



# BURR ALERT

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## Lenders Beware: 11th Circuit holds borrower's false oral statement regarding single asset does not provide basis for non-dischargeability action under § 523(a)(2)(A)

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Section 523(a)(2) of the Bankruptcy Code is clear that a debtor can discharge a debt for money obtained by a false statement respecting the debtor's financial condition unless that statement is in writing. What has not been clear is whether a debtor's false oral statement regarding a single asset is a "statement respecting the debtor's financial condition" that falls within the ambit of § 523(a)(2)(A). If so, debts obtained by such a false oral statement would be dischargeable. If not, then creditors could seek to have such fraudulently obtained debts excepted from discharge. Courts across the country have weighed in on both sides of the issue, causing a significant circuit split.

In *Appling v. Lamar, Archer & Cofrin, LLP (In re Appling)*, 848 F. 3d 953 (11th Cir. 2017), the Eleventh Circuit gave lenders, practitioners, and bankruptcy courts within the Circuit welcome clarity on this issue, holding a debtor's statement regarding a single asset is indeed a "statement respecting the debtor's financial condition" for purposes of § 523(a)(2)(A). The dispute arose when Mr. Appling made false oral statements to his lawyers, Lamar, Archer & Cofrin, LLP ("Lamar") that he expected a large tax refund that he promised to use to pay his debt to the firm. After Appling failed to pay Lamar with the tax refund as promised, Lamar sued and obtained a judgment against Appling for its attorneys' fees. Appling then filed for bankruptcy.

Lamar initiated an adversary proceeding under § 523(a)(2)(A) of the Bankruptcy Code, seeking to have Appling's debts declared non-dischargeable based on his false oral statements regarding the tax refund. The bankruptcy court and the district court both ruled in favor of Lamar, holding Appling's debts could not be discharged because they were incurred by fraud. In doing so, both courts found that Appling's statement was not one "respecting" his "financial condition."

The Eleventh Circuit disagreed and reversed. The issue on appeal was the breadth of the phrase "statement respecting the debtor's financial condition." Lamar argued, consistent with the Fifth, Eighth, and Tenth Circuit Courts of Appeals, that this phrase means statements regarding the debtor's *overall* financial condition and ability to repay a debt, not just a statement regarding one asset. The Eleventh Circuit was not persuaded. It reasoned that this reading ignored the word "respecting," which has a broad definition. The Court held that a statement about a single asset is indeed a statement *respecting* a debtor's financial condition.

The takeaway for lenders is clear: if it's not in writing, the debt is dischargeable. Lenders should require borrowers to put in writing *any* statement or representation regarding the borrower's financial condition, even if the representation concerns only a single asset.

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