

ORDERED.

Dated: March 31, 2022

  
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Grace E. Robson  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
Eva-Djina Grant-Carmack,	)	Case No. 6:20-bk-02408-GER
	)	Chapter 7
Debtor.	)	
_____	)	
	)	
Eva Carmack,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adv. Pro. 6:21-ap-00134-GER
	)	
Gary Carmack,	)	
	)	
Defendant.	)	
_____	)	

**ORDER DENYING MOTION FOR  
RECONSIDERATION AND/OR ALTER OR AMEND ORDER**

This adversary proceeding came before the Court upon the *Motion for Reconsideration and/or Alter or Amend Order* (the “Motion for Reconsideration”) filed by Eva Carmack (the “Debtor”).<sup>1</sup> The Debtor seeks reconsideration of the Order Denying Motion to Reopen Chapter

<sup>1</sup> Doc. No. 16. All “Doc. No.” citations refer to pleadings filed in the Adversary Proceeding, No. 6:21-ap-00134-GER, unless otherwise noted.

7 Case (the “Order”).<sup>2</sup> The Court abated the Motion for Reconsideration pending adjudication of the Debtor’s Motion for Sanctions filed in the main bankruptcy case.<sup>3</sup> The Court, having entered an order denying the Motion for Sanctions in the main bankruptcy case and upon consideration of the Motion for Reconsideration, **FINDS, ORDERS, AND ADJUDGES as follows:**

**Background**

A. The Debtor and Gary Carmack (“Gary”) have been involved in a state court domestic relation proceeding in Orange County, Florida (the “State Court Matter”),<sup>4</sup> since 2015.

B. A final divorce judgment was entered in February 2016 (the “Divorce Judgment”).

C. On December 30, 2019, the state court entered an Order Awarding Attorneys’ Fees and Costs (the “State Court Fee Order”).

D. The Debtor filed this bankruptcy case on April 28, 2020;<sup>5</sup> an Order of Discharge was entered on August 4, 2020, granting the Debtor a discharge, and this case was closed.<sup>6</sup>

E. Gary filed a Chapter 7 bankruptcy case on April 17, 2020;<sup>7</sup> an Order of Discharge was entered on July 28, 2020, granting Gary a discharge.<sup>8</sup>

F. On June 22, 2021, Gary filed a Motion for Contempt and Enforcement (the “Motion for Contempt”) in the State Court Matter, seeking to enforce the State Court Fee Order.

G. On July 19, 2021, the Debtor removed the State Court Matter to this Court, commencing Adversary Proceeding No. 6:21-ap-00109-KSJ.<sup>9</sup>

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<sup>2</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 28.

<sup>3</sup> Doc. No. 23.

<sup>4</sup> *Carmack v. Carmack*, No. 2015-DR-010370-O (Fla. 9th Cir. Ct. filed July 6, 2015).

<sup>5</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 1.

<sup>6</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 15.

H. The Debtor then filed a motion to dismiss, arguing that the attorneys' fees awarded by the state court were discharged as part of the Debtor's bankruptcy case.<sup>10</sup>

I. On August 17, 2021, Gary filed a motion to remand the State Court Matter back to state court,<sup>11</sup> and the Debtor filed an opposition thereto.<sup>12</sup>

J. After the motion for remand, but before the hearing scheduled for September 8, 2021, the Debtor filed a motion to reopen her bankruptcy case so that she could file a complaint to determine the dischargeability of the attorneys' fees awarded to Gary in the State Court Fee Order.<sup>13</sup> As noted above, the Debtor had already removed the State Court Matter to the Bankruptcy Court, and a hearing was pending on the request to remand the matter back to state court.

K. On September 8, 2021, the Bankruptcy Court conducted a hearing, considered the oral and written arguments of the parties, and for the reasons stated on the record at that hearing, granted the motion for remand.<sup>14</sup> Those reasons included that both the Debtor and Gary received their bankruptcy discharges in their personal bankruptcy filings, the cases were fully administered by the respective bankruptcy trustees, there was nothing left to do in the bankruptcy cases, and the state court had concurrent jurisdiction to determine whether the attorneys' fees were or were not dischargeable as a domestic support obligation pursuant to section 523(a)(5) of

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<sup>7</sup> Voluntary Petition for Individuals Filing for Bankruptcy, *In re Carmack*, No. 6:20-bk-02270-GER (Bankr. M.D. Fla. Apr. 17, 2020), Doc. No. 1.

