

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

FILED

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U.S. BANKRUPTCY COURT  
DIST OF SOUTH CAROLINA

In Re: )  
 )  
DAVID M. STRONG, )  
 )  
 )  
Debtor. )  
\_\_\_\_\_ )

Bankruptcy Case No.: 94-75489

Chapter 7

ENTERED

NOV 14 1995

R. S. S.

BARBARA J. STRONG, )  
 )  
Plaintiff, )

Adversary\Complaint No.: 95 - 8100

v. )

DAVID M. STRONG, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**ORDER DETERMINING  
BURDEN OF PROOF**

This matter comes before the Court upon the motion of the Plaintiff for an Order of this Court determining the burden of proof in the above-referenced adversary action for the causes of action against the Defendant arising under 11 U.S.C. §523(a)(15). Plaintiff properly filed and served the motion, but received no responsive pleading. This Court finds that the issue has been properly raised.


This Court finds that the burden of proof to prove that the initial requirements in the first Paragraph of the section have been met should rest with the Plaintiff. The burden of proof under the lettered paragraphs of §§523(a)(15)(A)&(B), however, should rest upon the Defendant. The determinative issue under this code section is whether the defendant (debtor) has the ability to pay debts from income or property not reasonably necessary for his or his dependents' maintenance and support or whether the discharge of debts would result in a benefit to the debtor which would outweigh the detriment to the former spouse. If the Plaintiff were to bear the

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issues, Plaintiff would not have any incentive to meet the burden, because that proof would support the Defendant's case for dischargeability.

NOW, THEREFORE, IT IS HEREBY ORDERED that the burden of proof under 11 U.S.C. §523(a)(15) is first upon the Plaintiff to bring the matter before the Court, and to prove the initial requirements of the first Paragraph of the section have been met. The burden of proof on the lettered Paragraphs, §§523(a)(15)(A) and (B), rests upon the Defendant/debtor.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
JOHN E. WAITES  
United States Bankruptcy Judge

November 13, 1995.

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