



**IT IS ORDERED** as set forth below:

**Date: March 20, 2007**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: R06-40795-PWB
	:	
MILDRED LUCILLE PROCTER,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
MILDRED LUCILLE PROCTER,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	06-4112
MICHAEL WAYNE TULLOSS,	:	
	:	
Defendant.	:	

**ORDER DENYING DEBTOR’S MOTION FOR DEFAULT JUDGMENT**

Mildred Lucille Procter (the “Debtor”) seeks a determination that a debt owed by her to her former spouse, Michael Wayne Tulloss (the “Defendant”) is dischargeable in her bankruptcy case. The Debtor contends that pursuant to a Final Decree of Divorce entered by the Circuit Court of Bradley County, Tennessee, on February 19, 1999, she was obligated to pay certain “joint debts”

owed to third parties by the Debtor and the Defendant. Specifically, the Debtor shows that paragraph (d) of the Divorce Decree provides:

That the [Debtor], Mildred Lucille Tulloss, shall be fully responsible for the indebtedness owed for the 1995 Nissan Sentra. The debt is owed to T.C.F. Financial Services. The [Debtor] shall indemnify and hold harmless [Michael Wayne Tulloss] against the claims of T.C.F. Financial Services or any other creditor(s) for this vehicle and the associated indebtedness.

The Debtor contends that the Defendant has an unsecured claim against her arising out of the joint debt and her corresponding obligation to pay said debt under the Divorce Decree. The Debtor contends that because the debt she must pay under the Divorce Decree is not in the nature of alimony or support, her debt to the Defendant is dischargeable.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 made substantial changes to the provisions governing the dischargeability of marital debts. Under pre-BAPCPA law, a debt in the nature of alimony, maintenance and support was excepted from discharge under § 523(a)(5), and any other divorce related debts not in the nature of alimony, maintenance or support (such as a property settlement), were subject to a test of the Debtor's ability to pay and a balancing test of the benefits and burdens to each party to determine dischargeability under § 523(a)(15). In addition, under former Bankruptcy Rule 4007(c), a § 523(a)(15) claim was time-barred if not brought within sixty days after the first date set for the meeting of creditors. Thus, if pre-BAPCPA law applied to this proceeding, the Debtor's indebtedness to the Defendant would be discharged because (1) the Defendant did not contest the allegations that the debt is not in the nature of alimony or support; and (2) the Defendant did not timely file a complaint seeking determination that his debt is excepted from discharge under § 523(a)(15).

The changes enacted to § 523(a)(5) and § 523(a)(15) by BAPCPA dictate a different result in this case. Section 523(a)(5) as amended excepts a debt for a "domestic support obligation"

from discharge. A domestic support obligation is defined in § 101(14A) as a debt that is

- (A) owed to 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 . . . 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 -
  - (i) a separation agreement, divorce decree, or property settlement agreement;
  - (ii) an order of a court of record; or
  - (iii) 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.

Thus, as with the pre-BAPCPA law, alimony, maintenance and support claims are excepted from discharge. However, § 523(a)(15) expands the discharge exception for divorce related debts by providing that the discharge does not cover any debt:

to a spouse, former spouse, or child of the debtor and not of the kind described in [§ 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.

Thus, the effect of the amendment to § 523(a)(15) is to render nondischargeable any other divorce-related debt set forth in a court order which is not alimony, maintenance, or support. Further, there is now no bar date for bringing such a claim.

Based on the foregoing, the Debtor's complaint fails to state a claim for relief. While the Debtor's debt to the Defendant may not be a domestic support obligation as contemplated by § 523(a)(5), it is nevertheless a debt to a former spouse incurred by the Debtor in connection with

the divorce decree and, therefore, falls within the category of debts described in § 523(a)(15) which are excepted from discharge. Therefore, it is

**ORDERED** that the Debtor's motion for default judgment is **DENIED**. It is

**FURTHER ORDERED** that the Debtor may file a brief within 20 days of the entry date of this Order which sets forth any applicable law which would require a contrary result. If no such brief is timely filed, the Court shall enter an Order dismissing the complaint for failure to state a claim upon which relief may be granted.

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**DISTRIBUTION LIST**

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