

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 01-35838
	)	
Panfilo R. Mata, Jr.,	)	Chapter 7
	)	
Debtor.	)	Adv. Pro. No. 02-3015
	)	
Maria V. (Mata) Vela,	)	Hon. Mary Ann Whipple
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Panfilo R. Mata, Jr.,	)	
	)	
Defendant.	)	

**MEMORANDUM OF DECISION AND ORDER**

This case is before the court upon Plaintiff Maria V. Mata's ("Ms. Mata") Motion for Summary Judgment("Motion") [Doc. #9] and Defendant/Debtor Panfilo R. Mata's ("Mr. Mata") Response to the Motion [Doc. #10]. This case involves the dischargeability of certain debts that Mr. Mata incurred in connection with his divorce from Ms. Mata in August, 2001. Ms. Mata contends that the debts constitute alimony, maintenance or support within the meaning of 11 U.S.C. § 523(a)(5) or, alternatively, a nondischargeable property settlement within the meaning of 11U.S.C. § 523(a)(15). Her motion contends that there are no genuine issues of material fact, and that she is entitled to summary judgment in her favor as a matter of law under one of the two identified Bankruptcy Code sections. The court disagrees, and for the following reasons finds that there are either genuine issues of fact material to a determination under either section, or that Ms. Mata is not entitled to judgment as a matter of law.

**Summary of Facts:**

The Matas were divorced pursuant to a decree entered by the Court of Common Pleas of Van

Wert County, Ohio on August 29, 2001 ('divorce decree'). [Exhibit A to Aff. of Maria Mata, Doc. #9]. The relevant provisions of the decree include paragraph 4, which provides that "neither party shall pay or receive spousal support." [Id. at 3]. Also, the parties agreed that Mr. Mata would retain the marital residence and assume any indebtedness related thereto. [Id.]. They had previously acknowledged in a separation agreement that the value of the marital home was \$55,000.00, with a first mortgage debt on the property of \$44, 557.70. [Exhibit B to Aff. of Maria Mata at 4, Doc. #9]. Accordingly, the home had equity of approximately \$11,000.00 at the time of the divorce decree. Also, paragraph 9 of the divorce decree required Mr. Mata to assume and pay all personal medical bills and all marital debts. [Exhibit A to Aff. of Maria Mata at 4, Doc. #9]. The amount and specific identity of the marital debts is not specified in the divorce decree. According, however, to Ms. Mata's affidavit, they amount to \$80, 028.67, including the home mortgage debt of \$44, 557.70, for a total of other debt of \$35,470.97. [Aff. of Maria Mata at ¶¶ 19-21, Doc. #9]. Mr. Mata claims that the correct number is \$32,174.36 based on his bankruptcy Schedule F. (This is a genuine issue of material fact as to any determination under § 523(a)(15)). Moreover, the divorce decree provides that each party shall hold the other party harmless and indemnify him or her with respect to any obligations assumed in the divorce decree, and that "such debts assumed by each of the parties shall be in lieu of spousal support, i.e. alimony, and shall not be dischargeable in Bankruptcy pursuant to 11 U.S.C. Sec. 532 [sic]." [Exhibit A to Aff. of Maria Mata at 5, Doc. #9]. The child support computation worksheet attached to the divorce decree shows that Mr. Mata had adjusted gross income of \$22, 651.65 and Ms. Mata had adjusted gross income of \$25, 626.74. She was determined as the custodial and residential parent of the parties' two minor children, one born in 1985 and the other born in 1994. Mr. Mata is obligated to pay Ms. Mata support for the two children, which is not in issue in this adversary proceeding. Finally, Mr. Mata commenced his Chapter 7 bankruptcy case in this court on September 19, 2001, less than a month after the divorce decree was entered in state court.

### **Law and Analysis:**

#### **I. Summary Judgment Standard**

Under Fed.R. Civ. P. 56, made applicable to this proceeding by Fed.R.Bankr.P. 7056, a party

will prevail on a motion for summary judgment when “[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, (1986); Fed.R.Civ.P. 56(c). In order to prevail, the movant must demonstrate all elements of the cause of action, but once that burden is established, the opposing party must set forth specific facts showing there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-51, (1986). Inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-88, (1986).

