IT IS SO ORDERED.

Dated: 04:22 PM September 16 2011

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 09-50070
	)	
CHRISTIAN NMN FODOR,	)	CHAPTER 13
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM
	)	
	)	**MEMORANDUM OPINION RE: OBJECTION TO CONFIRMATION OF DEBTOR'S AMENDED PLAN**

Currently before the Court is an objection filed by Terri Fodor to confirmation of debtor's amended chapter 13 plan. This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). Based upon pleadings on file in this case, the Adversary Proceeding (as defined below) and the arguments of counsel and pursuant to FED. R. BANKR. P. 7052, the Court makes the following findings of fact and conclusions of law.

BACKGROUND

The matter now before the Court ultimately stems from a contentious domestic relations dispute between debtor, Christian Fodor and his ex-wife, Terri Fodor. On January 23, 2008 Christian and Terri Fodor entered into a Separation Agreement (the "Separation Agreement") and on February 27, 2008, a Decree of Divorce was entered by the Summit County Court of Common Pleas, Domestic Relations Division (the "Divorce Decree"). The Divorce Decree fully incorporated the Separation Agreement which requires, *inter alia*, that Christian Fodor make payments to Terri Fodor on account of spousal support and child support (collectively, the "Support Payments"). In addition to the Support Payments, the Separation Agreement provided for division of certain personal effects, household furniture, bank accounts and individual retirement accounts.

The Separation Agreement also provided for the transfer of certain real and personal property between the parties and such transfers were made subject to hold harmless provisions (collectively, the "Hold Harmless Agreements"). For instance, as to the jointly owned marital residence located at 4409 Regal Drive in Copley, Ohio the Separation Agreement provides the following:

> Husband shall retain as his property, free and clear of any claim of Wife, all right, title and interest in the marital residence. Immediately upon execution of this agreement, Wife shall quit claim all her right, title and interest in the marital residence to Husband. Husband shall assume, be solely responsible for, and pay in a timely manner the outstanding note and mortgage balance on the marital residence . . . and further assume, be solely responsible for, and pay in a timely manner the homeowner's insurance, real estate taxes and utilities, and indemnify and hold Wife absolutely harmless thereon.
>
> On or before December 31, 2008, Husband shall remove Wife's name from the outstanding note and mortgage on the marital residence through CitiMorgage . . . .

> In the event the Husband shall be delinquent on the monthly note and mortgage payments for a period of two months prior to refinancing of the marital residence in Husband's name only, the marital residence shall be sold forthwith, the purpose of this clause being to prevent damage to the Wife's credit rating due to Husband's failure to pay the mortgage and note.

Separation Agreement at pg. 3. As to jointly owned real property located at 555 Graham Road in Cuyahoga Falls, Ohio, the Separation Agreement provides the following:

> Husband and Wife are the owners of a certain piece of real property and dwelling thereon known as 555 Graham Road . . . consisting of a commercial building and adjacent parking lot . . . . Wife shall retain as her property, free and clear of any claim of Husband, all right, title and interest in the Graham Road Property. Immediately upon execution of this agreement, Husband shall quit claim all his right, title and interest in the Graham Road Property to Wife. Commencing February 1, 2008, Wife shall assume, be solely responsible for, and pay in a timely manner:
>
> 1. The outstanding note and mortgage on said Graham Road Property through Valley Savings Mortgage in the approximate amount of $663,676 payable in monthly installments on $5,158.00.
>
> 2. The outstanding second note and mortgage balance on said Graham Road Property through Valley Savings Mortgage in the approximate amount of $75,538 payable in monthly installments of $1,324.00.
>
> 3. The commercial insurance.
>
> 4. The real estate taxes.
>
> Wife shall indemnify and hold Husband absolutely harmless on the above obligations.
>
> On or before December 31, 2008, Wife shall refinance the outstanding notes and mortgages on the Graham Road Property in her name only thereby relieving Husband from any obligation thereon.
>
> In the event Wife shall be delinquent on the monthly note and mortgage payments for a period of two months prior to her refinancing the Graham Road Property in her name, said property shall be sold forthwith. The purposes of this clause being to prevent damage to Husband's credit rating due to Wife's failure to pay the mortgages and notes.

