SO ORDERED.
SIGNED this 20th day of August, 2025

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

JOHN FRANCIS BRANOM, II
DONNA LEE BRANOM

Debtors

Case No. 3:23-bk-32023-SHB
Chapter 7

ANGELA REED

Plaintiff

v.

JOHN FRANCIS BRANOM, II and
DONNA LEE BRANOM

Defendants

Adv. Proc. No. 3:24-ap-03008-SHB

MEMORANDUM AND ORDER ON MOTION FOR ATTORNEY'S FEES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 7054(b)(2) AND FEDERAL RULE OF CIVIL PROCEDURE 54(d)(2)

In its Memorandum opinion granting summary judgment ("Opinion") that was entered on January 7, 2025 [Doc. 33], the Court determined that an Ohio state-court judgment for

$67,500.00[1] is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Through her Motion for Attorney's Fees Pursuant to Federal Rule of Bankruptcy Procedure 7054(b)(2) and Federal Rule of Civil Procedure 54(d)(2) ("Motion") filed on January 21, 2025 [Doc. 37], Plaintiff asks the Court to make a separate determination that the attorney's fees she incurred to file and prosecute this adversary proceeding also are nondischargeable under 11 U.S.C. § 523(a)(2)(A).[2] In support of her Motion, Plaintiff attached itemized billing statements for the period of December 2023 through January 2025, reflecting total fees of $19,613.50. [Doc. 37-1 at 1.] She argues that because the underlying judgment included a finding of malice and awarded punitive damages, under Ohio law "the aggrieved party may recover reasonable attorney's fees" and "attorney's fees may be awarded in a nondischargeability case if such attorney's fees are supported by an underlying state law." [Doc. 38 at 2.] Defendants have opposed the Motion, arguing that "[t]he Bankruptcy Code does not provide for adding to a final Judgment obtained in a State Court as part of a determination of dischargeability under 11 U.S.C. § 523(a)." [Doc. 39 at 2.]

I. ANALYSIS

A. Does the Bankruptcy Code Authorize Recovery of Attorney's Fees for Adjudicating the Character of a Prepetition State-Court Judgment under § 523?

"Awards of attorney fees in bankruptcy cases are governed by . . . the 'American Rule,' [under which] the prevailing litigant is generally not entitled to collect attorney's fees. This default rule, however, can be overcome by statute, contract, or other specific rule of common law authorizing an award of attorney's fees." *Ewing v. Bissonnette* (*In re Bissonnette*), 398 B.R. 189, 196 (Bankr. N.D. Ohio 2008). In actions to determine dischargeability, "the text of §

[1] The judgment was entered in favor of Plaintiff in *Reed v. Branom, et al.*, Case No. 2023 CV 0427, Civil Division of the Common Pleas Court of Greene County, Ohio, on November 13, 2023.

[2] Plaintiff's Amended Complaint included a request under Ohio law for attorney's fees for the adversary proceeding. [Doc. 19 at ¶ 33 and Prayer for Relief ¶ 3.]

523(a)(2)(A), the meaning of parallel provisions in the statute, the historical pedigree of the fraud exception, and the general policy underlying the exceptions to discharge all support [the] conclusion that 'any debt . . . for money, property, services, or . . . credit, to the extent obtained by' fraud encompasses any liability arising from money, property, etc., that is fraudulently obtained, including treble damages, attorney's fees, and other relief that may exceed the value obtained by the debtor." *Cohen v. de la Cruz*, 523 U.S. 213, 223 (1998).

Defendants argue that the Code does not authorize an award of attorney's fees under the circumstances of this case because Plaintiff sought for the Court to determine only the character of the state-court judgment and not the validity of Plaintiff's claim against Defendants. Defendants cite *Rael v. Gonzales* (*In re Gonzales*), 667 B.R. 357 (Bankr. D.N.M. 2025), and *DirectTV, LLC v. Coley* (*In re Coley*), No. 18-02154-5-JNC, Adv. Proc. No. 18-00118-5-JNC, 2020 WL 265931 (Bankr. E.D.N.C. Jan. 16, 2020), in support of their argument. The *Coley* court explained as follows:

> As a general proposition, "[t]here is no statutory basis in the Bankruptcy Code that provides generally for attorney's fees for a prevailing creditor in a § 523 action. . . . "Without a statutory right to collect attorney's fees, the creditor must have an independent right on which to base an award of attorney's fees."

