March 2026

# AVOIDING IMPUTING NONDISCHARGEBALITY TO INNOCENT CO-DEBTORS IN BANKRUPTCY


In *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023), the United States Supreme Court reaffirmed that scienter for fraud may be imputed from the actual wrongdoer to an innocent/non-acting partner or agent debtor. This ruling went on to establish not only joint liability on the underlying debt but also joint nondischargeability under Section 523(a)(2)(A). While consistent with historical partnership liability principles, the decision creates broader exposure for individuals who neither participated in nor knew of fraudulent conduct.

The concurring opinion in *Bartenwerfer* correctly raised concerns regarding expansion of nondischargeability through evolving liability theories. Post-Bartenwerfer case law shows early signs of expansion. In In re *Hann (Kahkeshani v. Hann)*, 2023 WL 6803541 (5th Cir. October 16 2023) the court extended imputation concepts to an alter ego relationship despite the absence of a traditional agency or partnership relationship. Conversely, in *In re Del Rosario*, 668 B.R. 618 (9th Cir 2025) the court declined to expand imputation to Section 523(a)(6), emphasizing statutory language limiting nondischargeability to acts committed "by the debtor," reflecting Congressional intent to require direct debtor misconduct for nondischargeability. We also believe that the situation is ripe for expansion of nondischargeability with respect to larceny and embezzlement situations. See, *Corwin v. Countrywide Home Loans*, 864 F.3d 344 (5th Cir. 2017) and therefore an amendment should also cover Section 523(a)(4).

Scholarly commentary highlights risks in domestic and marital contexts. Recent law review analysis discussing coerced debt scenarios notes that innocent spouses may face nondischargeable debt exposure despite lacking meaningful participation in fraudulent conduct, raising fairness and equity concerns, particularly in community property jurisdictions.[1]

Without statutory clarification, courts may continue expanding nondischargeability through imputation doctrines, subjecting non-acting debtors to financial liability based solely oassociation with wrongdoers. This conflicts with the bankruptcy principle of providing honest but unfortunate debtors a fresh start.[2]

**PROPOSED LEGISLATIVE SOLUTION:** The following revisions to Sections 523(a)(2)(A) & (a)(4):

**§ 523. Exceptions to discharge**

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) the debtor's false pretenses, ~~a~~ false representations, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

…

(4) for:

**(A)** fraud or defalcation by the debtor while acting in a fiduciary capacity.

**(B)** embezzlement~~,~~ by the debtor; or

**(C)** larceny by the debtor.

---

[1] Littwin, Adams & Kennedy, *Bartenwerfer V. Buckley and Coerced Debt*, 99 Amer. Bank. Law Jour. 3 (Issue 1, 2025)

[2] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nbconf.org/wp-content/uploads/2026/02/NBC-Letter-January-2026-re-Bartenwerfer.pdf (Letter by the National Bankruptcy Conference, dated January 28, 2026, arguing for the same amendment to Sections 523 (a)(2) and (a)(4) in order to reverse the result of Bartemwerfer).

# CONTACTS


**Peter C. Califano**
Niesar & Vestal LLP
90 New Montgomery Street, 9th Floor
San Francisco, CA 94105
Telephone: (415) 882-5300
Fax: (415) 882-5400
Email: pcalifano@nvlawllp.com
Website: nvlawllp.com

**Jeffrey N. Schatzman**
Schatzman & Schatzman, P.A
9990 S.W. 77th Avenue
Penthouse 2
Miami, FL 9956
Phone: 305-670-6000
Email: jschatzman@schatzmanlaw.com
Website: schatzmanlaw.com