

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

2002 JAN 14 PM 3: 54

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Troy David Seybt,

Debtor.

Teresa K. Seybt,

Plaintiff,

v.

Troy David Seybt,

Defendants.

C/A No. 01-03549-W

Adv. Pro. No. 01-80128-W

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court denies the discharge of Debtor's obligation to Plaintiff to pay the second mortgage encumbering the former marital home pursuant to 11 U.S.C. §523(a)(5) upon the Court's finding that the debt was incurred pursuant to a divorce decree and is in the nature of alimony, maintenance, or support. The Court discharges Debtor's obligation to pay two credit card accounts; however, the Court excepts the obligation to Plaintiff represented by the First U.S.A. account from discharge pursuant to §523(a)(15)(B).


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 14, 2002.

ENTERED
JAN 15 2002
J.G.S.

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ORDER

Chapter 7

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THIS MATTER comes before the Court upon Teresa K. Seybt's ("Wife") Complaint asking the Court to declare certain debts arising from the Final Order of Divorce ("Divorce Decree") by the Family Court of the Eleventh Judicial Circuit of South Carolina as excepted from discharge pursuant to 11 U.S.C. §523(a)(5) and (a)(15).¹ After reviewing the pleadings as well as the arguments and evidence counsel presented at trial, the Court makes the following Findings of Fact and Conclusions of Law.²

FINDINGS OF FACT

1. Wife and Troy David Seybt ("Debtor") were married on December 4, 1982. They are the

¹ Further references to the Bankruptcy Code shall be by section number only.

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

parents of two daughters, ages sixteen and five.

2. Debtor filed for divorce on September 14, 1999. The Family Court granted the divorce on February 29, 2000 on the grounds that the parties lived separate and apart for one year.

3. As part of the Divorce Decree, the Family Court incorporated the parties' Property Agreement whereby the parties resolved several issues including the division of their marital property and debts.

4. In one provision of the Property Agreement, Debtor agreed to pay the balance of the second mortgage encumbering the former marital residence in which Wife and the parties' daughters continue to reside. Under the agreement, Debtor is obligated to make monthly payments in the amount of \$307.00. The parties stipulate that the balance of the second mortgage is \$21,809.00.

5. The parties stipulate that Debtor has not paid the second mortgage as ordered by the Family Court in several months.

6. In another provision of the Property Agreement, Debtor agreed to assume and pay certain credit card balances existing as of February 22, 2000, the date the Divorce Decree was entered.

At that time, the balance owed on the five accounts was \$46,055.00.

7. Debtor filed a petition for relief under Chapter 7 on April 4, 2001.

8. When Debtor filed bankruptcy, the balance owed on the five credit card accounts was \$57,429.00.

9. The parties stipulate that Wife's claim to a portion of Debtor's military retirement as ordered by the Family Court is not dischargeable.

10. The parties stipulate that Debtor's obligation to pay collegiate support as ordered by the

Family Court is not dischargeable.

CONCLUSIONS OF LAW

The parties dispute whether Debtor's obligation to make the second mortgage payment is incidental to support and therefore non-dischargeable pursuant to §523(a)(5) as debt to a former spouse or children of Debtor in the nature of alimony, maintenance, or support. Alternatively, if the second mortgage obligation does not fall within §523(a)(5), Wife argues the Court should declare the debt non-dischargeable pursuant to §523(a)(15). Finally, the parties dispute whether Debtor's obligation under the Divorce Decree to pay the credit card accounts is excepted from discharge pursuant to §523(a)(15). Wife asks the Court to declare the debts non-dischargeable, to enter a judgment against Debtor for the amount of Wife's claims, and to award her attorney's fees.

A. Second Mortgage

To guide its analysis of determining whether Debtor's obligation to pay the second mortgage falls within the category of alimony, maintenance, or support, the Court initially notes that, under §523(a)(5), the objecting party bears the burden of proof. See Baker v. Baker (In re Baker), C/A No. 99-10575-W; Adv. Pro. No. 00-80048-W, 2000 WL 1690314, at 8 (Bankr. D. S.C. Oct. 13, 2000); see also Sterna v. Paneras (In re Paneras), 195 B.R. 395, 401 (Bankr. N.D. Ill. 1996) (noting that the party seeking to establish an exception to discharge bears the burden of proof and that the burden is by a preponderance of the evidence). In this case, Wife has the burden of proving, by a preponderance of the evidence, that the debt in question is for alimony, maintenance, or support.

