoning of both cases, the court believes that the better view is that of the Appellate Panel. If there is a private right of action for violation of § 524, then the court has no discretion to forgive minor or innocent violation of a debtor's discharge rights, and its traditional equitable powers to fashion an appropriate remedy are curtailed. Congress has never expressed an intent to deprive bankruptcy courts of this discretion. Contempt proceedings have been considered an appropriate method of enforcing the discharge for over a century. The court accordingly elects to follow Bassett. Insofar as its prior ruling is inconsistent with Bassett, Arcadia's motion for reconsideration will be granted. Counsel for Arcadia shall submit an appropriate form of order.

Dated: January 18, 2001

Alan Jaroslovsky

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