

Bankruptcy Discharge Does Not Invalidate Arbitration Clause

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On July 26, 2010, the Indiana Court of Appeals held that a discharge in bankruptcy does not invalidate the arbitration clause in a contract at issue in the bankruptcy proceeding in a case of first impression, *Green Tree Servicing, LLC v. Brough*, Case No. 88A01-0911-CV-550.

Brough had borrowed money to purchase a mobile home from Green Tree's predecessor-in-interest and his contract contained an arbitration clause. Brough defaulted on the contract, declared bankruptcy under Chapter 13 (which was converted to a Chapter 7 proceeding), and his debt to Green Tree was discharged in the bankruptcy proceeding. After the bankruptcy discharge, Green Tree filed suit against Brough, who counterclaimed for a violation of the Fair Credit Reporting Act ("FCRA"). Green Tree asked for the case to be stayed and for the trial court to compel arbitration. The trial court granted Green Tree's request and Brough appealed.

On appeal, Brough argued that the contract as a whole was invalid because it was terminated by his bankruptcy discharge. The Court disagreed, citing cases from Texas (*In re Wells Fargo Bank, N.A.*) and the Ninth Circuit (*Siegel v. Fed. Home Loan Mortgage Corp.*), which held that a bankruptcy discharge does not terminate a contract entirely and that provisions providing for arbitration or attorney fees survived bankruptcy.

In this case, as in *In re Wells* and *Siegel*, Brough's bankruptcy proceeding has ended, so arbitration of his FCRA claim will not jeopardize the bankruptcy case or affect Brough's bankruptcy discharge. The Contract's arbitration clause, like the attorney's fees provision in *Siegel*, was not terminated by Brough's bankruptcy discharge.

Lessons:

1. Do not admit a fact adverse to your client's interests orally at a hearing on a motion unless you are convinced that you do not have a good faith basis to dispute that fact.
2. When arguing that a contractual term has been terminated by a bankruptcy proceeding, describe how enforcing that contractual term will affect the bankruptcy discharge.



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