When a court is faced with deciding whether a debt incurred pursuant to a divorce decree is for alimony, maintenance, or support, it cannot, unfortunately, rely on an uniformly accepted calculus to determine the nature of the obligation. Instead, courts must consider several factors, including the family court's intent as to the purpose of the obligation. See Baker, at 9 (quoting Robinson v. Robinson (Matter of Robinson), 193 B.R. 367, 373 (Bankr. N.D. Ga. 1996)). Other factors include the parties' financial circumstances at the time of the divorce as well as the degree to which the obligation enables the recipient to maintain daily necessities. See Burton v. Burton (In re Burton), 242 B.R. 674, 679 (Bankr. W.D. Mo. 1999).

In the present case, the Divorce Decree does not clearly indicate the nature of Debtor's obligation to pay the second mortgage other than to convey that its payment is mandatory, evidenced by the use of the words "shall pay." Likewise, the transcript of the Family Court proceeding does little to characterize this debt. Moving to another factor, the Court notes that, at the time of the divorce, neither party was in a substantially better financial position that would enable one to shoulder debts better than the other. Indeed, when the parties divorced, Husband had a gross monthly income of \$3,238.06 and monthly expenses of \$2,953.01, and Wife had a gross monthly income of \$2,195.20 and monthly expenses of \$2,004.40.

Upon examining the factor of daily necessities, the Court concludes that the essential function behind Debtor's obligation to pay the second mortgage is to provide support. One court noted, "An agreement that serves to provide such daily necessities as food, clothing, shelter, and transportation is indicative of debt intended to be in the nature of support." Catron v. Catron (In re Catron), 164 B.R. 912, 919 (E.D. Va. 1994) (quoting Kettner v. Kettner, 1991 WL 549386 (E.D. Va.) (emphasis added), aff'd 43 F.3d 1465 (4th Cir. 1994)). Because Debtor's obligation

serves to allow Wife and the parties' children to continue to reside in the home, the Court finds that the obligation is one for support. See Sylvester v. Sylvester, 865 F.2d 1164, 1166 (10th Cir. 1989) (holding that a debtor's obligation pursuant to his divorce decree, including in part an obligation to pay note payments on real property awarded to former wife, was in the nature of support and therefore non-dischargeable). Consequently, the Court finds that Debtor's obligation to pay the second mortgage is non-dischargeable pursuant to §523(a)(5).

Notwithstanding this finding, the Court, for the sake of argument, will also analyze whether the debt is dischargeable pursuant to §523(a)(15), and, under this code section, Debtor's obligation on the second mortgage is non-dischargeable. To establish a framework for its analysis, the Court notes that, under §523(a)(15), the party seeking the denial of discharge has the initial burden of establishing that the claim against the defendant debtor is one other than the kind described in §523(a)(5) and that it was awarded by a court in the course of a divorce proceeding or separation. See Baker, at 15 (citing Morgan v. LeRoy (In re LeRoy), 251 B.R. 490, 504 (Bankr. N.D. Ill. 2000)). Upon establishing this point, the burden then shifts to the defendant debtor to prove, by a preponderance of the evidence, either he or she lacks the ability to pay the debt in question from income or property not reasonably necessary for his or her or dependents' maintenance or support or the discharge of the debt would result in a benefit to the debtor that outweighs the detriment the former spouse would suffer. See Campbell v. Campbell (In re Campbell), 198 B.R. 467, 473 (Bankr. D. S.C. 1996); Baker, at 17 (quoting Waits v. Kyzer (In re Kyzer), C/A No. 99-06445-W; Adv. Pro. No. 99-80375-W, slip op. at 10 (Bankr. D. S.C. May 24, 2000)). Because subsections (A) and (B) of §523(a)(15) are written in the disjunctive, the defendant debtor is required only to prove one prong to prevent the debt from being excepted

from discharge. See Baker, at 17 (quoting LeRoy, 251 B.R. at 504).

