

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	
SEAN CHRISTOPHER HARNAGE,)	Case No. 6:13-bk-01045-KSJ
)	Chapter 7
Debtor.)	
_____)	
MICHELE L. CAMPBELL,)	
)	
Plaintiff,)	
vs.)	Adversary No. 6:13-ap-00081-KSJ
)	
SEAN CHRISTOPHER HARNAGE,)	
)	
Defendant.)	
_____)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff, Michele L. Campbell, is the former wife of the Debtor and Defendant, Sean Christopher Harnage. She contends that the monies awarded to her in Paragraph 32(B) and (C) of the Parties’ consensual Marital Settlement Agreement¹ (the “MSA”) are not dischargeable in her former husband’s Chapter 7 bankruptcy case. Defendant argues the debts are dischargeable because, first, the debts or obligations predated the MSA and, second, because certain language in the MSA refers to the Defendant’s right to file bankruptcy. The Court rejects the Defendant’s arguments and finds his obligations to the Plaintiff not dischargeable.

The Parties married in 2008. They divorced in January 2012. As part of the Parties’ Stipulated Final Judgment, they entered into the MSA,² which in pertinent paragraphs, 32(B) and (C), provides:

¹ Stipulated Final Judgment for the Dissolution of Marriage, Ex. 1 to Plaintiff’s Complaint (Doc. No. 1).

² *Id.* at ¶ 4.

B) The Wife shall be solely responsible for the following credit cards in her individual name:

1. Sony Chase card.
2. Bank of America card.
3. Citi Home card.
4. Chase card.

The parties acknowledge that the current balances on the cards referenced in Paragraph B above were used to fund the business as referenced in Paragraph 30. As such, commencing in 1/1/13 the Husband shall pay directly to the Wife the sum of \$800.00/mo. for a period of 48 months representing his contribution toward the referenced debts. Nothing herein shall prevent the Husband from seeking Federal Bankruptcy relief as it relates to his obligation in this paragraph.

C) The parties acknowledge that the Husband owes the Wife \$8,500.00 representing miscellaneous reimbursement / loans, etc. throughout the marriage. Same shall be added to the payments set forth in paragraph B above after the expiration of 48 months such that the Husband shall continue to pay \$800.00/mo. until this obligation is satisfied in full. Same shall also be subject to the bankruptcy provision therein.³

The Parties do not dispute that the payments required in this paragraph are not alimony or support payments or that the Defendant owes the Plaintiff a total of \$46,900, payable over 59 months with payments of \$800 per month supposedly to start in January 2013 (the “MSA Debt”). Defendant has made no payments toward the MSA Debt. Instead, he filed this Chapter 7 bankruptcy case on January 30, 2013.

Plaintiff contends that the MSA Debt is not dischargeable under Section 523(a)(15) of the Bankruptcy Code.⁴ Plaintiff has the burden to establish the nondischargeability of the Defendant’s unfulfilled MSA obligations by a preponderance of the evidence.⁵ Exceptions to discharge are to be “strictly construed against the creditor and liberally in favor of the debtor.”⁶

³ *Id.* at ¶ 32.

⁴ All references to the Bankruptcy Code refer to 11 U.S.C. § 101 *et. seq.*

⁵ *Grogan v. Garner*, 498 U.S. 279, 291, 111 S. Ct. 654, 112 L. Ed. 2d. 755 (1991).

⁶ *Schweig v. Hunter (In re Hunter)*, 780 F. 2d 1577, 1579 (11th Cir. 1986).

Sections 523(a)(5) and (a)(15) govern the dischargeability of various claims incident to divorce.⁷ Section 523(a)(5) provides any debt constituting a “domestic support obligation” is not dischargeable. Section 101(14A) defines “domestic support obligation” as a debt that is owed to or recoverable by a spouse that is “in the nature of alimony, maintenance, or support . . . of such spouse” and established by “a separate agreement, divorce decree, or property settlement agreement”⁸

Section 523(a)(15) was modified by the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) in 2005, now also excepts from discharge any debt:

to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph [523(a)] (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, or a determination made in accordance with State or territorial law by a governmental unit.⁹

BAPCPA essentially removed the balancing test from the prior version of Section 523(a)(15) and eliminated any distinction between domestic support obligations, such as alimony or support, and other obligations arising from a divorce in a dischargeability analysis.¹⁰

