

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
01 FEB 15 PM 12:18  
U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

Christopher R. Steele,

Debtor.

Christopher R. Steele,

Plaintiff,

v.

Sharon Assey,

Defendants.

C/A No. 00-00729-W

Adv. Pro. No. 00-80251-W

JUDGMENT

Chapter 7

ENTERED

FEB 16 2001

S. R. P.

Based on the Findings of Fact and Conclusions of Law as stated in the attached Order of the Court, Sharon Assey's Motion to Dismiss the above-referenced adversary proceeding is granted.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
February 15, 2001

**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:

**FEB 16 2001**

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R. PHIPPS

Deputy Clerk

✓ Downey  
✓ Dalrymple

2002 MAR 13  
11:22 AM

**FILED**  
UNITED STATES BANKRUPTCY COURT  
**01 FEB 15 PM 12:18**  
FOR THE DISTRICT OF SOUTH CAROLINA  
U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

**ENTERED**  
FEB 16 2001  
**S. R. P.**

IN RE:

Christopher R. Steele,

Debtor.

Christopher R. Steele,

Plaintiff,

v.

Sharon Assey,

Defendants.

C/A No. 00-00729-W

Adv. Pro. No. 00-80251-W

**ORDER**

Chapter 7

THIS MATTER comes before the Court upon the Motion to Dismiss filed on February 2, 2001 by Sharon Assey ("Defendant") requesting that the relief sought by Christopher R. Steele ("Plaintiff" or "Debtor") in the Adversary Proceeding be denied and that the proceeding against Defendant be dismissed. On November 14, 2000, Plaintiff filed the Adversary to Enforce Discharge Injunction under 11 U.S.C. §524,<sup>1</sup> Alternatively to determine Dischargeability of Debt under §523(a)(15) (the "Complaint"). In the Complaint, Plaintiff requested that the Court find that Sharon Assey ("Defendant") violated Debtor's discharge injunction pursuant to §524 by filing a verified petition for contempt in the Family Court of the Eleventh Judicial Circuit in South Carolina for Debtor's non-payment of debts arising from a property settlement entered into between Plaintiff and Defendant. In the alternative, Debtor requested that the Court find that the obligation to Defendant to pay certain joint debts pursuant to the settlement be deemed discharged pursuant to §523(a)(15). After considering the pleadings in the adversary proceeding

---

<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

and the arguments of counsel at the Motion to Dismiss, the Court makes the following Findings of Fact and Conclusions of Law:<sup>2</sup>

### **FINDINGS OF FACT**

1. Plaintiff and Defendant were formerly husband and wife; however, they then divorced and a Decree of Divorce of the Lexington Family Court was filed on or about September 22, 1999.
2. The Family Court Decree obligated Plaintiff to pay certain marital debts, including the obligation to pay credit card obligations jointly incurred by the parties. Furthermore, the Decree required Plaintiff to indemnify and hold harmless Defendant from any cost, expense or obligation incurred by reason of Plaintiff's failure to pay or satisfy said debts in full.
3. On January 28, 2000, Plaintiff filed for relief under Chapter 7 of the Bankruptcy Code.
4. Defendant was not included on Debtor's Schedules E or F, but was included on Plaintiff's Schedule H as a co-debtor on certain marital debts.
5. Due to an apparent problem with the software of Plaintiff's attorney, Defendant was not included in the mailing matrix of creditors; therefore, she never received notice of Debtor's pending bankruptcy case. The parties stipulated that Defendant did not have actual or constructive notice of Debtor's bankruptcy filing.
6. During the pendency of the Chapter 7 case and before the deadline prescribed by the Bankruptcy Rules, neither Defendant nor Debtor filed a complaint pursuant to §523(a)(15) to determine the dischargeability of the debts presently at issue.

---

<sup>2</sup> 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.

7. On April 6, 2000, the Chapter 7 Trustee filed a Report of No Distribution; subsequently, on May 17, 2000, an Order was entered granting Debtor's discharge under §727, discharging the Chapter 7 Trustee, and closing the case.

8. On July 28, 2000, Defendant filed a Verified Petition for Contempt in the Family Court for the Eleventh Judicial Circuit in South Carolina on the basis of Debtor's failure to pay the debts arising from the Property Settlement entered into between the parties.

9. Debtor's new bankruptcy counsel then filed a Motion Reopening Case on September 25, 2000, for the purpose of enforcing a discharge injunction against Defendant. By Order entered on October 24, 2000, the case was reopened, and on November 14, 2000, Debtor filed the Adversary Proceeding, which is presently at issue before the Court, for the purpose of enforcing the discharge injunction against Defendant or determining that the subject debts are dischargeable pursuant to §523(a)(15).

10. At the Pretrial Conference, the parties stipulated that due to the lack of notice, Defendant was not liable for a violation of a discharge injunction and further agreed that the issues regarding the domestic obligation were not covered by §523(a)(5).

### **CONCLUSIONS OF LAW**

Defendant moves to have the Complaint dismissed on the basis that the obligation that Plaintiff owes Defendant to indemnify and hold her harmless against joint marital debts is nondischargeable due to the Plaintiff's failure to include the debt in his Schedules. The Court finds that Defendant's Motion to Dismiss should be granted, but in order to reach that conclusion, an analysis of several sections of the Bankruptcy Code dealing with dischargeability of debts is necessary.