In re Coley, 2020 WL 265931, at *3 (citations omitted).

The plaintiff in *Coley* argued that the Supreme Court's decision in *Cohen* authorized an award of attorney's fees for bringing a § 523 action as part of the plaintiff's collection process. The *Coley* court disagreed, stating that "*Cohen* merely clarifies that a prior award of statutory attorney fees is included in a debt subsequently determined by a bankruptcy court to be excepted from discharge [but that] '*Cohen* did not create a common law basis for awarding attorney fees or otherwise overrule or alter how the American Rule is applied by federal courts.'" *Id.* (citation omitted).

The *Coley* court and other courts have focused on whether the bankruptcy court is determining the *character* of a state-court judgment as opposed to determining the *validity* of a claim by liquidating the claim – i.e., by deciding "whether the claimant had been injured in a legally cognizable manner by the debtor and the amount of damages suffered." *Id.* at *4. The several courts that have refused to award attorney's fees when the adversary-proceeding plaintiff was merely asking the bankruptcy court to determine that a prior state-court judgment should be deemed nondischargeable have relied on the Ninth Circuit's decision in *Renfrow v. Draper*, 232 F.3d 688 (9th Cir. 2000). *See, e.g., Coley*, 2020 WL 265931, at *4; *Thomas v. Causey* (*In re Causey*), 519 B.R. 144, 155 (Bankr. M.D.N.C. 2014) (relying on *Renfrow* when deciding that "the only relief sought in this Court was a determination of dischargeability [which] is a purely federal question, and therefore, to the extent that the Plaintiff seeks fees in this action, it can only be in connection with the federal dischargeability determination, rather than pursuant to the underlying claims for which the Plaintiff already was awarded fees by the State Court."); *Headrick v. Atchison* (*In re Atchison*), 255 B.R. 790, 792-93 (Bankr. M.D. Fla. 2000) (relying on *Renfrow* and finding *Cohen* "inapposite" because the plaintiff filed the adversary proceeding "solely to determine the character of the liability that had been established conclusively by the state court" and because "*Cohen* itself does not create an independent right to attorney's fees for the benefit of a party who prevails in a Section 523 dischargeability proceeding . . . [but merely] clarifies that attorney's fees supported by statute are included in the debt that may be determined to be nondischargeable").

One bankruptcy court in the Sixth Circuit explained: "if a bankruptcy court liquidates a claim and also determines its dischargeability under the Bankruptcy Code, the liquidated claim may include an attorney's fee component only if the contract or a statute provides for such an

award." *Synergeering Grp. v. Jonatzke* (*In re Jonatzke*), 478 B.R. 846, 869-70 (Bankr. E.D. Mich. 2012). That court, however, acknowledged the issue addressed in *Coley*:

> [I]t is important to note that there is a difference between fees incurred in liquidating and enforcing a debt prior to a bankruptcy case and fees incurred in prosecuting a nondischargeability claim in a bankruptcy case. "[T]here is no statutory basis in the Bankruptcy Code that provides generally for attorney's fees for a prevailing creditor in a § 523 action."

Id. at 869 (quoting *In re Headrick*, 255 B.R. at 792). In support of the distinction between fees incurred to liquidate a claim in bankruptcy and fees incurred solely to obtain a determination of the character of a prepetition judgment, the *Jonatzke* court cited the decision of the Sixth Circuit Court of Appeals in *Martin v. Bank of Germantown* (*In re Martin*), 761 F.2d 1163, 1167-68 (6th Cir. 1985). *In re Jonatzke*, 478 B.R. at 869 (adding a parenthetical that the *Martin* decision was "decided under the Bankruptcy Act's § 523(a)(2)(B), noting that although § 523(d) 'explicitly grants fees and costs to prevailing debtors . . . [t]he congressional failure to award attorney's fees to prevailing creditors was not accidental'").

