



Burr Alert: 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.

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