SUPREME COURT OF THE UNITED STATES

No. 01–1418

A. ELLIOTT ARCHER, ET UX., PETITIONERS *v.* ARLENE L. WARNER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[March 31, 2003]

JUSTICE THOMAS, with whom JUSTICE STEVENS joins, dissenting.

Section 523(a)(2) of the Bankruptcy Code excepts from discharge "any debt . . . for money, property, [or] services, . . . to the extent *obtained by* . . . false pretenses, a false representation, or actual fraud." 11 U. S. C. §523(a)(2)(A) (emphasis added). The Court holds that a debt owed under a settlement agreement was "obtained by" fraud even though the debt resulted from a contractual arrangement pursuant to which the parties agreed, using the broadest language possible, to release one another from "any and every right, claim, or demand . . . arising out of" a fraud action filed by petitioners in North Carolina state court. App. 67. Because the Court's conclusion is supported neither by the text of the Bankruptcy Code nor by any of the agreements executed by the parties, I respectfully dissent.

The Court begins its description of this case with the observation that "the settlement agreement does not *resolve* the issue of fraud, but provides that *B* will pay *A* a fixed sum." *Ante*, at 1 (emphasis added). Based on that erroneous premise, the Court goes on to find that there is "no significant difference between *Brown* [v. *Felsen,* 442 U. S. 127 (1979),] and [this case]." *Ante*, at 6. The only distinction, the Court explains, is that "the relevant debt here is embodied in a settlement, not in a stipulation and consent judgment" as in *Brown* v. *Felsen,* 442 U. S. 127 (1979). *Ibid.*

Remarkably, however, the Court fails to address the critical difference between this case and *Brown:* The parties here executed a blanket release, rather than entered into a consent judgment. And, in my view, "if it is shown that [a] note was given and received as payment or waiver of the original debt and the parties agreed that the note was to substitute a new obligation for the old, the note fully discharges the original debt, and the nondischargeability of the original debt does not affect the dischargeability of the obligation under the note." *In re West*, 22 F. 3d 775, 778 (CA7 1994). That is the case before us, and, accordingly, *Brown* does not control our disposition of this matter.

In *Brown*, Brown sued Felsen in state court, alleging that Felsen had fraudulently induced him to act as guarantor on a bank loan. 442 U. S., at 128. The suit was settled by stipulation, which was incorporated by the court into a consent judgment, but "[n]either the stipulation nor the resulting judgment indicated the cause of action on which respondent's liability to petitioner was based." *Ibid.* The Court held that principles of res judicata did not bar the Bankruptcy Court from looking behind the consent judgment and stipulation to determine the extent to which the debt was "obtained by" fraud. The Court concluded that it would upset the policy of the Bankruptcy Code for "state courts to decide [questions of nondischargeability] at a stage when they are not directly in issue and neither party has a full incentive to litigate them." *Id.,* at 134. *Brown* did not, however, address the question presented in this case—whether a creditor may, *without the participation of the state court*, completely release a debtor from "any and every right, claim, or demand . . . relating to" a state-court fraud action. App. 67.

Based on the sweeping language of the general release, it is inaccurate for the Court to say that the parties did not "resolve the issue of fraud." *Ante*, at 1. To be sure, as in *Brown*, there is no legally controlling document stating that respondent did (or did not) commit fraud. But, unlike in *Brown*, where it was not clear which claims were being resolved by the consent judgment, the release in this case clearly demonstrates that the parties intended to resolve conclusively not only the issue of fraud, but also any other "right[s], claim[s], or demand[s]" related to the state-court litigation, "excepting only obligations under [the] Note and deeds of trust."[1] App. 67. See *McNair* v. *Goodwin,* 262 N. C. 1, 7, 136 S. E. 2d 218, 223 (1964) ("'[A] compromise agreement is conclusive between the parties as to the matters compromised'" (quoting *Penn Dixie Lines* v. *Grannick*, 238 N. C. 552, 556, 78 S. E. 2d 410, 414 (1953))).

