

ORDERED.

Dated: November 13, 2015


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re:

Gregory Evan Hause,

Debtor.

Chapter 13

Case No. 6:15-bk-00457-CCJ

ORDER SUSTAINING DEBTOR'S
OBJECTION TO CLAIM NO 7-1 FILED BY MARY HAUSE

This case came before the Court for hearing on October 13, 2015, for consideration of the Debtor's Objection to Claim 7-1 filed by Mary Hause (Doc. No. 20; the "Objection to Claim"). The Court having considered the pleadings and heard argument of counsel, sustains the Objection to Claim for the reasons set forth below.

Background

The marriage between the Debtor and the Claimant ended in divorce. The terms of that divorce are memorialized by a Marital Settlement Agreement¹ (the "Agreement"), which was entered into between the parties and incorporated into a Final Judgment of Dissolution of

¹ Doc. No. 22-1; Doc. No. 24-1.

Marriage on October 24, 2006.² The parties addressed and resolved several issues by the Agreement. The provisions of the Agreement which are relevant to this case concern real estate and alimony.

Paragraph 4.1 of the Agreement instructs the Debtor to pay the Claimant \$15,000 as “non-modifiable alimony,” in twenty-four monthly installments of \$625. Paragraphs 1.4-1.10 of the Agreement relate to certain real property, referred to as the “Collier County property,” which the husband was to list for sale at fair market value. Until sale, the Debtor had exclusive possession and use of the Collier County property. Upon the sale of the Collier County property, however, the Agreement required the debtor to pay the Claimant a lump sum of \$40,000. The Agreement further provides that, if the Collier County property was not sold by the twenty-fourth month of the Claimant’s alimony, the Debtor “shall place the Carpenter Lane home³ on the market for sale in order to pay said sum to the [Claimant].”

The Debtor filed a Voluntary Petition for relief under Chapter 13 of Bankruptcy Code on January 20, 2015, prompting the Claimant to file a proof of claim. The Claimant filed Claim No. 7-1 as a priority claim in the amount of \$40,000, alleging that the debt constituted a domestic support obligation under Section 507(a)(1)(A) or (a)(1)(B) of the Bankruptcy Code. The Debtor objected to the claim on the grounds that the debt is a *property settlement* which should be treated as a general unsecured claim, rather than a *domestic support obligation* entitled to priority status. The Claimant argues that the funds from the sale of the Collier Country property were intended to function as support for the Claimant because the \$40,000 lump sum had to be paid by the twenty-fourth month of the Claimant’s alimony.⁴

² Doc. No. 22-2; Doc. No. 24-1.

³ The “Carpenter Lane home” is the former marital residence which was awarded to the Debtor by way of the Agreement.

⁴ Doc. No. 22.

A hearing on the Objection to Claim was held on July 21, 2015, but was continued to October 13, 2015, to allow time for the parties to file supporting briefs. The Debtor filed a Supplemental Objection to Claim,⁵ contending that the parties did not intend the payment to be in the form of support.⁶ The Debtor argues that the parties' lack of intent to do so is demonstrated by their inclusion of the monies in the section of the Agreement discussing *property*, as opposed to the section concerning *alimony*.

Discussion

Section 1322(a)(2) of the Bankruptcy Code states that a Chapter 13 plan "shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim."⁷ Sections 507(a)(1)(A) and 507(a)(1)(B) provide a priority claim for domestic support obligations.⁸ Pursuant to Section 101(14A), the term "domestic support obligation" means:

[A] debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

(A) owed or recoverable by--

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

⁵ Doc. No. 24.

⁶ The Debtor also argues in the Supplemental Objection to Claim that the debt underlying the claim is dischargeable under 11 U.S.C. § 523(a)(15). However, to date neither party has filed an adversary proceeding to determine the dischargeability of the debt. *See* Fed. R. Bankr. P. 7001(6). As a result, the Court's analysis serves solely to determine whether the claim at issue should be afforded priority under §507 and, therefore, be paid in full over the life of the plan. *See* 11 U.S.C. § 1322(2). The Court will not speak to the dischargeability of the underlying debt under § 523 in the absence of an adversary proceeding. *See* Fed. R. Bankr. P. 3007(b).

