



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

[Home](#) > Memorandum of Decision Re: Reaffirmation

Friday, May 15, 1987

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

GRIFFITH OWEN MARSHALL,

No. 1-81-00148

[Debtor](#) ⁱ.

ORDER

This case presents a difficult and unusual issue. At the heart of the matter is section 524(c) of the [Bankruptcy Code](#) ⁱ, which invalidates reaffirmation agreements which are not approved by the court. The debtor filed a [Chapter 7](#) ⁱ [bankruptcy petition](#) ⁱ on February 28, 1981, and received his [discharge](#) ⁱ on June 15, 1981. One of his duly scheduled debts was a personal loan from Walter and Jesse Cordua in the amount of 60,000.00. On June 26, 1981, the debtor met with Walter Cordua and his son, Paul Cordua, and borrowed \$10,000.00 from the son. The debtor gave Paul Cordua and his wife his note for this amount; this debt is not in dispute and the debtor has made his payments in accordance with the note. At the same time as the debtor borrowed the \$10,000.00 from Paul Cordua and his wife he entered into the transaction which is now before the court. In return for a written waiver executed by Walter and Jesse Cordua releasing the debtor's former spouse from liability on the discharged obligation, the debtor signed a new note to Walter and Jesse in the amount of \$60,000.00. The debtor's former spouse, Barbara Marshall, had not herself been a debtor in bankruptcy. Thereafter, Walter and Jesse honored their release of Barbara Marshall

but sought to enforce the new \$60,000.00 note against the debtor when he defaulted. The debtor now seeks injunctive relief from this court, claiming that the new \$60,000.00 debt is an illegal [reaffirmation agreement](#)ⁱ. Section 524(c) was intended by Congress to correct common practices which had the effect of cheating the debtor out of the benefit of his discharge. Under prior law, a debt discharged in bankruptcy could be revived and enforced under state law if the debtor after his discharge promised to pay the debt, even if there was no additional consideration to support the promise. Many debtors were tricked or shamed into promising to pay a debt after bankruptcy, and Congress sought to stop this practice. See 3 Bkr.L.Ed. sec. 22:100, p.414; H.Rept. 95-595, pp. 162, 163. Congress therefore provided in section 524(c) that for any postpetition promise based on a prepetition debt to be binding it had to be approved by the bankruptcy court prior to discharge. This provision applies to any agreement where the consideration is in whole or in part based on a dischargeable prepetition debt. Walter and Jesse argue that the note of June 26, 1981, is enforceable because its consideration was the waiver of their rights against the debtor's spouse. However, the court cannot accept this argument without doing violence to the intent of Congress, as such a ruling would create a means of circumventing the law. On the other hand, the court cannot hold the postpetition note to be a nullity, as urged by the debtor, without giving debtors a means of creating illusory obligations to their unfair benefit. This matter can be decided fairly only by invoking the doctrine of equitable estoppel, which precludes a party from taking advantage of his own wrong while asserting his strict legal rights. *In re Allustiarte* (9th Cir. 1986) 786 F.2d 910; *In re Eastview Estates* (9th Cir. 1983) 713 F.2d 443. The court finds that the debtor's discharge prohibits enforcement of the \$60,000.00 note of June 26, 1981, but also finds that the debtor is estopped from defending an action on the note to the extent that Walter and Jesse gave up a valuable right by agreeing to release the debtor's spouse. It must be noted that the court does not find the mere release of the spouse by itself to be sufficient consideration to give Walter and Jesse an enforceable right. Rather, the court finds that the creditors have a right to be made whole from the debtor to the extent that they were "tricked" into parting with actual value. Since the scope of the discharge is a matter over which this court has exclusive jurisdiction pursuant to 28 U.S.C. section 1334(a), if the Walter and Jesse wish to pursue the matter they must file an [adversary proceeding](#)ⁱ in this court against the debtor. The court will render a judgment in their favor to the extent that they demonstrate that they could have actually collected money from the debtor's spouse had they not been induced to release her. If the court finds that the spouse had little or no nonexempt assets, and would have discharged the obligation in bankruptcy herself if pressed for payment, then the court will enter judgment for the debtor. If Walter and Jesse elect to bring such an action, they shall attach a copy of this order to their complaint. Pending judgment in such an adversary proceeding, IT IS ORDERED that Walter and Jesse Cordua shall not attempt to enforce the debtor's \$60,000.00 note dated June 26, 1981, in any court except this court.

Dated: May 15, 1987

ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#)ⁱ

Source URL (modified on 11/12/2014 - 3:35pm):

<http://www.canb.uscourts.gov/judge/jaroslovsky/decision/memorandum-decision-re-reaffirmation>