<sup>8</sup> Order of Discharge, *In re Carmack*, No. 6:20-bk-02270-GER (Bankr. M.D. Fla. July 28, 2020), Doc. No. 13.

<sup>9</sup> Notice of Removal, *Carmack v. Carmack*, No. 6:21-ap-00109-KSJ (Bankr. M.D. Fla. July 19, 2021), Doc. No. 1.

<sup>10</sup> Motion to Dismiss Defendant's Complaint, *Carmack v. Carmack*, No. 6:21-ap-00109-KSJ (Bankr. M.D. Fla. July 23, 2021), Doc. No. 3.

<sup>11</sup> Defendant Gary Carmack's Motion to Remand to State Court, *Carmack v. Carmack*, No. 6:21-ap-00109-KSJ (Bankr. M.D. Fla. Aug. 17, 2021), Doc. No. 6.

<sup>12</sup> Plaintiff's Reply in Opposition to Motion to Remand, *Carmack v. Carmack*, No. 6:21-ap-00109-KSJ (Bankr. M.D. Fla. Aug. 30, 2021), Doc. No. 12.

<sup>13</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 19.

<sup>14</sup> Order Granting Motion for Remand, *Carmack v. Carmack*, No. 6:21-ap-00109-KSJ (Bankr. M.D. Fla. Sept. 13, 2021), Doc. No. 18.

the Bankruptcy Code<sup>15</sup> or otherwise incurred by the Debtor in the course of a divorce decree or other order of the state court under Florida law pursuant to section 523(a)(15) of the Bankruptcy Code.

L. Despite this ruling, five days later, on September 13, 2021, the Debtor filed a complaint in the Bankruptcy Court seeking a determination of the dischargeability of the attorneys' fees award against the Debtor subject of the State Court Fee Order —the same matter that had just been remanded to state court.<sup>16</sup>

M. On October 13, 2021, prior to the deadline to file a response to the complaint, Gary filed a *Motion to Stay Adversary Proceeding* (the "Motion to Stay"),<sup>17</sup> which sought to stay the adversary proceeding pending the outcome of the Debtor's motion to reopen her bankruptcy case, or if the case were reopened, extend the time for Gary to file a response to the complaint.

N. On December 13, 2021, the Debtor filed the Motion for Sanctions in the main bankruptcy case, arguing that the Court should sanction Gary for proceeding with the Motion for Contempt in the State Court Matter.<sup>18</sup>

O. On December 14, 2021, the Court conducted a hearing on the Debtor's motion to reopen case and entered an order denying the motion to reopen noting the Court's prior rulings.<sup>19</sup>

P. On December 17, 2021, the Debtor filed the Motion for Reconsideration in both the main bankruptcy case<sup>20</sup> and in this adversary proceeding.<sup>21</sup>

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<sup>15</sup> Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.

<sup>16</sup> Doc. No. 1.

<sup>17</sup> Doc. No. 9.

<sup>18</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 30.

<sup>19</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 28.

<sup>20</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 31.

<sup>21</sup> Doc. No. 16.

Q. The Motion for Reconsideration was granted in the main bankruptcy case<sup>22</sup> and abated in Adversary Proceeding No. 6:21-ap-00134-GER pending the outcome of the Motion for Sanctions.<sup>23</sup>

R. The Court, on March 31, 2022, entered an order denying the Motion for Sanctions in the main bankruptcy case.<sup>24</sup>

### **Motion for Reconsideration**

The Debtor argues that Gary failed to respond to the complaint and that a default should be entered against him. However, as noted, on October 13, 2021, prior to the deadline to file a response to the complaint, Gary filed the Motion to Stay,<sup>25</sup> which the Court treated as a timely response and request to extend time to respond. As a result, the Motion to Stay was a timely response that precluded entry of a default against Gary.

Additionally, the crux of the Debtor's argument in this adversary proceeding is that the attorneys' fees awarded to Gary were discharged as part of her chapter 7 bankruptcy case, and that Gary's efforts to collect on the attorneys' fee award is a violation of the automatic stay and the discharge order. The Debtor asserts that she "would suffer legal prejudice to her fresh start if [Gary] pursue[s] [her] with collections outside this federal bankruptcy forum."<sup>26</sup>

A bankruptcy discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such [discharged] debt as a personal liability of the debtor."<sup>27</sup> "Together, sections 524(a)(2) and 105(a) 'authorize a court to impose civil contempt sanctions [for attempting to collect a

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<sup>22</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 45.

