

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:	)	
	)	<b>JUDGE RICHARD L. SPEER</b>
Nicholaus/Tabetha Stoodt	)	
	)	Case No. 01-3048
Debtor(s)	)	
	)	(Related Case: 00-35074)
Amy Biederman	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
Nicholaus Stoodt	)	
	)	
Defendant(s)	)	

**ORDER**

This cause comes before the Court after a Trial held on the Plaintiff’s Complaint to Determine the Dischargeability of a marital debt. The statutory authority upon which the Plaintiff relies for her Complaint is 11 U.S.C. § 523(a)(15) which generally excludes from the scope of a bankruptcy discharge property settlements arising from a divorce unless one of two exceptions are met: (1) the debtor does not have “the ability to pay” the debt within the meaning of subparagraph (A) of § 523(a)(15); or within the meaning of subparagraph (B), “discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to [the] spouse, former spouse, or child of the debtor[.]”

With respect to the Plaintiff’s cause of action under § 523(a)(15), only one debt is at issue: A potential deficiency which may result if the sale of the Parties’ former marital home is insufficient to satisfy the first mortgage. With regards to this debt, the undisputed facts of this case show that both the Plaintiff and the Defendant executed a first mortgage on their former marital residence to Fifth-Third Bank in the amount of Fifty-six Thousand Five Hundred Twenty-five dollars (\$56,525.00). In addition,

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it was presented to the Court that, despite the Parties' obligation being in arrears for a significant period of time, Fifth-Third Bank has not concluded foreclosure proceedings against the property.

Under § 523(a)(15), the creditor bears the initial burden of proving that the debt at issue arose from a separation or divorce. Once this burden has been established, however, the burden then shifts to the debtor who must establish his/her compliance with one of the two exceptions to nondischargeability set forth in § 523(a)(15). *See, e.g., Erd v. Erd (In re Erd)*, 282 B.R. 620, 625 (Bankr. N.D.Ohio 2002). In applying this standard to the case, there is no dispute between the Parties that the Defendant was ordered, in the Parties' decree of divorce, to assume and hold the Plaintiff harmless on the mortgage obligation to Fifth-Third Bank. Consequently, the issue at the Trial was whether the Defendant had met his burden under either subparagraph (A) or (B) of § 523(a)(15).

The "ability to pay" test of subparagraph (A) of § 523(a)(15) requires that a court ascertain the amount of income that the debtor has available that is not "reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor . . ." *Calabrese v. Calabrese (In re Calabrese)*, 277 B.R. 357, 361 (Bankr. N.D.Ohio 2002). By comparison, the "balancing test" of subparagraph (B) requires that a court conduct a "standard of living" analysis which necessitates comparing the parties' respective standards of living to determine if the debtor's standard of living will fall materially below that of the creditor's standard of living if the debt is not discharged. *Id.* at 363. Implicit in both of these tests, however, is that the trier-of-fact be able to ascertain, with reasonable certainty, the amount of indebtedness involved. *See, e.g., Courtney v. Trout (In re Trout)*, 282 B.R. 863, 870 (a debtor's disposable income must be set against the amount of the marital debt at issue to determine whether or not the debtor can repay the marital debt within a reasonable amount of time); *In re Erd*, 282 B.R. at 625 (after considering the total amount of the indebtedness involved, the court must determine whether the debtor can realistically pay the marital debt(s) within a reasonable amount of time).

In this case, however, no such determination can be made. For example, the Parties did express optimism that their former marital home would sell for an amount sufficient to satisfy the mortgage to

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Fifth-Third Bank, thus negating the need for a dischargeability determination. On the other hand, the facts of this case show that the Parties' former marital residence has been vacant for a considerable period of time, thus raising concerns as to whether the property has significantly depreciated in value. Along this same line, it would appear that considerable interest and other penalties have accrued on the Plaintiff's obligation to Fifth-Third Bank.

Accordingly, based upon the above concerns, the Court finds that it is premature, at this time, to make a ruling on whether the Defendant is entitled to a discharge of his marital obligation pursuant to either subparagraph (A) or (B) of § 523(a)(15). Therefore, the Court will hold this matter in abeyance until the amount of the Plaintiff's liability, if any, is determined. The Parties may, however, if they wish the Court to proceed with matter, submit by way of a joint stipulation the amount of indebtedness at issue, at which time the Court will proceed to make a ruling.

Accordingly, it is

**ORDERED** that upon the sale of the Parties' former marital property, the Parties notify the Court as to the amount of deficiency, if any, for which the Plaintiff, Amy Biederman, is liable.

It is **FURTHER ORDERED** that the Clerk, U.S. Bankruptcy Court, hold this matter in abeyance until the information set forth in the above Order has been received.

Dated:

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Richard L. Speer  
United States  
Bankruptcy Judge