The fact that the parties intended, by the language of the general release, to replace an "old" fraud debt with a "new" contract debt is an important distinction from *Brown*, for the text of the Bankruptcy Code prohibits discharge of any debt "to the extent *obtained by*" fraud. 11 U. S. C. §523(a)(2) (emphasis added). In interpreting this provision, the Court has recognized that, in order for a creditor to establish that a debt is not dischargeable, he must demonstrate that there is a causal nexus between the fraud and the debt. See *Cohen* v. *de la Cruz,* 523 U. S. 213, 218 (1998) (describing §523(a)(2)(A) as barring discharge of debts "'resulting from'" or "'traceable to'" fraud (quoting *Field* v. *Mans*, 516 U. S. 59, 61, 64 (1995))). Indeed, petitioners conceded at oral argument that the "obtained by" language of §523(a)(2) requires a creditor to prove that a debtor's fraud is the proximate cause of the debt. Tr. of Oral Arg. 10, 12; see also 1 Am. Jur. 2d, Ac-

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[1] There are no allegations that petitioners were fraudulently induced to execute the settlement agreement or the general release.

tions §57 (1994) ("What is essential is that the wrongful act charged be the proximate cause of the damage; the loss must be *the direct result of, or proximately traceable to*, the breach of an obligation to the plaintiff" (emphasis added)).

This Court has been less than clear with respect to the requirements for establishing proximate cause. In the past, the Court has applied the term "'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts." *Holmes* v. *Securities Investor Protection Corporation,* 503 U. S. 258, 268 (1992). The Court has explained that, "[a]t bottom, the notion of proximate cause reflects 'ideas of what justice demands, or of what is administratively possible and convenient.'" *Ibid.* (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §41, p. 264 (5th ed. 1984) (hereinafter Keeton)); see also *Palsgraf* v. *Long Island R. R. Co.*, 248 N. Y. 339, 352, 162 N. E. 99, 103 (1928) (Andrews, J., dissenting) ("What we do mean by the word 'proximate' is, that because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point"). While the concept of proximate cause is somewhat amorphous, see Keeton 279, the common law is clear that certain intervening events—otherwise called "superseding causes"—are sufficient to sever the causal nexus and cut off all liability. See *Exxon Co., U. S. A.* v. *Sofec, Inc.,* 517 U. S. 830, 837 (1996) ("'The doctrine of superseding cause is . . . applied where the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of independent origin that was not foreseeable'" (quoting 1 T. Schoenbaum, Admiralty and Maritime Law §5–3, pp. 165–166 (2d ed. 1994))); 57A Am. Jur. 2d, Negligence §790 (1989) ("The intervention, between the negligence of the defendant and the occurrence of an injury to the plaintiff, of a new, independent, and efficient cause, or of a superseding cause, of the injury renders the negligence of the defendant a remote cause of the injury, and he cannot be held liable, notwithstanding the existence of some connection between his negligence and the injury").

In this case, we are faced with the novel situation where the parties have, by agreement, attempted to sever the causal relationship between the debtor's fraudulent conduct and the debt.[2] In my view, the "intervening" settlement and release create the equivalent of a superseding cause, no different from the intervening negligent acts of a third party in a negligence action. In this case, the parties have made clear their intent to replace the old "fraud" debt with a new "contract" debt. Accordingly, the only debt that remains intact for bankruptcy purposes is the one "obtained by" voluntary agreement of the parties, not by fraud.

Petitioners' own actions in the course of this litigation support this conclusion. Throughout the proceedings below and continuing in this Court, petitioners have sought to recover only the amount of the debt set forth in the settlement agreement, which is lower than the total damages they allegedly suffered as a result of respondent's alleged fraud. See Brief for Petitioners 21 ("[T]he nondischargeability action was brought solely in order to enforce the

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[2] Petitioners argue that *any* prepetition waiver of nondischargeability protections should be deemed unenforceable because it is inconsistent with the Bankruptcy Code and impairs the rights of third-party creditors. Brief for Petitioners 24. As respondent points out, however, a creditor forfeits the right to contest dischargeability if it fails to affirmatively request a hearing within 60 days after the first date set for the meeting of the creditors. See 11 U. S. C. §523(c)(1); Fed. Rule Bkrtcy Proc. 4007(c). Thus, presumably, creditors may choose, for any or no reason at all, to forgo an assertion of nondischargeability under §523(a)(2). Indeed, petitioners have failed to point to *any* provision of the Bankruptcy Code that specifically bars a creditor from entering into an agreement that impairs its right to contest dischargeability.

agreement to pay [the amount in the settlement agreement]"). This crucial fact demonstrates that petitioners seek to recover a debt based only in contract, not in fraud.

The Court concludes otherwise. The Court, however, does not explain why it permits petitioners to look at the settlement agreement for the amount of the debt they seek to recover but not for the character of that debt. Neither this Court's precedents nor the text of the Bankruptcy Code permits such a selective implementation of a valid agreement between the parties.

* * *

The Court today ignores the plain intent of the parties, as evidenced by a properly executed settlement agreement and general release, holding that a debt owed by respondent under a contract was "obtained by" fraud. Because I find no support for the Court's conclusion in the text of the Bankruptcy Code, or in the agreements of the parties, I respectfully dissent.