> Husband and Wife have entered into a certain lease agreement wherein Wife as Lessor shall lease to Husband as Lessee a portion of the Graham Road Property . . . . Husband shall personally guarantee the Lease Agreement. . . .

Separation Agreement at pp. 4-5.

As to the couple's multiple motor vehicles, the Separation Agreement provided that Christian Fodor would retain, free and clear of any claim of Terri Fodor, a 2003 BMW 330i, a 1996 Jimmy SLT, and a 2004 Harley-Davidson FXST motorcycle. Terri Fodor would retain, free and clear of any claim of Christian Fodor, a 2003 Audi A-4 and a 2004 Chrysler Pacifica. Each party was obligated to assume and be responsible for the outstanding notes and liens on the vehicles they retained and to indemnify and hold the other party harmless thereon.

On January 10, 2009, Christian Fodor filed a voluntary chapter 7 bankruptcy petition. On May 8, 2009, Terri Fodor initiated adversary proceeding number 09-5066 (the "Adversary Proceeding") by filing a complaint objecting to the dischargeability of debt owed to her by her ex-husband. Terri Fodor's amended complaint appears to be a copy of an "Amended Motion for Contempt" filed in Domestic Relations Court on December 9, 2008 with the addition of language indicating that the Adversary Proceeding is "grounded upon Section 523(a)(2), (4) and (6)" of the Bankruptcy Code.

An initial pre-trial conference was held in the Adversary Proceeding on August 24, 2009. During that pre-trial conference counsel indicated that they hoped to reach a consensual resolution of the matter. Accordingly, the pre-trial conference was adjourned to allow counsel to discuss settlement. The parties then engaged in informal discovery and on September 11, 2009, counsel filed a joint request that the Adversary Proceeding be referred to mediation. An order referring the matter to mediation before Retired Bankruptcy Judge Harold F. White was entered on October 14, 2009.

Judge White conducted a mediation of the matter on October 30, 2009 and adjourned the matter to allow the parties to retain an accountant to value a business owned by debtor's father.

On January 28, 2010 the parties filed a joint "Motion to Employ Accountant and to Set Parameters Regarding Services of Said Accountant." An order granting the motion to employ the accountant was entered on February 22, 2010. That order provides, *inter alia*, the "[t]he accountant's findings and reports may be presented in this adversary proceeding, in the current Chapter 7 proceeding, or in a any Chapter 13 proceeding in the event of conversion, and shall be considered a stipulation of fact in said proceedings." A further mediation was conducted by Judge White on April 15, 2010 but was unsuccessful.

On May 14, 2010 debtor filed a motion seeking to convert his case to chapter 13 (the "Motion to Convert"). On June 3, 2010 Terri Fodor filed an objection to the Motion to Convert claiming that "Debtor's debts to his ex-spouse are non-dischargeable and the Debtor should not be permitted to attempt to claim such under § 1328(a)(2)." A response to Terri Fodors' objection was filed on June 8, 2010 in which debtor stated the following:

> Without allowing the Debtor to submit his Chapter 13 plan for confirmation review, Creditor now objects to this Court permitting the Debtor to "attempt to claim" his debts to his ex-spouse are non-dischargeable. Although generally alluding to the non-dischargeability of domestic support obligations, the Creditor does not address the specific "obligations" which she alleges should be excepted from discharge.

A hearing on debtor's Motion to Convert was held on June 23, 2010 and that motion was granted by an order entered on June 25, 2010.

On June 27, 2010 debtor filed a chapter 13 plan. Pursuant to that plan debtor proposed to make semi-monthly payments to the chapter 13 trustee of $602.50 and to pay creditors holding general unsecured claims an 11% dividend. The plan also provided for direct payments to Terri Fodor on account of the Support Payments. On July 19, 2010 Terri Fodor filed a three sentence

objection to confirmation of debtor's plan contending that "[t]he proposed Plan does not appropriately address the debtor's domestic support obligation." On July 29, 2010 debtor filed a response to Terri Fodor's objection noting the following:

> Debtor respectfully submits that he is current in his domestic support obligations. Creditor does not specify the "obligation" to which she refers, however the Debtor shall assume Creditor is referring to debts to his former spouse that are not in the nature of support and thus, are not priority debts which need to be addressed specifically in his Plan, but [are] included in general unsecured debt.

A hearing on the objection to confirmation of the plan was held on September 16, 2010 and, pursuant to that hearing, a further briefing schedule was set.

On September 30, 2010 Terri Fodor filed a reply to debtor's response to her objection to confirmation of the plan. In that response Terri Fodor states that the issue before the Court is whether debtor's obligations under the Hold Harmless Agreements are "domestic support obligations" under § 523(a)(5) and, for the first time in this proceeding, she sets forth an analysis of that issue. Based upon that analysis, Ms. Fodor contends that, because § 1328(b) of the Bankruptcy Code prohibits discharge of domestic support obligations and because debtor's plan contemplates discharge of those debts, such plan cannot be confirmed. A supplemental pleading was also filed by debtor.

Upon review of the parties' pleadings the Court noted that referenced documents were not properly before the Court. Accordingly, the Court issued an order requiring the parties to file a list of all matters that were not in dispute and which could be the subject of stipulations, including any documentary evidence upon which the parties intend to rely. On October 22, 2010, counsel for Terri Fodor filed a document captioned "Stipulations of Fact." On that same day, counsel for debtor filed a motion to strike that pleading indicating that she had not given her consent to all the matters set

forth therein. Finally, after the filing of several other related pleadings, the parties filed agreed to stipulations of fact on November 30, 2010.[1]

On January 18, 2011 the Court entered an Order which set forth, in part, the following:

> Currently pending before the Court is Creditor Terri Fodor's Objection to Confirmation of the Plan . . . . The Court also notes that the chapter 13 trustee has not yet concluded the § 341 meeting of creditors, which has been continued six times since the Debtor converted to a chapter 13 case on June 25, 2010.
>
> The Court cannot confirm Debtor's chapter 13 Plan until the § 341 meeting of creditors has been concluded. Additionally, the Court is concerned that the conclusion of the meeting of creditors could lead to changes in Debtor's Plan and that such changes could be material to the Objection. It appears that in order to conserve judicial resources, it may be appropriate for the Court to hold the pending Objection in abeyance until the meeting of creditors is concluded.

The Court also scheduled a status conference in the case for January 27, 2011. That status conference was held as scheduled and the chapter 13 trustee and counsel for debtor appeared. Counsel for Terri Fodor was unable to attend due to ongoing issues regarding his health. During the status conference the chapter 13 trustee briefly reviewed for the Court the extensive background information he had prepared regarding this case. The Court then requested that the trustee prepare a summary of his information and forward a copy of the summary to counsel for both debtor and Terri Fodor. The Court then instructed counsel to review that information and confer regarding whether a resolution of the issues between their clients could be achieved. The Court indicated that, once counsel for Terri

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[1] Given the many documents that were filed in relation to stipulations [*see* docket #96 through #100 and docket #106] and the confusion caused by such multiple filings, the Court indicated in a April 29, 2011 Scheduling Order that, unless advised otherwise by the parties, the Court intended to rely upon docket #106 as the parties' stipulations. Neither party has indicated to the Court that docket #106 does not represent the stipulations in this case.

The parties' stipulations contain 19 paragraphs which mostly reiterate information from the Separation Agreement, the Divorce Decree or the docket of debtor's bankruptcy case and the Adversary Proceeding. Paragraph 3 of the parties' stipulations indicate that "the Divorce Decree and incorporated Separation Agreement attached to Creditor's Proof of Claim, filed in this Court as Claim No. 20, is a true and accurate copy of said Decree and Separation Agreement."

Fodor was permitted by his physician to return to work, a further status conference would be scheduled.

On February 8, 2011, the Court held a telephonic pre-trial conference in the Adversary Proceeding at which counsel for both debtor and Terri Fodor appeared. Pursuant to that pre-trial conference counsel agreed that the issue of dischargeability could be addressed in debtor's main bankruptcy case and that the Adversary Proceeding should be abated pending such resolution. An order abating the Adversary Proceeding was entered on February 10, 2011.

On March 27, 2011, debtor filed an amended chapter 13 plan (the "Amended Plan") which changed proposed payments to creditors holding unsecured claims from a flat 11% dividend to the following: "Unsecured creditors shall be paid an as yet undetermined percentage to be based upon timely filed and non-disputed general non-priority unsecured claims, with the total projected payout of, at a minimum, $102,000.00." The Amended Plan did not change the provision regarding Support Payments. To date, no objections to the Amended Plan have been filed.

On April 1, 2011, the chapter 13 trustee filed an eleven page "Report on Status of Case" in which he requested that a hearing be set. At the conclusion of his report the trustee also requests that the Court:

> a. Confirm the Amended Chapter 13 plan over the objection of creditors. . . .
>
> * * *
>
> c. Disallow the claims of Terri Fodor as currently filed, without prejudice, and direct that amended claims based on bankruptcy law be filed within 30 days.
>
> d. Take under consideration the question of whether or not, the claims of Terri Fodor, once amended, are dischargeable or non-dischargeable.

A status hearing in the case was scheduled for April 28, 2011.

The April 28th status hearing was held as scheduled and appearing for that matter were the chapter 13 trustee, counsel for debtor and counsel for Terri Fodor. During the status hearing the trustee reviewed information contained in his "Report on Status of Case" and noted that debtor was current on his monthly payments to trustee pursuant to the Amended Plan and also current on Support Payments to Terri Fodor. The trustee further noted that, subject to claims actually filed, he expects creditors holding general unsecured claims to receive a 30% dividend.

Despite not having filed an objection to the Amended Plan, counsel for Terri Fodor indicated that his client objects to confirmation of that plan based upon her contention that any debt arising under the Hold Harmless Agreements and not paid through the Amended Plan is not dischargeable in debtor's chapter 13 case. Based upon the trustee's review of the case and the representations of counsel, the Court stated that it would confirm debtor's Amended Plan over Terri Fodor's objection to enable the trustee to begin making distributions to creditors. The order confirming the Amended Plan was entered on May 24, 2011 and specifically provides, *inter alia*, that it will not become a final, appealable order until the Court has ruled whether the claims of Terri Fodor are dischargeable in this chapter 13 proceeding.

Pursuant to counsels' representations at the status conference, it was determined that the issue of dischargeability could be determined upon the parties' pleadings but that additional briefing would be permitted. Accordingly, the Court entered a scheduling order pursuant to which Terri Fodor was required to file any supplemental brief by not later than May 27, 2011, debtor was required to file a response by not later than June 10, 2011 and Terri Fodor was required to file reply by not later than June 17, 2011.

To date, Terri Fodor has filed no supplemental pleadings in support of her contention that debtor's obligations under the Hold Harmless Agreements are not dischargeable in this chapter 13

proceeding. On June 3, 2011, debtor filed his supplemental pleading. Pursuant to that pleading debtor indicates his reliance on previously filed pleadings and concludes as follows:

> For the reasons set forth in the Debtor's prior briefs and the chapter 13 Trustee's Report on Status of Case, the Debtor submits that any and all claims held by creditor Terri Fodor be declared to be claims which are not domestic support obligations and should thus be dischargeable within the context of Debtor's [Amended] Plan of Arrangement. This assertion is not deemed to include the Debtor's actual spousal and child support obligations to Terri Fodor which are cuurently in the amount of $3,500.00 and $1,200.00 respectively. Further the debtor concedes that his spousal support obligation shall increase to the sum of $5,000.00 beginning February 1, 2012 and further observes that the Summit County Domestic Relations Court maintains jurisdiction to adjust support as appropriate.

DISCUSSION

As an initial matter, the Court must address resolution of pending issues via pleadings filed in debtor's main bankruptcy case. Currently before the Court is the Amended Plan and Terri Fodor's objection to confirmation of that plan which, pursuant to Bankruptcy Rules 3015(f) and 9014, is a contested matter. However, the basis for Terri Fodor's objection to confirmation of the Amended Plan is that such plan contemplates the discharge of certain debts that she contends are nondischargeable pursuant to 11 U.S.C. § 523(a)(5). Bankruptcy Rule 7001 provides that the determination of the dischargeability of debts should be done by adversary proceeding.

As a general rule, when the Bankruptcy Rules specifically provide that a matter is to be decided by an adversary proceeding, such matter cannot be otherwise addressed through a chapter 13 plan provision. *See, e.g., In re Mansaray-Ruffin*, 530 F.3d 230 (3rd Cir. 2008) (holding that provision in confirmed chapter 13 plan treating mortgage assignee's claim as unsecured did not operate to invalidate a mortgage lien given that lien avoidance is to occur via adversary proceeding). However, where, as in this case, the parties consented to the resolution of the issue of nondischargeability through the plan confirmation process, fully participated in the matter and were

afforded all the procedural safeguards of an adversary proceeding, this Court may, in the interest of judicial economy, decide the matter in the context of plan confirmation. *Cf., Trust Corp. of Montana v. Patterson (In re Cooper King Inn, Inc.)*, 918 F.2d 1404 (9th Cir. 1990) (creditor's argument on appeal that it was entitled to an adversary proceeding was without merit where action in main bankruptcy case was tantamount to adversary proceeding and creditor did not object to such procedure). *See also, In re Lewis*, 142 B.R. 952, 955 (D. Colo. 1992) (and cases cited therein).

The Bankruptcy Code provides that a chapter 13 plan must provide for full payment of all claims entitled to priority under § 507. Section 507, in turn, provides for priority of certain "domestic support obligations," a term created by the 2005 amendments to the Bankruptcy Code and defined in § 101(14A) as "a debt in the nature of alimony, maintenance or support . . . without regard to whether such debt is expressly so designated[.]" A chapter 13 debtor may, however, discharge debts arising from a divorce or separation if those debts are not in the nature of alimony, maintenance or support.

> In cases under Chapters 7, 11, and 12 of the Bankruptcy Code, the distinctions between DSOs [domestic support obligations], governed by Section 523(a)(5), and other types of post-marital obligations, governed by Section 523(a)(15), are immaterial because both types of debts are nondischargeable and must be paid in full. . . . But in Chapter 13 cases, an important distinction is drawn. DSOs may not be discharged in a Chapter 13 plan. 11 U.S.C. § 1328(a)(2); 11 U.S.C. § 523(a)(5). However, other post-marital obligations, including property settlements, are dischargeable in Chapter 13. 11 U.S.C. § 1328(a)(2); 11 U.S.C. § 523(a)(15). If an obligation is deemed a DSO, pursuant to Section 523(a)(5), then the obligation is a priority debt, pursuant to Section 507(a)(1)(A), and the Chapter 13 plan must provide for its full payments, pursuant to Section 1322(a)(2). . . . In fact, the discharge will not be granted until the DSO has been paid in full. . . .*In re Johnson*, 397 B.R. 289, 296 (Bankr. M.D.N.C. 2008).

The Sixth Circuit has set forth a four-part test to analyze whether an obligation which is not designated alimony or maintenance is actually in the nature of support:

> First, the obligation constitutes support only if the state court or parties intended to create a support obligation. Second, the obligation must have the actual effect of providing necessary support. Third, if the first two conditions are satisfied, the court must determine if the obligation is so excessive as to be unreasonable under traditional concepts of support. Fourth, if the amount is unreasonable, the obligation is dischargeable to the extent necessary to serve the purposes of federal bankruptcy law.

Fitzgerald v. Fitzgerald (In re Fitzgerald), 9 F.3d 517, 520 (6th Cir. 1993). In determining whether the parties and the state court intended to create a support obligation, bankruptcy courts may consider:

> the nature of the obligations assumed (provision of daily necessities indicates support); the structure and language of the parties' agreement or the court's decree; whether other lump sum or periodic payments were also provided; length of the marriage; the existence of children from the marriage; relative earning powers of the parties; age, health and work skills of the parties; the adequacy of support absent the debt assumption; and evidence of negotiation or other understandings as to the intended purpose of the assumption.

Long v. Calhoun (In re Calhoun), 715 F.2d 1103, 1108 n.7 (6th Cir. 1983). Terri Fodor bears the burden to show, by a preponderance of the evidence, that the Hold Harmless Agreements are, in fact, domestic support obligations. *Grogan v. Garner*, 498 U.S. 279 (1991); *Fitzgerald v. Fitzgerald (In re Fitzgerald)*, 9 F.3d 517, 520 (6th Cir. 1993).

Through her pleadings Terri Fodor has chosen not to provide any supplemental information pertaining to most of the factors listed in *Fitzgerald*. *See* note 1, *supra*. The Court must, therefore, rely primarily on the information contained in the Separation Agreement and the Divorce Decree to determine whether the Hold Harmless Agreements were, although not designated as such, actually intended by the parties and the state court to create a support obligation.

Both parties were represented by counsel in the negotiation and preparation of the Separation Agreement. Included in the Separation Agreement are several introductory recital paragraphs which set forth the parties' intentions in entering into that agreement:

> **WHEREAS,** the parties desire to confirm their separation and make arrangements in connection therewith including a settlement of property rights and other rights and obligations growing out of the marriage relationship; and
>
> **WHEREAS,** the parties desire this agreement to be in full settlement of each and all of their respective present and future claims and demands upon and against the estate of the other and in full settlement of certain rights, obligations and privileges conferred or imposed upon Husband and Wife by virtue of the marriage; and
>
> **WHEREAS,** the parties have made a full and complete disclosure of all assets which they own or have an interest therein and all such assets are specifically set forth in this Separation Agreement; that the parties have made a full and complete disclosure of all liabilities and said liabilities are specifically set forth in this Separation Agreement; and
>
> **WHEREAS,** the parties desire this agreement to settle certain matters arising out of their marriage *including a division of property, both real and personal, spousal support between the parties, allocation of parental rights relative to the minor children and support for the minor children.*

Separation Agreement at pp. 1-2 (emphasis added). Based upon the foregoing, it seems clear that, by entering into the Separation Agreement, the parties intended to create distinct agreements to address the division of property and the obligations for support.

In addition to the express intent set forth in the introductory portion of the Separation Agreement, the agreement itself is divided into separate provisions that address property division and the award of support. The portion of the agreement that addresses spousal support is specifically labeled "Spousal Support" and provides a detailed schedule of payments to be made "as and for

spousal support" directly from debtor to Terri Fodor.[2] Separation Agreement at pp. 16-17. The other provisions in the Separation Agreement address the division of the couples' real and personal property and each provision that requires the transfer of property from one ex-spouse to the other requires that the non-transferring party hold the other harmless on any liability arising from the transfer.

There is nothing in the Separation Agreement to evidence that the Hold Harmless Agreements were included to somehow enable Terri Fodor to achieve a standard of living compatible with what she might expect were the marriage to continue. In fact, the Separation Agreement specifically addresses post-divorce employment by Terri Fodor and contemplates that such employment could prove detrimental to Christian Fodor:

> **10. <u>Business Interest</u>**
>
> Husband is a 50% owner of the business known as Secret Aesthetics, Inc. Wife is a 50% owner of a business entity known as Secret Aesthetics, Inc. As and for consideration of this agreement, Wife hereby assigns to Husband all right, title and interest in her stock ownership in Secret Aesthetics, Inc. . . .
>
> Wife shall not directly as an individual or indirectly through a business interest compete in any way with Secret Aesthetics, Inc., in Summit County, Cuyahoga County, Medina County, Portage County, Stark County for a period of five years from the date of the decree of divorce. The parties agree that this covenant not to compete is an essential element of this agreement. Nothing herein shall prevent Wife from being employed by a dentist, orthodontist or pediatric dentist.

Separation Agreement at pp. 10-11. That provision of the Separation Agreement also grants Terri Fodor a right of first refusal to purchase Secret Aesthetics, Inc. should Christian Fodor ever decide to sell that business.

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[2] The parties' agreement as to shared parenting and child support was addressed in a separate "Shared Parenting Plan" which was to be attached to the Divorce Decree. The copy of the Divorce Decree being relied upon by the parties for determination of this matter (*see* footnote 1, *supra*) does not include a copy of that Shared Parenting Agreement.

In addition to the foregoing, the Separation Agreement is replete with provisions that appear designed to ensure that *both* parties emerge from the divorce on an equal economic footing. *See, e.g.*, Separation Agreement at pp. 3 and 5 ("the purpose of this clause being to prevent damage to the [other spouse's] credit rating due to [one spouse's] failure to pay the mortgage and note"); pg. 8 ("[e]ach party shall be responsible for obtaining and maintaining automobile insurance in his or her respective name commencing February 1, 2008"); pp. 8-9 ("Husband shall transfer to Wife by way of Qualified Domestic Relations Order or other appropriate Order that sum of money necessary to equalize the [individual retirement] account balances between the parties . . . [and] the cost [of preparing such orders] shall be divided equally between the parties."); pg. 14 ("Neither Husband nor Wife shall hereafter incur any debts or obligations upon the credit of the other and each shall indemnify and save the other absolutely harmless of any debt or obligation so charges or otherwise incurred.").

> There is a saying that if something looks like a duck, walks like a duck, and quacks like a duck, then it is probably a duck. In determining whether an award is actually support, the bankruptcy court should first consider whether it "quacks" like support. Specifically, the court should look to the traditional state law indicia that are consistent with a support obligation. These include, but are not necessarily limited to, (1) a label such as alimony, support, or maintenance in the decree or agreement, (2) a direct payment to the former spouse, as opposed to the assumption of a third-party debt, and (3) payments that are continent upon such events as death, remarriage, or eligibility for Social Security benefits.

In re Sorah, 163 F.3d 397, 401 (6th Cir. 1998). In this case, the Hold Harmless Agreements simply do not "quack" like a § 523(a)(5) domestic support obligation. Accordingly, the Court's inquiry into this issue must end. *Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103, 1109 (6th Cir. 1983) ("We believe that the initial inquiry must be to ascertain whether the state court or the parties to the divorce *intended* to create an obligation to provide support through the assumption of the joint debts. If they did not, the inquiry ends there.").

CONCLUSION

Based upon the foregoing, the Court finds that Terri Fodor has not shown by a preponderance of the evidence that the parties intended for the Hold Harmless Agreements to somehow create an obligation for her support. Accordingly, any such obligations are not excepted from discharge pursuant to 11 U.S.C. § 523(a)(5). A order consistent with this opinion will be entered as a separate pleading in this case.

# # #

cc (*via* electronic mail):
KEITH RUCINSKI, Chapter 13 Trustee
CHRISTINE CORZIN, Counsel to Debtor
CHRIS MANOS, Counsel to Terri Fodor