## **II. 11 U.S.C. § 523. Exceptions to Discharge**

### **A. 11 U.S.C. § 523(a)(5)**

The court will first turn to the issue of whether the assumption of debt, and the obligation to hold Ms. Mata harmless and indemnify her thereon, by Mr. Mata in the divorce decree are in the nature of alimony, maintenance or support for Ms. Mata and the two Mata children, within the meaning of § 523(a)(5). If his obligations fall under § 523(a)(5), then the court need not analyze the § 523(a)(15) issues, as the two provisions are, by their terms, mutually exclusive.

The Sixth Circuit has addressed the interpretation of state court divorce decrees pursuant to § 523(a)(5) several times, starting with *Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103 (6<sup>th</sup> Cir. 1983), and more recently in *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397 (6<sup>th</sup> Cir. 1998). In *Calhoun*, the Sixth Circuit had to determine whether an assumption of debt labeled as alimony but contained in a section of the decree addressing property division was really support. The Sixth Circuit presented a four part test focusing on: (1) whether the parties intended the obligation to be support, (2) whether the obligation in fact provides support, (3) whether the support award is unreasonable and (4) if unreasonable, the amount of the debt to be discharged to carry out the provisions of the Bankruptcy Code. As noted in a subsequent

decision, *Calhoun* provides a framework for analysis when obligations are not designated as alimony, maintenance or support, as in this case. *Fitzgerald v. Fitzgerald (In re Fitzgerald)*, 9 F.3d 517, 520 (6th Cir. 1993).

In *Sorah*, the Sixth Circuit amplified the analysis by directing bankruptcy courts to review the obligation in light of “traditional indicia” of a support award, including: (1) how the obligation is labeled, (2) whether the payment is direct to the spouse, or to third parties, and (3) whether the payments are contingent upon such events as death or remarriage. *Sorah*, 163 F. 3d at 401. In a frequently quoted passage, the Sixth Circuit counseled deference to state court decrees and noted with respect to support awards that “if something looks like a duck, walks like a duck, and quacks like a duck, then it is probably a duck.” *Id.*

In this case, the assumption of debts and hold harmless obligations are not labeled, one way or another. Nevertheless, the decree expressly provides that neither party is entitled to spousal support, which is indicative of the parties’ intent. In light of this express provision, the court does not agree with the somewhat tortured analysis Ms. Mata would have this court employ to hold that the obligations incurred by Mr. Mata in the divorce decree constitute or are in the nature of support as a matter of law. Indeed, under *Sorah*, all of the so-called traditional indicia point the other way. The debt assumption is not labeled, but there is a separate paragraph stating that no spousal support will be paid to either party. The payments are to third party creditors, not directly to Ms. Mata. And Mr. Mata’s obligation does not terminate upon life-changing events such as Ms. Mata’s remarriage or eligibility for Social Security benefits, which would indicate the payments were meant to be a support bridge for her. Also, Ms. Mata’s income is shown as being close to, and even somewhat greater than Mr. Mata’s income, indicative that she does need spousal support. Child support is being separately paid by Mr. Mata for the couple’s

children, indicative that support for his dependents is otherwise addressed by the divorce decree.

Ms. Mata points to the equity Mr. Mata retains in the home, upon which he has assumed the mortgage, as unfair if he is permitted to discharge his obligations to indemnify to Ms. Mata for marital debts. That does not, however, bear on that § 523(a)(5) analysis from the court's perspective. Rather, the court finds a more reasonable construction of the obligations as Mr. Mata assuming Ms. Mata's share of the parties' joint debts, with Ms. Mata estimating her ½ of the joint debts at \$17,735.49 [Aff. of Maria Mata at ¶ 22, Doc. #9], in exchange for the equity in the home. This appears more like a division of property than an award of support. The court does not agree that the statement in paragraph 11 of the divorce decree, that the assumption of marital debts is "in lieu of support," turns Mr. Mata's indemnification debt to Ms. Mata into a debt in the nature of support, given the foregoing facts and other provisions of the decree. Therefore, the court cannot find as a matter of law based upon the record presented by Ms. Mata in her Motion, that she is entitled to summary judgment in her favor on her claim under § 523(a)(5). Both parties will be permitted to present any other evidence they deem appropriate on this issue at trial.

**B. 11 U.S.C. § 523(a)(15)**

The second issue presented by the Motion is whether Mr. Mata's obligations in the divorce decree to pay the joint debts of marital creditors and to indemnify and hold Ms. Mata harmless thereon are dischargeable under 11 U.S.C. § 523(a)(15), which states:

(a) A discharge under 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor and, if the debtor or a dependant is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

Contrary to Ms. Mata's argument, the court does not find that the statement in paragraph 11 of the divorce decree, which says that the debts shall not be dischargeable, is determinative, and that this court must make its own determination of this issue. For one thing, the Bankruptcy Code section stated ("Sec.532") is incorrect and unclear. And this court has exclusive jurisdiction over § 523(a)(15) determinations. 11 U.S.C. § 523(c)(1).

The parties do not dispute that Mr. Mata's obligations to Ms. Mata at issue in the complaint and Motion arose pursuant to a divorce decree entered by a court of record. And the court cannot now conclude, as a matter of law and the record based on the Motion, that Mr. Mata's debt is of a kind described by § 523(a)(5), also a predicate to application of § 523(a)(15). Ms. Mata has thus met her burden of proof insofar as the Motion on the nondischargeability of Mr. Mata's debt to her under § 523(a)(15). As so established, the burden of proof now shifts to Mr. Mata to prove by a preponderance of the evidence that he is entitled to discharge his obligation to Ms. Mata to assume and pay the joint marital debts. *Hart v. Molino (In re Molino)*, 225 B.R. 904, 907 (B.A.P. 6<sup>th</sup> Cir. 1998).<sup>1</sup> This burden can be met by proving either that he cannot pay the property settlement obligations or that the

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The court recognizes that other courts have allocated the burdens of going forward and proof differently. The court will, however, follow the burdens articulated in Molino. The two exceptions are structured in the nature of affirmative defenses, with the evidence and ability to prove them most logically resting with the debtor.

benefits of their discharge to him outweigh any detriment to her if they are discharged. *Id.*

**i. 11 U.S.C. § 523 (a)(15)(A) - “Ability to Pay Test”**

Under the ability to pay test the court must first determine the amount of disposable income, if any, the debtor has available to pay the debt. *In re Barnes*, 218 B.R. 409, 411 (Bankr. S.D. Ohio 1998). Although courts have taken different approaches in applying this test, the majority have applied the same disposable income analysis used in a chapter 13 case under 11 U.S.C. § 1325(b)(2). *See, e.g., In re Koenig*, 265 B.R. 772 (Bankr. N.D. Ohio 2001). In making this calculation, a debtor’s income and expenses are generally gauged at the time of trial. *Id.* Under the disposable income test as derived from chapter 13, a marital obligation will be discharged under Section 523 (a)(15) only if repaying it reduces a debtor’s current income below the what is reasonably necessary for the support of the debtor or his or her dependents. *Hammermeister v. Hammermeister (In re Hammermeister)*, 270 B.R. 863, 875 (Bankr. S.D. Ohio 2001). Further, the court may consider a debtor’s future earning potential, *Koenig*, 265 B.R. at 776 (citing *Newcomb v. Miley (In re Miley)*, 228 B.R. 651, 655 (Bankr. N.D. Ohio 1998)), as well as any support provided by a new spouse or spousal equivalent. *Cleveland v. Cleveland (In re Cleveland)*, 198 B.R. 394, 399 (Bankr. N.D. Ga. 1996).

Ms. Mata points to Mr. Mata’s income and the equity in the home as indisputably establishing that Mr. Mata has the ability pay the marital debts, or to pay Ms. Mata if she has to pay them. But Ms. Mata has not supplied any information about Mr. Mata’s monthly expenses, just his income. In response, Mr. Mata has supplied his Schedules I and J from his bankruptcy filing showing that his monthly expenses exceed his monthly income by \$600.00. The court finds that this showing is enough to create a genuine issue of material fact on the issue of Mr. Mata’s ability to pay the marital debts or hold harmless Ms. Mata thereon. The court also notes that, as pointed out above, there is an issue about

what the amount of these debts are, which is material to both the ability to pay test and the relative burden test. Therefore, the court cannot grant Ms. Mata's Motion under § 523(a)(15)(A).

**ii. 11 U.S.C. § 523(a)(15)(B)-“Relative Burden Test”**

Ms. Mata also contends she is entitled to summary judgment under § 523(a)(15)(B). Section 523(a)(15)(B) itself provides no guidance as to how the court should determine and balance the interests of the parties. The only guidance from the Sixth Circuit is in an unpublished opinion that endorses a test balancing the parties' standards of living as affected by the discharge or nondischarge of the obligations in issue. *Patterson v. Patterson*, 1997 U.S. App. LEXIS 33664; 1997 WL 745501 (6<sup>th</sup> Cir. 1997). Ultimately the court must make an equitable determination comparing the relative financial condition of the parties. The debts in issue will be discharged only if the debtor's standard of living will fall “materially below” the non-debtor spouse's standard of living if they are not discharged. *Id.* at 3, n.1. In *Patterson*, the court of appeals also listed the following, non-exclusive factors to guide balancing the detriment to each party:

- (1) the amount of debt and payment terms;
- (2) all parties and spouses' current incomes;
- (3) all parties and spouses' current expenses;
- (4) all parties and spouses' current assets;
- (5) all parties and spouses' current liabilities;
- (6) parties and spouses' health, job training, education, age, and job skills;
- (7) dependents and their ages and special needs;
- (8) changes in financial conditions since divorce;
- (9) amount of debt to be discharged;
- (10) if objecting creditor is eligible for relief under the bankruptcy code; and
- (11) whether parties have acted in good faith in filing bankruptcy and in litigation of §523(a)(15) issues.

*Id.* at 7, n.1 (citing *In re Smither*, 194 B.R. 102, 111 (Bankr. W.D. Ky 1996)).

As illustrated by the foregoing list of factors, this is a very fact intensive analysis, and one not



generally well-suited to decision on summary judgment. Ms. Mata points to the parties relative incomes, and makes conclusory statements in her affidavit that she cannot repay the marital debts and that it would be a hardship for her to do so. But there is very little in the record to inform the court about all of the other relevant factual questions involved, such as the relative expenses of the parties. Mr. Mata has provided evidence in the form of his bankruptcy budget to show that his expenses exceed his monthly income. We do not know on this record about Ms. Mata's expenses. And the evidence that exists about the parties' relative incomes shows that Ms. Mata's income is the same as or even exceeds Mr. Mata's income. There is also a dispute about the amount of the debts in issue. Accordingly, the court finds that there are also genuine issues of fact material to Ms. Mata's claim under § 523(a)(15)(B) and for that reason cannot grant her Motion.

**Conclusion:**

Based upon the foregoing reasons and authorities, the court cannot grant Ms. Mata's Motion for Summary Judgment.<sup>2</sup> The court will set this matter for further pretrial, at which time a trial date will be scheduled. As the matters to be addressed will mainly involve scheduling, counsel may appear by telephone with prior notice to the court. Therefore, for good cause shown,

**IT IS ORDERED** that Plaintiff's Motion for Summary Judgment [Doc. #9] is **DENIED**; and

**IT IS FURTHER ORDERED** that a **further pretrial scheduling conference** will be held on **October 23, 2002, at 10:15 o'clock a.m.** pursuant to Fed. R. Bankr. P. 7016 and Fed. R. Civ. P. 16 .

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<sup>2</sup> The court also notes that the complaint contains a claim under 11 U.S.C. § 523(a)(2), which has not been addressed at all by the Motion. Given the disposition on the Motion, this claim will also be determined through trial.

Dated:

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Mary Ann Whipple  
United States Bankruptcy Judge