Defendant advances two reasons why his debts should not be excepted from discharge under 523(a)(15). First, he argues the debts were incurred before the divorce, and thus do not fall within the purview of (a)(15), which pertains to debts incurred “*in the course* of a divorce . . . or *in connection* with a separation agreement [or] divorce decree.”¹¹ In the divorce decree, Defendant agreed to pay the MSA Debt to the Plaintiff to represent “his contribution towards” certain debts that arose during the marriage.¹² Thus, Defendant did not agree to assume liability

⁷ 11 U.S.C. §§ 523(a)(5) & 523(a)(15).

⁸ 11 U.S.C. § 101(14A).

⁹ 11 U.S.C § 523(a)(15).

¹⁰ See Pub. L. No. 109-8, § 215(3) (2005); 4 *Collier on Bankruptcy* ¶ 523.23 (16th ed. 2013) (“[T]he distinction between a domestic support obligation and other types of obligations arising out of a marital relationship is of no practical consequence in determining the dischargeability of the debt.”).

¹¹ 11 U.S.C 523(a)(15) (emphasis added).

¹² Stipulated Final Judgment for the Dissolution of Marriage ¶ 32(B), Ex. 1 to Plaintiff’s Complaint (Doc. No. 1).

on the underlying debts. Rather, he consensually agreed to pay the MSA Debt that was undoubtedly incurred “in the course of a divorce” or “in connection with” the divorce decree.¹³

Second, Defendant argues the Parties intended certain language in the MSA to allow him to discharge the obligations in bankruptcy. Defendant refers to the last line in section 32(B) of the MSA, which states: “Nothing herein shall prevent the Husband from seeking Federal Bankruptcy relief as it relates to his obligation in this paragraph.”¹⁴ Subsection (C) also adopts this language.¹⁵ The language does not state specifically that it preserves the Debtor’s right to discharge, and even if it did, such a statement would be of questionable enforceability.¹⁶

Defendant was not prevented from “seeking” bankruptcy relief. The overall scheme of bankruptcy relief includes determining which debts are dischargeable and which are not. “Dischargeability is the ‘central issue in bankruptcy discharge litigation,’ and bankruptcy courts have exclusive jurisdiction to determine the dischargeability of a claim”¹⁷ The defendant “sought” bankruptcy relief and he received a discharge on May 15, 2013. But under the Bankruptcy Code this particular debt simply is not dischargeable.

The MSA Debt owed to Plaintiff, a former spouse, was incurred in the course of their divorce and in connection with the divorce decree. The Debtor’s MSA obligations are nondischargeable pursuant to the plain and unambiguous language of Section 523(a)(15) of the Bankruptcy Code.

¹³ *Cf. In re Washburn*, 2010 WL 4008154, at *2 (Bankr. N.D. Ga. 2010) (“Thus, assumption of responsibility for a preexisting third party debt under a divorce decree is a debt to the former spouse under § 523(a)(15). The debt is also incurred in the course of the divorce . . . because the obligation to the former spouse did not exist prior to the divorce.”).

¹⁴ Stipulated Final Judgment for the Dissolution of Marriage ¶ 32(B), Ex. 1 to Plaintiff’s Complaint (Doc. No. 1).

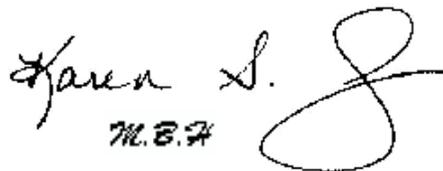
¹⁵ *Id.* at ¶ 32(C).

¹⁶ *Cf. In re Cole*, 226 B.R. 647, 653 (B.A.P. 9th Cir. 1998) (determining that “a state stipulated judgment where the debtor waives his right to discharge is unenforceable as against public policy”).

¹⁷ *Id.*

A separate and final judgment in favor of the Plaintiff and against the Defendant consistent with this memorandum shall be entered.

DONE AND ORDERED in Orlando, Florida, on November 1, 2013.



The image shows a handwritten signature in black ink. The signature is written in a cursive style and appears to read "Karen S. Jennemann". Below the signature, the initials "K.S.J." are printed in a small, bold, sans-serif font.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge