

NOV 08 2010

United States Bankruptcy Court
Columbia, South Carolina (19)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Christopher Michael Flood,

ENTERED

NOV 08 2010

K.E.P.

Debtor(s).

C/A No. 10-06063-JW

Chapter 13

ORDER

This matter comes before the Court upon a Motion for Relief from Automatic Stay ("Motion") filed by Debtor's ex-spouse, Marodith Hamrick, f/k/a Marodith H. Flood ("Movant"). The Motion seeks relief for cause pursuant to 11 U.S.C. § 362(d)(1)¹ to allow Movant to return to state court to enforce a divorce settlement. Debtor filed an Objection to the Motion. The parties through counsel stipulated that the record in this case is complete with the inclusion of the exhibits to the Motion and exhibits attached to Movant's Proof of Claim admitted into evidence for the Court's consideration of this matter. After reviewing the pleadings as well as the arguments and evidence counsel presented at the hearing, the Court makes the following Findings of Fact and Conclusions of Law.²

FINDINGS OF FACT

1. Movant and Debtor were divorced by Order of the Georgetown County, South Carolina, Family Court, dated March 31, 2008, and filed April 4, 2008 ("Divorce Decree"). It appears the parties have no children as a result of the marriage.
2. The Divorce Decree incorporates the parties' Property and Separation

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

² 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.

Agreement dated January 24, 2008 ("Agreement") whereby the parties resolved several issues including the equitable division of their marital property and debts.

3. The Agreement provides that Debtor is to retain possession of the marital home built during the marriage.

4. Pursuant to the Agreement, Debtor agreed to be responsible for a loan obtained from BB&T during the construction of the home and the balance owed on a BB&T credit card resulting from purchases for the home (collectively, "Debts").

5. Debtor also agreed to remove Movant's name from these Debts by refinancing into Debtor's name or paying the Debts in full and also to hold the Movant harmless for any of the obligations associated with the home.

6. The parties stipulate that Debtor has not paid the Debts as ordered by the Family Court.

7. Movant asserts Debtor is in violation of the Family Court order and it appears Debtor may be incarcerated for contempt if the automatic stay is lifted and Movant pursues her remedies in state court.

8. In another provision of the Agreement, each party agreed that they were "capable of taking care of themselves" and also "waived any and all rights they may have for alimony against the other."

9. Debtor filed a petition for relief under Chapter 13 on August 24, 2010.

10. Debtor lists Movant as an unsecured creditor in his schedules and statements with a claim for marital debt and attorney fees in the amount of \$26,870.00.

11. Movant filed a proof of claim in the amount of \$33,657.15 as a priority domestic support obligation claim.

12. Subsequent to the hearing on the Motion, Debtor filed an objection to Movant's proof of claim asserting that the claim is not a domestic support obligation and thus not entitled to be paid as a priority debt.

CONCLUSIONS OF LAW

Movant argues cause exists pursuant to § 362(d)(1) for modification of the automatic stay to allow her to pursue her state court remedies with regard to a divorce action currently pending in Family Court because the Debts are in the nature of domestic support obligations.³ Movant implies that Family Court is the preferred forum to adjudicate her rights. The parties dispute whether the Debts owed to Movant constitute a domestic support obligation and therefore are non-dischargeable pursuant to § 523(a)(5). Debtor takes the position that the Debts are in the nature of a property settlement and thus are appropriately treated in the Chapter 13 plan and dischargeable under § 1328(a)(2). In the event the Debts are appropriately treated in Chapter 13, relief from stay would disrupt the plan and should therefore be denied absent circumstances warranting otherwise.

Domestic support obligation is defined under § 101(14A) as a debt 1) owed to a former spouse; 2) in the nature of alimony, maintenance, or support; and 3) established pursuant to a separation or divorce decree. Domestic support obligations are an exception from discharge in a Chapter 13 case pursuant to § 1328(a)(2).⁴

In determining whether an obligation falls within the category of alimony, maintenance, or support, courts consider several factors, including whether the divorce

³ Movant does not appear to argue that the Debts are an exception from the automatic stay pursuant to 11 U.S.C. §§ 362(b)(2)(B) or (C).

⁴ In contrast, a debt described under § 523(a)(15)⁴ is dischargeable in a chapter 13 case because § 1328(a)(2) does not include § 523(a)(15) as an exception to discharge. *In re Sprouse*, 2008 WL 544999, *1 (Bankr. D. Neb. 2008).

court intended the obligation at issue to be one for support at the time of the divorce. See Baker v. Baker (In re Baker), 274 B.R. 176, 188 (Bankr. D.S.C. 2000); In re Poole, 383 B.R. 308, 314 (Bankr. D.S.C. 2007). Other factors to consider include: (1) the substance and language of the document in question; (2) the financial condition of the parties at the time of the decree of agreement; (3) the function served by the obligation and intent of the parties at the time of the agreement; and (4) whether there is evidence to question the intent or a spouse or evidence of overbearing by either party. Baker, 274 B.R. at 189 (citing In re Catron, 164 B.R. 912, 919 (E.D. Va. 1994); see also Breibert v. Breibert (In re Breibert), C/A No. 03-07440-W, Adv. Pro. No. 04-80195-W, slip op. at 8-9 (Mar. 22, 2005); In re Poole, 383 B.R. at 314.

An obligation that is fixed and non-modifiable indicates a property settlement; however this factor alone is not decisive. Kinder v. Kinder (In re Kinder), C/A No. 02-10519-W, Adv. Pro. No. 02-80342, slip op. at 4 (Bankr. D.S.C. Feb. 10, 2003). The court may also examine whether the obligation provides for the recipient's daily necessities. Seybt v. Seybt (In re Seybt), C/A No. 01-80128-W, 2002 WL 342346 at *2 (Bankr. D.S.C. Jan. 14, 2002) (citing Burton v. Burton (In re Burton), 242 B.R. 674, 679 (Bankr. W.D. Mo. 1999)).

When an agreement contains a provision to hold an ex-spouse harmless in regards to payments which relate to the allocation of debt, courts have determined such obligations can be in the nature of alimony, maintenance and support if the agreement itself expressly states the obligation is in the nature support. See, e.g. In re Poole, 383 B.R. at 314; Sledge v. Sledge (In re Sledge), 47 B.R. 349, 353 (Bankr. E.D. Va. 1981); Catron v. Catron (In re Catron), 186 B.R. 197, 205 (Bankr. E.D. Va. 1995).

Based upon the stipulations and evidence presented, the Court finds that the Debts owed to Movant are not a domestic support obligation. The provisions allocating the Debts to the Debtor are under the heading "Equitable Division." The Debts are for a fixed amount and the obligation will end once the Debts are paid in full or refinanced into Debtor's name. The hold harmless provision in the Agreement does not label the Debts as alimony, maintenance or support. Further, there is no indication that at the time of the divorce or during the marriage that the financial condition of the parties was unequal or that the Debts were awarded to Movant to maintain daily necessities. In fact, the Agreement specifically states that the parties are capable of providing for themselves and both parties waived all right to alimony. It appears from the Divorce Decree that Movant was represented by counsel during the divorce and there is no evidence before the Court to question the intent of the parties as presented in the Agreement and Divorce Decree nor is there any evidence of overbearing by either party.

The Court finds for purposes of this Motion that the Debts are not in the nature of alimony, maintenance or support, but instead appear to be a property settlement that is treatable in the Chapter 13 plan. Therefore, the Motion is hereby denied because no cause exists at this time to grant the relief sought.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 8, 2010