This Court might be inclined to follow the decisions cited above to find that Plaintiff is unable to recover attorney's fees in this case for merely obtaining an adjudication of the character of the state-court judgment as nondischargeable. Sixth Circuit precedent, however, precludes the Court's adoption of such an approach. In 2006, the Sixth Circuit Court of Appeals issued its decision in *Official Committee of Unsecured Creditors v. Dow Corning Corp.* (*In re Dow Corning Corp.*), 456 F.3d 668 (6th Cir. 2006). In *Dow Corning*, the court expressly "declin[ed] to follow the series of Ninth Circuit cases . . . that limit the recovery of attorneys' fees, costs and expenses to those incurred in enforcing the contract," specifically mentioning *Renfrow* as one of those Ninth Circuit cases. *Id.* at 685. The *Dow Corning* court stated: "[W]e recognize that the Ninth Circuit has squarely held that, even if provided for by contractual

provisions value under state law, creditors may never be awarded attorneys' fees expended litigating issues solely of federal bankruptcy law." *Id.* (citing *Thrifty Oil Co. v. Bank of Am.*, 322 F.3d 1039, 1040-42 (9th Cir. 2003)). The court then expressly found unpersuasive the Ninth Circuit's reasoning in *Thrifty Oil* "that the prevailing party could not recover attorneys' fees because neither the validity nor enforceability of the contract was at issue." *Id.* Instead, the *Dow Corning* court held: "In this circuit, an unsecured creditor may recover those costs to which it has a state-law-based right against a solvent debtor, regardless of the nature of the federal proceedings." *Id.* at 686.

Absent binding authority otherwise, given the Supreme Court's plain-text approach to statutory interpretation and application (*see, e.g., Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 284 (2024) (stating that "a 'parade of horribles' argument generally cannot 'surmount the plain language of the statute'")), this Court might be inclined to find that the text of the Bankruptcy Code does not include authority to override the American Rule. Because this Court is bound by the Sixth Circuit's holding in *Dow Corning*, however, the Court finds that the Bankruptcy Code does authorize recovery of attorney's fees for seeking only an adjudication of the character of a prepetition state-court judgment under § 523 – but only if state law or a contract authorizes such recovery.

B. Does Ohio Law Authorize an Award of Plaintiff's Attorney's Fees for Bringing an Action to Enforce the State-Court Judgment by Seeking a Nondischargeability Determination?

The United States Supreme Court made clear in *Cohen* that attorney's fees may be awarded in a § 523 nondischargeability claim if such damages are authorized by the underlying state law. *Cohen*, 523 U.S. at 223. To resolve the instant issue, the Court must look to Ohio law. The Ohio Supreme Court recently explained Ohio's approach to attorney's fees:

> "Ohio has long adhered to the 'American rule' with respect to recovery of attorney fees; a prevailing party in a civil action may not recover attorney fees as a part of the costs of the litigation." *Wilborn v. Bank One Corp.*, 906 N.E.2d 396, 400 (Ohio 2009). . . .
>
> However, there are three well-established exceptions to the American rule: (1) when a statute creates a duty to pay attorney fees, (2) when the losing party acted in bad faith, and (3) when the parties contracted to shift the fees. *Wilborn*, 906 N.E.2d at 400. It is the second exception that is relevant here. As we explained in *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, 153 N.E.3d 30, 34-35 (Ohio 2020):
>
> > An exception to the American rule allows an award of attorney fees to the prevailing party as an element of compensatory damages when the jury finds that punitive damages are warranted. *Zoppo v. Homestead Ins. Co.*, 644 N.E.2d 397, 402 (Ohio 1994); *N.Y., Chicago & St. Louis RR. Co. v. Grodek*, 186 N.E. 733, 734 (Ohio 1933) ("facts which justify the infliction of exemplary damages will also justify the jury in adding the amount of counsel fees to the verdict, not as a part of exemplary damages, but as compensatory damages"). . . .
>
> Since the earliest cases at common law, juries in Ohio have been permitted to include reasonable attorney fees as part of compensatory damages when the jury also awards exemplary or punitive damages. . . . "[I]n cases where the act complained of is tainted by fraud, or involves an ingredient of malice, or insult, the jury, which has power to punish, has necessarily the right to include the consideration of proper and reasonable counsel fees in their estimate of damages." *Id.* at 282.
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> At common law, recovery of reasonable attorney fees has always been permitted when punitive damages are awarded. *See Columbus Fin., Inc. v. Howard*, 327 N.E.2d 654, 658 (Ohio 1975).

Cruz v. Eng. Nanny & Governess Sch., 207 N.E.3d 742, 750 (Ohio 2022) (citations omitted); *see also Estate of Samples v. LaGrange Nursing & Rehab. Ctr., Inc*., 252 N.E.3d 609, 617 (Ohio Ct. App. 2024) ("Because Ohio Courts adhere generally to the 'American Rule' regarding attorney fees, prevailing parties may not recover attorney fees unless provided by statute or contract or in the event that punitive damages are awarded."); *State ex rel. Int'l Ass'n of Fire Fighters v. Barbish*, 251 N.E.3d 700, 711 (Ohio Ct. App. 2024) ("[F]or attorney fees to be awarded under [the exception to the American Rule when a defendant acts with malice], there must also be an

award of punitive damages.").[3]

Thus, Ohio law "allows for attorney's fees to be awarded in a claim based upon fraud [that] must be coupled with an award of punitive damages." *In re Bissonnette*, 398 B.R. at 196 (citation omitted). This rule, however, does not end the Court's inquiry. Just because an Ohio trial court that awards punitive damages is authorized to award attorney's fees, even in the absence of a contract or statute, does not mean that the successful party may continue to add attorney's fees to the judgment in its efforts to execute or enforce that judgment.

At least one state has an "enforcement of judgments" statute that addresses recovery of attorney's fees for enforcing a judgment. *See, e.g.*, Cal. Civ. Proc. Code § 685.040 (West. 2025) ("The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless provided by law. Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.") Thus, in California, post-judgment attorney's fees are not authorized absent applicability of the statutory authorization of section 685.040. *Carnes v. Zamani*, 488 F.3d 1057, 1061 (9th Cir. 2007).

The Ohio legislature, however, has not enacted such a statute. Recently, the Ohio Supreme Court refused to award post-judgment attorney's fees *for an appeal* even when the trial court had awarded punitive damages and attorney's fees in the judgment for tort liability.

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[3] Generally, courts limit any deviation from the "American Rule" solely to when a statute or contract provides otherwise; however, in very limited cases, courts "recognize a 'narrow exception' to the American Rule, allowing a trial court to award attorney fees when a party's opponent acts 'in bad faith, vexatiously, wantonly, or for oppressive reasons' . . . [and is justified] 'only in exceptional cases and for dominating reasons of justice.'" *United States v. McCall*, 235 F.3d 1211, 1216 (10th Cir. 2000) (quoting *Sterling Energy Ltd. v. Friendly Nat'l Bank*, 744 F.2d 1433, 1435 (10th Cir. 1984)). "[T]he bad faith exception is intended to punish those who have abused the judicial process and to deter those who would do so in the future." *Synanon Found., Inc. v. Bernstein*, 517 A.2d 28, 37 (D.C. 1986).

Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Grp., L.L.C., 260 N.E.3d 393 (Ohio 2020). After the Ohio Supreme Court reversed an enhancement to a lodestar fee award and remanded to the trial court with instructions to issue a final judgment for attorney's fees in a sum certain, the winning party on remand asked the trial court to award fees, costs, and expenses incurred in defending against post-judgment motions, an appeal, and in successfully prosecuting its cross-appeal on its request for punitive damages on a conspiracy-to-misappropriate-trade-secrets claim. The trial court awarded post-judgment fees, which award was affirmed by the Ohio Court of Appeals. The Ohio Supreme Court, however, reversed the post-judgment fee award because the prior appeal had adjudicated the attorney's fees award, determining that it was sufficient so that it should not have been enhanced by the trial court. *Id.* at 448.

The decision in *Phoenix Lighting Group* is inapposite on its facts because the post-judgment fees at issue were for successfully defending an appeal, but the concurring opinion informs this Court on Ohio's approach to post-judgment attorney's fees. The majority distinguished the Ohio Supreme Court's prior *Cruz* decision on fees incurred in successfully defending an appeal, but the concurring judge noted that the court should have overruled that prior decision because it allowed appellate attorney's fees outside of the scope of Ohio statutes that authorize (1) fee awards *by a trial court* when punitive damages are awarded and (2) fee awards for frivolous conduct in pursuit of a civil action or appeal:

> *Cruz* upended decades of precedent by allowing litigants to recover appellate attorney fees outside the limited circumstances provided by the General Assembly in [Ohio Revised Code Ann. §] 2323.51, the appellate-attorney-fees statute. . . . Doing so flew in the face of the American rule – "the 'bedrock principle' of our adversarial system that each side in litigation is responsible for the cost of their own attorney fees."
>
> An exception to the American rule allows "an award of attorney fees to the prevailing party as an element of compensatory damages when the jury finds that punitive damages are warranted." *Phoenix Lighting Grp., L.L.C. v. Genlyte Thomas*

> *Grp., L.L.C.*, 153 N.E. 3d 30, 35 (Ohio 2020). The General Assembly recognized this exception in [Ohio Revised Code Ann. §] 2315.21. But in *Cruz*, this court judicially expanded the exception to allow a party who prevails on appeal from a judgment awarding punitive damages to recover *appellate* attorney fees. *Cruz*, 207 N.E.3d at 758-59 (Kennedy, J., dissenting). In doing so, this court turned a bedrock principle into clay. *Id.* at 754.

Phoenix Lighting Grp., 260 N.E.3d at 404 (Kennedy, C.J., concurring). That is, the concurring judge's complaint about the *Cruz* decision was that it authorized attorney's fees for an appeal when the fees did not fall into either the statute for trial courts to award fees when awarding punitive damages or the statute for fees to be awarded for frivolous appeals. *See Cruz*, 207 N.E.3d at 758 (Kennedy, concurring) ("In the past, any time this court has determined that appellate-attorney fees could be awarded, it has done so on the basis of the language of a statute. The question in those cases was whether the *statute* at issue that allowed attorney fees also permitted an award of appellate-attorney fees. In each case, this court determined that the relevant statute did allow appellate-attorney fees as well as trial-attorney fees. . . . The consideration of attorney fees as a result of an award of punitive damages is a determination made at trial and cannot include the consideration of appellate-attorney fees, because those fees are unknown." (citations omitted)). Thus, in the opinion of the concurring judge, the *Cruz* court conflated the Ohio statutory authority that allows fees for successfully prosecuting a claim for which punitive damages are awarded (Ohio Rev. Code Ann. § 2315.21) with the statutory authority for awarding fees for frivolous appeals (Ohio Rev. Code Ann. § 2323.51).

Although the Ohio court's ruling in *Cruz* allowed attorney's fees relating to an appeal of a punitive-damages award under the authority of section 2315.21, it did not extend the statutory authority of that section to post-judgment enforcement of a judgment that includes punitive damages. In Ohio, post-judgment attorney's fees are statutorily authorized when the fees are incurred in connection with (1) a successful defense of a frivolous appeal (Ohio Rev. Code Ann.