<sup>23</sup> Doc. No. 23.

<sup>24</sup> Main Case, No. 6:20-bk-02408-GER, Doc. No. 51.

<sup>25</sup> Doc. No. 9.

<sup>26</sup> Doc. No. 16 at 4.

<sup>27</sup> 11 U.S.C. § 524(a)(2).

discharged debt] when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order.”<sup>28</sup> The Supreme Court, in *Taggart v. Lorenzen*, explained that “[a] court may hold a creditor in civil contempt for violating a discharge order where there is not a ‘fair ground of doubt’ as to whether the creditor’s conduct might be lawful under the discharge order.”<sup>29</sup> Accordingly, the Court must determine: (1) “whether a communication is a prohibited debt collection under section 524 by looking to ‘whether the objective effect of the creditor’s action is to pressure a debtor to repay a discharged debt’”<sup>30</sup> and, if so, (2) “whether that violation of the discharge injunction is sanctionable under section 105, by determining if ‘there is *no fair ground of doubt* as to whether the order barred the creditor’s conduct.’”<sup>31</sup>

Because the Court has left the determination of whether the attorneys’ fees at issue are discharged to the state court with concurrent jurisdiction,<sup>32</sup> the Court will not address the first prong but instead will focus on the fair ground of doubt standard and whether Gary had an “objectively reasonable basis for concluding that [his] conduct might be lawful under the discharge order.”<sup>33</sup>

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<sup>28</sup> *Roth v. Nationstar Mortg., LLC (In re Roth)*, 935 F.3d 1270, 1275 (11th Cir. 2019) (alteration in original) (quoting *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019)).

<sup>29</sup> *Taggart*, 139 S. Ct. at 1804; accord *In re Abril*, No. 8:20-BK-08218-RCT, 2021 WL 3162637, at \*5 (Bankr. M.D. Fla. June 24, 2021) (quoting *Taggart*, 139 S. Ct. at 1804) (“In other words, and as stated in *Taggart*, a creditor may only be sanctioned for violating the discharge injunction where there is ‘no fair ground of doubt’ . . . that the creditor’s actions were lawful under the discharge order.”).

<sup>30</sup> *In re Roth*, 935 F.3d at 1276 (quoting *Green Point Credit v. McLean (In re McLean)*, 794 F.3d 1313, 1322 (11th Cir. 2015)).

<sup>31</sup> *Id.* (quoting *Taggart*, 139 S. Ct. at 1799).

<sup>32</sup> The state court has concurrent jurisdiction with this Court to determine the dischargeability of a debt under section 523(a)(5) and section 523(a)(15). See *Lewis v. Lewis (In re Lewis)*, 423 B.R. 742, 755 (Bankr. W.D. Mich. 2010); *Khurana v. State of Idaho, Child Support Servs. (In re Khurana)*, No. 13-20058-TLM, 2019 WL 1431916, at \*3 n.5 (Bankr. D. Idaho Mar. 29, 2019) (“The Court’s jurisdiction over § 523(a)(5) and (a)(15) matters, however, is not ‘exclusive’ and state courts have concurrent jurisdiction to determine dischargeability under § 523(a)(5) and (a)(15).”), *aff’d*, No. 3:19-CV-00117-RHW, 2020 WL 254531 (D. Idaho Jan. 16, 2020).

<sup>33</sup> *Taggart*, 139 S. Ct. at 1801.

A discharge in a chapter 7 case releases a debtor from personal liability for pre-petition bankruptcy debts, except for certain categories of debts set forth in the Code.<sup>34</sup> Pursuant to section 523(a)(5), debts owed for a domestic support obligation are excepted from discharge.<sup>35</sup>

Additionally, section 523(a)(15) excepts from discharge debts owed

to a spouse, former spouse, or child of the debtor and 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, or a determination made in accordance with State or territorial law by a governmental unit.<sup>36</sup>

Section 523(a)(15) “is not limited to simply divorce decree judgments alone but excepts any debt incurred by the debtor in the course of divorce or any debt *in connection* with a divorce decree.”<sup>37</sup> Also falling within section 523(a)(15) are “debts resulting from enforcement of obligations imposed by a divorce decree . . . because they are ‘in connection’ with the divorce decree.”<sup>38</sup> Section 523(a)(15) is “broadly and liberally construed to encourage payment of familial obligations rather than to give a debtor a fresh financial start.”<sup>39</sup>

Because no determination of dischargeability has been made by this Court or a state court with concurrent jurisdiction, there is still a question of whether the attorneys’ fees at issue in the Motion for Contempt were discharged. It is arguable that the attorneys’ fees were not dischargeable as a domestic support obligation pursuant to section 523(a)(5) or otherwise incurred by the Debtor in the course of a divorce decree or other order of the state court under

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<sup>34</sup> 11 U.S.C. §§ 727(b), 523(a).