Section 727(b) provides that a debtor should be granted a discharge of all debts with the exception of the debts provided in §523. See, e.g. §727(b) (“Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter . . .”). In turn, “[s]ection 523 excepts certain debts from discharge and then, in section 523(c)(1), carves out certain debts under section 523(a) which will be discharged unless a creditor files a timely complaint to object to discharge.” In re Crawford, 183 B.R. 103, 106 (Bankr. W.D. Va. 1995). More specifically, §523(c)(1) provides:

*Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6) , or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15), as the case may be, of subsection (a) of this section.*

§523(c)(1) (Emphasis added). Section 523(c)(1) thus gives the bankruptcy court exclusive jurisdiction to determine the dischargeability of debts excepted from discharge under subsections (2), (4), (6), and (15) and further requires that creditors who fall within those subsections initiate proceedings for an exception to discharge. However, the Bankruptcy Code provides protection from such discharge in cases where the creditor does not receive actual notice of the deadline. In fact, §523(a)(3)(B) provides that a debt should not be discharged if it was not listed nor scheduled in time to permit the following:

if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

Despite the fact that §523(a)(3)(B) does not expressly include a reference to §523(a)(15), the

omittance of that section is deemed to have been a technical error. See, e.g., Jestice v. Jestice (In re Jestice), 2000 WL 1805312, \*7 n.14 (Bankr. E.D. Va. 2000) (“Nearly every commentator has observed that Congress--when it amended the bankruptcy Code in 1994 to add §523(a)(15)--apparently blundered by omitting §523(a)(15) from the list of specially-treated debts in §523(a)(3)(B).”); Herman v. Bateman (In re Bateman), 254 B.R. 866, 870 n.5 (Bankr. D. Ma. 2000) (“Note that the protection of §523(a)(3)(B) does not extend to creditors holding claims that may not be dischargeable under §523(a)(15). This is a technical error.”); see also 4 Collier on Bankruptcy, ¶523.09[1] (15th ed. rev. 2000).

In this case, both parties agree and expressly admitted on the record that the obligation at issue would ordinarily be subject to determination under §523(a)(15). Furthermore, it is clear that, due to an apparent glitch in the software of the attorney for the debtor, Defendant was never included in the mailing matrix and thus never received notice of Debtor’s bankruptcy filing, nor did she ever acquire actual notice of the bankruptcy until the case had been closed. Thus, as explained above, the joint debts at issue were not discharged by Debtor’s Chapter 7 bankruptcy. See, e.g., 4 Collier on Bankruptcy ¶523.09[1] (15th ed. rev. 2000) (“Under subsection (a)(3)(B), if a debt has not been scheduled in time for the creditor to seek a determination of dischargeability under section 523(a)(2), (a)(4), (a)(6) or possibly (a)(15) and debt is of the kind specified in any of those sections, the debt is nondischargeable.”).

In the alternative, Plaintiff requests a current finding of no exception to discharge of the hold harmless obligation to Defendant regarding the joint debts pursuant to §523(a)(15). However, the Court finds that such a current dischargeability action pursuant to §523(a)(15) is time-barred as against both parties. Pursuant to Fed. R. Bankr. P. 4007(c), “[a] complaint to determine the dischargeability of a debt under §523(c) shall be filed no later than 60 days after

the first date set for the meeting of creditors.” Such deadline can only be extended on motion filed prior to the expiration of the deadline. See, e.g. Fed. R. Bankr. P. 4007(c) and 9006(b)(3); see also Fidelity Nat’l Title Ins. Co. v. Franklin (In re Franklin), 179 B.R. 913, 923 (Bankr. E.D. Cal. 1995). In this case, the original time has passed to file a dischargeability complaint under §523(a)(15). Furthermore, “[r]eopening and adding a creditor to the schedules does nothing to resurrect that deadline.” In re Humar, 163 B.R. 296, 299 (Bankr. N.D. Ohio 1993).<sup>3</sup>

The Court acknowledges that Debtor may not be personally at fault for failing to include Defendant in the mailing matrix and for causing her lack of notice.<sup>4</sup> However, the Court also notes that Debtor could have himself timely requested such a dischargeability determination pursuant to §523(a)(15), but failed to do so. Therefore, from the foregoing arguments,

**IT IS ORDERED** that Defendant’s Motion to Dismiss is granted.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
February 15, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

---

<sup>3</sup> As stated earlier, §523(c) clearly gives bankruptcy courts “exclusive jurisdiction to decide exceptions to discharge that arise under sections 523(a)(2), (4), (6) and (15).” In re Crawford, 183 B.R. 103, 105 (Bankr. W.D. Va. 1995). Despite the fact that a state court does not have the jurisdiction nor authority to make a determination of dischargeability pursuant to §523(a)(15), it does retain the authority to make similar equitable considerations regarding the marital obligation, such as modification of said obligation on the basis of changed circumstances.

<sup>4</sup> The Court notes that Debtor may have a cause of action against his prior attorney or the software company whose negligence may have caused the failure to include Defendant in the mailing matrix. To allow untimely litigation under §523(a)(15) in this case would unfairly place the consequences of this error on the Defendant.