§ 2315.21), an appeal from a judgment "in an action for divorce, dissolution, legal separate, or annulment of marriage" (Ohio Rev. Code Ann § 3105.73(A)), and an appeal that falls within the statutory requirements applicable to eligible parties in civil actions or appeals involving the state (Ohio Rev. Code Ann. § 2335.39); (2) when a municipal corporation incurs post-judgment collection costs and fees, including attorney's fees, related to tax liability (Ohio Rev. Code Ann. § 718.27(G)); and (3) when a contract so provides (*Huntington Nat'l Bank v. Stanley Miller Constr. Co.*, No. 2014CA000128, 2015 WL 1851164, at *9 (Ohio Ct. App. Apr. 13, 2015) (awarding fees, including for post-judgment proceedings, when the loan documents so provided, as authorized by Ohio Rev. Code Ann. § 1319.02(B)-(D))).

Instructive here is the Ohio Court of Appeals' decision in *Palmer v. David R. Pheils, Jr. & Assocs.*, No. WD-01-010, 2002 WL 1436030 (Ohio Ct. App. June 28, 2002). Attorneys had been awarded "indemnification" damages as compensation for their former clients' breach of a settlement agreement. *Id*. at *1. The former clients had hired the attorneys to represent them in a personal injury action. *Id*. After the attorney-client relationship soured, the law firm sued the former clients for fees owed. *Id*. The former clients then separately sued the firm and attorneys for legal malpractice. *Id*. The parties eventually reached a settlement, but the former clients brought another suit against the attorneys shortly after the settlement was reached. *Id*. The law firm won summary judgment and the initial appeal solely on the issue of breach of the settlement agreement, with the question of damages remanded to the trial court for hearing. *Id*. On remand, the trial court awarded $67,762.00 plus interest, which both sides appealed. *Id*.

After the lawyers won the appeal of the damages award, on remand they asked the trial court for an additional $142,665.42, representing "indemnification damages" that included costs and attorney's fees related to post-judgment proceedings, including fees relating to (1) appeals,

(2) collection attempts, (3) bankruptcy proceedings in the former clients' bankruptcy case, and (4) another case filed by the former clients. *Id*. at *2. The trial court ultimately awarded fees totaling $135,536.34, which was again appealed. *Id*.

At issue in the third appeal "for the most part, [we]re the attorney fees of [the lawyers] who represented themselves, pro se, in a variety of proceedings." *Id.* at *4. The Ohio Court of Appeals explained its analysis in reversing the award of post-judgment fees:

> Ohio is a[n] "American rule" jurisdiction. Generally, under the "American rule" parties involved in litigation pay their own attorney fees. *Krasny–Kaplan Corp. v. Flo–Tork, Inc.*, 609 N.E.2d 152, 153-54 (Ohio 1993). . . .
>
> In this matter, [the lawyers] claim no rule or statute which would entitle them to attorney fees. They rely wholly on the terms of the settlement agreement which we have held requires appellants to indemnify appellees for the "natural and probable result" of a breach, including compensating them for attorney time necessarily expended.

Id. at *4-5 (citations omitted). Thus, because no statutory authority existed for the post-judgment fees, the trial court's award of post-judgment attorney's fees was reversed. *Id*. at *6.

Although it may seem inequitable for Plaintiff to be denied her attorney's fees in pursuing a determination of nondischargeability for a judgment that included punitive damages and attorney's fees, Ohio law does not authorize post-judgment attorney's fees for the judgment holder's attempts to executive or collect on the judgment. The nondischargeability action is akin to collection efforts required when a judgment debtor moves to another state so that the judgment creditor must domesticate the judgment to pursue collection in the judgment debtor's new state. In Ohio, absent a contractual provision or statutory provision authorizing an award of such post-judgment attorney's fees, the judgment creditor may not add them to the judgment.

II. ORDER

For the foregoing reasons, the Court directs that the Motion for Attorney's Fees Pursuant to Federal Rule of Bankruptcy Procedure 7054(b)(2) and Federal Rule of Civil Procedure 54(d)(2) filed by Plaintiff on January 21, 2025 [Doc. 37], is DENIED.

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