As the Court stated previously, it believes this debt falls squarely within §523(a)(5); consequently, it treats the first step of the analysis, finding the obligation is outside of §523(a)(5), as a hypothetical “given.” Next, after reviewing the Divorce Decree, the Court finds the obligation to pay the second mortgage was awarded by the Family Court in the course of the parties’ divorce proceeding.

The burden now shifts to Debtor, and the Court examines whether Debtor has the ability to pay the obligation. In this district, the long-standing method for determining a debtor’s ability to pay is to perform the equivalent of the disposable income test applied in Chapter 13 confirmation pursuant to §1325(b)(2). See Oswald v. Asbill (In re Asbill), 236 B.R. 192, 196 (Bankr. D. S.C. 1999); Campbell, 198 B.R. at 473; Evans v. Evans (In re Evans), 2001 WL 359341 (Bankr. D. S.C.); Baker, at 17; Kyzer, at 11. Accordingly, the Court compares a debtor’s income and expenses at the time of the trial. See Baker, at 17 (quoting Campbell, 198 B.R. at 474).

At the time of trial, Debtor was unemployed and earned monthly income of \$2,112.00³ and had monthly expenses of \$2,515.00.⁴ Initially, it seems as though the analysis should end here as Debtor lacks the ability to pay as his expenses presently exceed his income. However, in instances where debtors were unemployed or underemployed, this Court has imputed income to

³ Debtor earns \$1,040.00 from his military retirement pension and \$1,072.00 in unemployment benefits.

⁴ The Court reached this figure by adjusting the amounts listed in Debtor’s Schedule J to correlate with evidence regarding the discharge of furniture debt and the reduction in the amount of his car payment.

debtors. See Asbill, 236 B.R. at 195 (imputing additional income to the debtor where there was evidence that the debtor formerly operated an after-hours business that generated significant supplemental income and that the opportunity to continue to operate the business was readily available); see also Baker, at 19 (imputing additional income after examining the debtor's income history). Indeed, other courts have reasoned that, when determining a debtor's ability to pay, courts should consider a debtor's future earning opportunities. See Migneault v. Migneault, 243 B.R. 585, 588 (D. N.H. 1999) (affirming the bankruptcy court's consideration of the debtor's future earning potential in determining his ability to pay where the debtor had the ability to earn commissions as a stockbroker in addition to his base salary); Johnson v. Rappleye (In re Rappleye), 210 B.R. 336, 340-41 (Bankr. W.D. Mo. 1997) (noting that the ability to pay analysis requires the court to consider the debtor's future earning capacity and finding that debtor did not prove the inability to pay in spite of his full-time position as an unpaid missionary where there was no evidence of a disability or condition rendering the debtor unable to work); Wolfe v. McCartin (In re McCartin), 204 B.R. 647, 655 (Bankr. D. Mass. 1996) (concluding the debtor had the ability to pay the debt incurred pursuant to a divorce decree based upon his potential to earn future commissions from his job as a real estate broker); Johnston v. Henson (In re Henson), 197 B.R. 299, 303-04 (Bankr. E.D. Ark. 1996) ("This Court believes that the appropriate analysis includes a view of the debtor's future financial situation . . . rather than a static view of the debtor's current ability to pay the debt."); In re Smither, 194 B.R. 102, 108 (Bankr. W.D. Ky. 1996) ("We therefore hold that a Court may consider facts and circumstances concerning a debtor's future earning potential . . . in determining his ability to pay."); Slover v. Slover (In re Slover), 191 B.R. 886, 892 (Bankr. E.D. Okla. 1996) (deciding the debtor's ability to pay by