⁷ 11 U.S.C. § 1322(a)(2).

⁸ *See* 11 U.S.C. § 507(a)(1)(A)-(B).

- (i) a separation agreement, divorce decree, or property settlement agreement;
- (ii) an order of a court of record; or
- (ii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and
- (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.⁹

Debts not in the nature of support, but rather of property settlements, do not fall within this definition.¹⁰

In determining whether a debt constitutes a “domestic support obligation” entitled to priority status under Bankruptcy Code, the bankruptcy court should undertake a simple inquiry as to whether the debt can be characterized as “support.”¹¹ When a court examines a property settlement agreement or final judgment of dissolution of marriage to determine whether an award is a domestic support obligation or property settlement, the court “must ... look beyond the label to examine whether the debt actually is in the nature of support or alimony.”¹² A debt is for support or alimony if “at the time of its creation the parties intended the obligation to function as support or alimony.”¹³

In the present case, it does not appear that the \$40,000 lump sum was intended to be in the nature of support. The lump sum was not to be paid in lieu of alimony.¹⁴ Instead, Claimant was separately awarded alimony which was specifically designated by the parties as non-modifiable weighing against the notion that the lump sum was additional support. The construction of the Agreement also suggests that the lump sum was not intended to be support, as

⁹ 11 U.S.C. § 101(14A).

¹⁰ See *Gaetaniello v. Gaetaniello (In re Gaetaniello)*, 496 B.R. 238, 241 (Bankr. M.D. Fla. 2013) (citing 8 *Collier on Bankruptcy* ¶ 1328.02[3][g] (16th ed. 2012)).

¹¹ See *In re Lopez*, 405 B.R. 382 (Bankr. S.D. Fla. 2009) (citing *Harrell v. Sharp (In re Harrell)*, 754 F.2d 902, 906 (11th Cir. 1985) (internal quotations and citations omitted).

¹² *Cummings v. Cummings*, 244 F.3d 1263, 1265 (11th Cir. 2001) (citing *Gianakas v. Gianakas (In re Gianakas)*, 917 F.2d 759, 762 (3d Cir. 1990)).

¹³ *Id.* (citations omitted).

¹⁴ See *In re Deberry*, 429 B.R. 532 (Bankr. M.D.N.C. 2010).

it was addressed, not in the alimony section of the Agreement, but in the section discussing division of real estate. The debtor's required lump sum payment was linked to the sale of real property, which also indicates that the lump sum is in the nature of a property settlement.

Courts that have considered the division of proceeds from the sale of marital real property have generally determined that such proceeds are in the nature of property settlements.¹⁵ While the Claimant contends that the lump sum constitutes a domestic support obligation because it had to be paid by the end of the twenty-four months of alimony, without more, the Claimant has not carried her burden to prove that the lump sum was intended to function as support.¹⁶ The Court finds that the claim is in the nature of a property settlement and is not entitled to priority status.

Conclusion

For the reasons set forth above, it is ORDERED that:

1. The Objection to Claim is sustained.
2. Claim No 7-1 is denied priority status and allowed only as a general unsecured claim.

Attorney Robert H. Pflueger is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

¹⁵ See e.g., *In re Gaetaniello*, 496 B.R. 238 (Chapter 13 debtor's obligation to pay \$53,274.14 to his ex-spouse as her share of the proceeds anticipated from the prospective sale of the former marital residence was in the nature of a property settlement obligation); *In re White*, 408 B.R. 677 (Bankr. S.D. Tex. 2009) (obligation that Chapter 13 debtor assumed to his soon-to-be former wife, in the section of the marital settlement agreement entitled "Division of Marital Estate," to make a \$30,000 payment out of the proceeds from the sale of residential property that was awarded to the debtor, was not in the nature of a "domestic support obligation," but rather "property settlement" debt).

¹⁶ See *In re Reynolds*, 530 B.R. 900 (Bankr. M.D. Fla. 2015).