<sup>35</sup> 11 U.S.C. § 523(a)(5).

<sup>36</sup> 11 U.S.C. § 523(a)(15).

<sup>37</sup> *Walls v. Hicks (In re Hicks)*, 530 B.R. 912, 921 (Bankr. M.D. Fla. 2015) (quoting *Quarterman v. Quarterman (In re Quarterman)*, No. 11-07867-SSC, 2012 WL 4965159, at \*4 (Bankr. D. Ariz. Oct. 17, 2012)).

<sup>38</sup> *Id.* (citing *Floody v. Kearney (In re Kearney)*, 433 B.R. 640 (Bankr. S.D. Tex. 2010)).

<sup>39</sup> *Reynolds v. Reynolds (In re Reynolds)*, 546 B.R. 232, 237 (Bankr. M.D. Fla. 2016).

Florida law pursuant to section 523(a)(15).<sup>40</sup> Accordingly, there is a “fair ground of doubt as to the wrongfulness”<sup>41</sup> of Gary’s filing the Motion for Contempt after the Order of Discharge was entered. Until a determination as to the dischargeability of the attorneys’ fees has been made, Gary’s proceeding to collect the attorneys’ fees is not a violation of section 524(a) or the discharge order.<sup>42</sup>

Moreover, the automatic stay was terminated upon the entry of the Debtor’s discharge,<sup>43</sup> and the Motion for Contempt therefore was not a violation of stay.

For the foregoing reasons, it is

**ORDERED:**

1. The Motion for Reconsideration (Doc. No. 16) is **DENIED**.

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The Clerk is directed to serve a copy of this Order on all interested parties.

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<sup>40</sup> *E.g., Mordas v. Schenkein (In re Schenkein)*, No. 09-14658 (AJG), 2010 WL 3219464, at \*5 (Bankr. S.D.N.Y. Aug. 9, 2010) (“[C]ourts have recognized that attorney’s fees awarded in a divorce proceeding are non-dischargeable under § 523(a)(15) regardless of whether or not the fees are considered to be in the nature of support or for some other purpose.”); *Tarone v. Tarone (In re Tarone)*, 434 B.R. 41, 49 (Bankr. E.D.N.Y. 2010) (finding it irrelevant whether awards for maintenance and attorneys’ fees awarded by the state court were true support obligations because they were non-dischargeable under section 523(a)(15)); *Davis, Matthews & Quigley, P.C. v. Elhag (In re Elhag)*, 606 B.R. 500, 504 (Bankr. N.D. Ga. 2019) (“Whether the Attorney’s Fees are a domestic support obligation is not dispositive of whether they are nondischargeable in this chapter 7 case. If the Attorney’s Fees are a debt to the Former Spouse incurred in the course of a divorce, then they are nondischargeable under § 523(a)(15) unless they are a domestic support obligation. But if they are a domestic support obligation, then they are nondischargeable under § 523(a)(5).”); *see also In re Hicks*, 530 B.R. at 921 (“Debts resulting from enforcement of obligations imposed by a divorce decree fall within § 523(a)(15) because they are ‘in connection’ with the divorce decree.”); *cf. In re Lopez*, 405 B.R. 382, 385 (Bankr. S.D. Fla. 2012) (finding that an award of attorneys’ fees to debtor’s former husband in the parties’ divorce proceeding, which were based upon the debtor’s bad faith litigation misconduct, did not qualify as a “domestic support obligation” under section 523(a)(5)); *Strickland v. Shannon (In re Strickland)*, 90 F.3d 444, 447 (11th Cir. 1996) (holding “that an attorney fees award arising from a post-dissolution custody action constitutes ‘support’ for the former spouse under 11 U.S.C. § 523(a)(5) where, as here, the award is based on ability to pay”).

<sup>41</sup> *Taggart*, 139 S. Ct. at 1801.

<sup>42</sup> *In re Massa*, 217 B.R. 412, 420 (Bankr. W.D.N.Y. 1998).

<sup>43</sup> 11 U.S.C. § 362(a)(2)(C).