examining what income the debtor is capable of producing in spite of his current unemployment). Although Debtor currently is unable to pay under the results of the disposable income test, the Court believes that Debtor will have the ability to pay once he is employed; moreover, the Court believes Debtor will likely be re-employed. Debtor is a forty-six year-old male in good health who earnestly seeks employment in an array of fields. In addition, there is no evidence of a long-term problem that would prohibit Debtor's eventual re-employment at a level he has formerly held. Based upon his diligence and past job history, the Court estimates Debtor can earn between \$25,000 and \$35,000 per year, and, in this income range, Debtor could pay the second mortgage. Debtor's Schedules support the Court's conclusion. If Debtor earned a gross salary of \$29,160 per year (excluding his military retirement), he would have a gross monthly income of \$2,340.00 with a monthly net of \$1,910.99. When Debtor's military retirement (\$1,040.00) is included with the net, Debtor has a total monthly net income of \$2,954.99. Deducting the expenses (\$2,515.00) from income, the Court concludes that Debtor has the ability to pay this debt as he would have \$439.99 in disposable income to contribute toward paying the second mortgage obligation.

The next step in the analysis is for Debtor to prove that, pursuant to §523(a)(15)(B), the benefit he would receive from the discharge of his obligation to pay the second mortgage outweighs the detriment Wife and the children would suffer if the debt were discharged. When performing a benefit / detriment analysis, courts exercise their equitable powers, evaluate the lifestyles of the parties, and make a value judgment in deciding which party suffers the most. See Phillips v. Phillips (In re Phillips), 187 B.R. 363, 369 (Bankr. M.D. Fla. 1995). To make this value judgment, courts typically rely on a totality of the circumstances approach and consider a variety of factors, including the income and expenses of both parties, whether the non-debtor

spouse is jointly liable on the debts, the number of dependents, the nature of the debts, the reaffirmation of any debts, and the non-debtor spouse's ability to pay. See Lipira v. Kaczmarksj (In re Kaczmarksj), 245 B.R. 555, 564 (Bankr. N.D. Ill. 2000); Sparagna v. Metzger (In re Metzger), 232 B.R. 658, 665 (Bankr. E.D. Va. 1999).

Upon reviewing these factors, the Court believes that the detriment Wife would suffer outweighs the benefit of Debtor's discharge. Wife testified that her net monthly income from her job as an administrative assistant is \$1,655.00. She also explained that her employer has reduced salaries and that she does not expect any salary increase in the near future. In addition to her salary, she receives \$680.00 monthly from Debtor in child support and her portion of his military retirement pension. Wife also testified that her first mortgage monthly payment is \$621.00 and that she owes a minimum monthly payment of \$230.00 for debts incurred since the divorce. In its review of Wife's income and expenses, the Court concludes that Wife would suffer a detriment in having to assume a monthly payment in the amount of \$307.00 as this additional debt would seemingly stretch her already constricted budget to what might be an unmanageable amount.

In addition to the financial strain the discharge would create for Wife, Debtor's obligation to pay the second mortgage directly impacts the welfare of his children, and, if the debt were not paid, the possibilities that Wife and the children would have to find a new residence would increase dramatically. Moreover, as discussed previously, the nature of this obligation is to provide shelter for the parties' children. To discharge this obligation jeopardizes the protection and support Debtor previously promised to provide and could create a significant detriment felt not only by Wife but by the children as well. Although the Court agrees that Debtor would

surely enjoy the benefit of the fresh start, the Court concludes that the detriment suffered by Wife outweighs this benefit. Accordingly, the Court would not discharge Debtor's obligation to pay the second mortgage on the former marital home pursuant to §523(a)(15).

B. Credit Card Debt

The parties also dispute whether Debtor's obligation to pay credit card bills is excepted from discharge under §523(a)(15). The Court agrees with the parties that the proper code section for resolving this issue is §523(a)(15) as the Court has previously treated credit card debts divided in a divorce decree as non-support debt to be examined under §523(a)(15). See Baker, at 17; see also Strayer v. Strayer (In re Strayer), 228 B.R. 211, 216 (Bankr. S.D. Ind. 1996); Hill v. Hill (In re Hill), 184 B.R. 750, 757 (Bankr. N.D. Ill. 1995).

The Court begins its analysis by finding that Debtor's obligation to pay the credit card bills was incurred by Debtor in connection with the parties' Divorce Decree. Next, the Court must determine whether Debtor has the ability to pay this debt pursuant to §523(a)(15)(A). As addressed previously, Debtor, at the time of the trial, earned monthly income in the amount of \$2,112.00 and had monthly expenses totaling \$2,515.00; however, the Court, because of its belief that Debtor will find employment, imputed income in the monthly amount of \$2,954.99 to Debtor.⁵ The debt at issue is the balance of five credit card accounts, which, when Debtor filed bankruptcy, totaled \$57,429.00. Regarding two of these accounts, Navy F.C.U. and M.B.N.A., Debtor is solely liable for the balances as they are not joint accounts. Accordingly, these debts are to be discharged and therefore not the subject of this Complaint. Debtor is then left with

⁵ Again, this amount includes both a salary as well as Debtor's military retirement pension.

three joint accounts that he agreed to pay: Capital One (\$14,215.00), First U.S.A. (\$16,881.00), and Fleet (\$7,894.00). The total of these accounts is \$38,990.00, and, using the imputed income from the analysis described above, the Court concludes that Debtor cannot pay this debt entirely. After subtracting the \$307.00 second mortgage obligation from his projected disposable income, Debtor has remaining disposable income, yet the amount of debt at issue is too great to allow Debtor to service that debt in any meaningful way so as to benefit Wife as creditors would seek to collect the deficiencies from her.

The Court, however, believes Debtor can pay part of the indebtedness and holds that Debtor should remain obligated to Wife on the amount represented by the First U.S.A. account. The Court reaches this conclusion based upon an assessment of the benefit / detriment Debtor and Wife would experience if the entire debt were discharged. Although Debtor would surely enjoy a great benefit of the fresh start with three less debts with which to contend, Wife would suffer a profound detriment. If she alone had to shoulder the burden of paying the three joint credit card accounts, her already precarious financial position, as described above, would reach a breaking point and leave her facing the decision of whether to file a bankruptcy petition herself. Moreover, it is reasonable for the Court to project that, once Debtor is re-employed, he will have some disposable income to contribute toward the credit card debt. In addition, with the amount of the debt reduced by his Chapter 7 discharge, Debtor's ability to pay on this account is increased. Instead of facing a formidable sum of almost \$39,000, Debtor must pay less than half of this amount, \$16,881.

The Court recognizes that this situation is one where both parties earn modest incomes and lead frugal lifestyles and that, ultimately, one party is not in a better position than the other to

handle the debt. Dealing with similar fact situations, some courts have granted the discharge regardless of the detriment to the former spouse; however, this Court believes the better approach is expressed in Sparagna v. Metzger (In re Metzger), 232 B.R. 658, 666 (Bankr. E.D. Va. 1999). In Metzger, the Court explained that the detriment the former spouse would suffer upon the discharge of both credit card debts could be the proverbial straw breaking her financial back and leading her to bankruptcy or to creditors attaching a judicial lien to her residence. The Court also explained the importance of the debtor receiving his fresh start. Striking a middle ground, the Court held that one credit card account was discharged and that the debtor remained liable for the other account. This Court believes this approach is the fairest to all parties as Debtor will receive a fresh start as the vast majority of his credit card debt is discharged while Ms. Seybt is not solely saddled with all of the joint credit card debt.

CONCLUSION

From the arguments discussed above, it is therefore

ORDERED that, Debtor's obligation to Wife to pay the second mortgage encumbering the former marital home is not discharged.

IT IS FURTHER ORDERED that Debtor's obligation to Wife on the Capital One and Fleet credit card accounts is discharged.

IT IS FURTHER ORDERED that Debtor's obligation to Wife in the amount represented by the First U.S.A. account is excepted from discharge.⁶

⁶ While under the Court's analysis it appears that, upon re-employment at the income level projected herein, Debtor could pay \$100.00 per month, the Court shall not set payment terms, but leave it to the Family Court to decide or the parties to agree upon payment

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 14, 2002.

terms. Additionally, the Court notes that Debtor's ability to pay the debt represented by this account may be affected in the future based upon the obligation incurred pursuant to the Divorce Decree to pay collegiate support for his children. At the appropriate time, the Family Court can consider altering Debtor's obligation on the debt represented by the account based upon a change of circumstances stemming from Debtor's providing collegiate support to his children.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JAN 15 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk