

Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
MAR 27 PM 2:40
CLERK OF COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Case No. 01-11423
)	
BRIAN KACZMARSKI,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
JULIE KACZMARSKI,)	Adversary Proceeding No. 01-1221
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
)	
BRIAN KACZMARSKI,)	
)	
Defendant.)	

The Plaintiff filed a Complaint asking that certain of the Defendant-Debtor's obligations under the parties' divorce judgment be declared non-dischargeable under Bankruptcy Code §§ 523(a)(5) and (a)(15). The Debtor moves to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6) (the "Motion to Dismiss"). (Docket 7). The Plaintiff opposes that request. (Docket 8).

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

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DISCUSSION

Federal Rule of Civil Procedure 12(b)(6)

Civil Rule 12(b)(6) addresses the sufficiency of a plaintiff's claim for relief. *See* FED. R. CIV. P. 12(b)(6) (providing for a motion to dismiss a claim for "failure to state a claim upon which relief can be granted") (applicable in adversary proceedings under FED. R. BANKR. P. 7012). In considering a motion made under this rule, "[t]he court must construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove a set of facts in support of [her] claims that would entitle [her] to relief." *Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 360 (6th Cir. 2001). "In order for dismissal to be proper, it must appear beyond doubt that the plaintiff would not be able to recover under any set of facts that could be presented consistent with the allegations of the complaint." *Glassner v. R.J. Reynolds Tobacco Co.*, 223 F.3d 343, 346 (6th Cir. 2000).

As a general rule, matters outside the pleadings may not be considered on a motion to dismiss unless the motion is treated as one for summary judgment. *See* FED. R. CIV. P. 12(b). In this case, the dispute arises from a judgment of divorce entered by the Cuyahoga County Court of Common Pleas, Domestic Relations Division on July 27, 1999 (the "Divorce Judgment"). A copy of the Divorce Judgment was filed as a supplement to the Complaint. (Docket 6). The Court may consider the Divorce Judgment in deciding this Motion to Dismiss because it is referred to in the Complaint and is central to the Plaintiff's claim. *See Weiner v. Klais and Co.*, 108 F.3d 86, 88 (6th Cir. 1997).

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The Plaintiff's Claim

The Complaint asserts that the Debtor's obligation under the Divorce Judgment to pay the parties' first and second mortgage and a debt to Huntington Bank are not dischargeable debts. Count I cites § 523(a)(5) as the legal basis for non-dischargeability and Count II cites § 523(a)(15). 11 U.S.C. §§ 523(a)(5) and (15). The Defendant-Debtor moves to dismiss the Adversary Proceeding on the ground that these debts are dischargeable under § 523(a)(5) as a matter of law.

Section 523(a)(5) provides that a debt is non-dischargeable if it is owed:

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that –

* * *

(B) such debt includes a liability designated as alimony maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support[.]

11 U.S.C. § 523(a)(5). “[I]n order to be held nondischargeable in bankruptcy, an award in a divorce decree or settlement agreement must actually be in the nature of support [and] [t]he inquiry that the [court] must undertake in making this determination depends upon the nature of the obligation and the language of the state court decree.” *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397, 400 (6th Cir. 1998).

The Divorce Judgment is a form entry. The parties have one child and there is a provision for monthly child support. There is no specific award of spousal support. The Divorce

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Judgment incorporates the parties' Separation Agreement which lists the parties' assets and liabilities and includes handwritten notations indicating which party is to receive each asset and which party is to be responsible for each liability. The Separation Agreement states that the Debtor is to be liable for: (1) the first and second mortgage on the marital home; and (2) a \$10,000.00 Huntington Bank Note.¹ The Separation Agreement does not include a "hold harmless" provision.

The Debtor argues that the disputed obligations are undeniably dischargeable because the Divorce Judgment does not label them as support. This argument is incorrect. If an award is labeled as support and has the indicia of a support, it should be conclusively presumed to be a nondischargeable support payment under § 523(a)(5). See *In re Sorah*, 163 F.3d at 401. However, the reverse is not true: ". . . if the state court has not specifically labeled an obligation as support [as is the case here], the bankruptcy court 'must look behind the award . . . and make an independent factual inquiry to determine whether the award is actually in the nature of support'." *Goans v. Goans (In re Goans)*, 271 B.R. 528, 533 (Bankr. E.D. Mich. 2001) (quoting *Harvey v. McClelland (In re McClelland)*, 247 B.R. 423, 426 (Bankr. N.D. Ohio 2000)). This is the analysis which was applied in the *Jones* decision cited in the Debtor's Motion to Dismiss. See *Jones v. Jones (In re Jones)*, 265 B.R. 746, 750 n. 2 (Bankr. N.D. Ohio 2001) ("This type of situation should be distinguished from the situation where there exists no actual label of support.").

This Complaint deals with obligations which are not labeled as support in the Divorce Judgment and it states a claim for relief under § 523(a)(5). The determination regarding

¹ The Separation Agreement addresses other obligations that are not at issue here.

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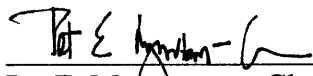
dischargeability under these circumstances is a factual one which cannot be resolved in the context of a Rule 12(b)(6) motion to dismiss. Also as noted above, Count II of the Complaint requests a nondischargeability determination under § 523(a)(15). The Motion to Dismiss does not address that claim which, similarly, cannot be resolved on a motion to dismiss.

CONCLUSION

For the reasons stated, the Motion to Dismiss is denied. A pretrial will be held in this Adversary Proceeding on **May 2, 2002** at 9:00 a.m.

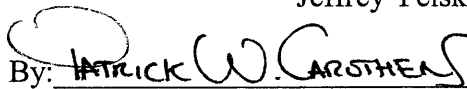
A separate order will be entered reflecting this decision.

Date: 27 Mar 2002



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mark Immormino, Esq.
Jeffrey Yelsky, Esq.

By: 

PATRICK W. CARSTHEN

Date: MARCH 27, 2002

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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BRIAN KACZMARSKI,)	Chapter 7
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Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
JULIE KACZMARSKI,)	Adversary Proceeding No. 01-1221
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Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
BRIAN KACZMARSKI,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date, the Debtor's Motion to Dismiss is denied.

IT IS SO ORDERED.

Date: 27 Mar 02

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mark Immormino, Esq.
Jeffrey Yelsky, Esq.

By: Patrick W. Carothers

Date: MARCH 27, 2002