



IT IS ORDERED as set forth below:

Date: January 5, 2016

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

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

IN RE:

JAMES CLAYTON NEWMAN, JR.,

Debtor.

CASE NO. 13-53426-BEM

CHAPTER 11

JAMES CLAYTON NEWMAN, JR.,

Plaintiff,

ADVERSARY PROCEEDING NO.
15-5395-BEM

v.

JUDY YEAGER,

Defendant.

ORDER

This matter comes before the Court on Plaintiff's Verified Complaint for Injunction and Other Relief [AP Doc. 1]¹ and his Motion for Temporary Restraining Order and

¹ Reference to documents filed in this adversary proceeding will be designated as "AP Doc. ___." Reference to documents filed in Debtor's main bankruptcy case will be designated as "BK Doc. ___."

Preliminary Injunction (the “Motion for Injunction”) [AP Doc. 3]. Plaintiff seeks to enjoin Defendant from proceeding with her Consolidated and Superceding Motion for Contempt, currently pending in the Superior Court of Newton County, Georgia, Case No. 11-1-933-JDRS (the “Motion for Contempt”) [AP Doc. 1, Exhibit F; AP Doc. 12, Exhibit 4]. The Court held a hearing on the Motion for Injunction on October 22, 2015 and October 28, 2015. Plaintiff was represented by Leon S. Jones, Cameron M. McCord, and Tyler W. Henderson. Defendant was represented by Shayna M. Steinfeld and John L. Strauss. After the hearing, the Court entered a temporary restraining order enjoining Defendant from pursuing Counts One through Five of her Motion for Contempt [AP Doc. 18]. In accordance with that order, the Court now addresses more fully the merits of Plaintiff’s complaint.

I. Background

The Court directed the parties to present any evidence they wished at the second hearing in this proceeding, but neither Plaintiff nor Defendant chose to do so. Thus, based on the foregoing, the pleadings in this proceeding and the main case and the statements of counsel, the Court finds that the facts relevant in this proceeding are undisputed.

A. The Divorce Decree

Plaintiff and Defendant married in 2007. In 2011, Defendant filed for divorce in the Superior Court of Newton County, Georgia (the “Superior Court”). [AP Doc. 1 ¶ 5-6; AP Doc. 9 ¶ 5-6]. On February 13, 2012, the Superior Court entered a final judgment and decree of divorce that attached and incorporated the parties’ prenuptial agreement which addresses alimony, division of property, and all other claims between the parties except attorney fees pursuant to O.C.G.A. § 9-15-14. [AP Doc. 1, Exhibit A; AP Doc. 12, Exhibit 1]. Part 5 of the prenuptial agreement provides that upon dissolution of the marriage, Plaintiff would pay

Defendant lump sum alimony in the amount of \$250,000, that the parties would retain their separate property, and the parties would each retain a one-half interest in the marital property in the absence of a written agreement providing for some other division. *Id.* In addition, paragraph 4.4(a) of the prenuptial agreement provides: “Each party shall be solely responsible for the payment from such party’s Separate Property of all income taxes, interest and penalty with respect to such party’s income.” *Id.* The prenuptial agreement defines “Separate Property” and “Marital Property” in Part 3. *Id.* On appeal, the Georgia Supreme Court affirmed the enforcement of the prenuptial agreement and its incorporation into the final divorce decree. [AP Doc. 1, Exhibit A; AP Doc. 12, Exhibit 2, *Newman v. Newman*, 732 S.E.2d 77 (Ga. 2012)].

B. The Chapter 11 Plan

On February 19, 2013, Plaintiff filed a Chapter 11 petition. [BK Doc. 1]. Defendant filed a proof of claim on April 17, 2013, in the amount of \$250,000 plus a one-half interest in the marital home, one-half of the furnishings in the marital home and lake house, and specifically identified items of personal premarital property. [BK Claim 5-1]. Defendant filed an amended proof of claim on September 12, 2013 in the amount of \$265,921 plus a one-half interest in the marital home, one-half of the furnishings in the marital home and lake house, personal premarital property, and marital gifts of five automobiles. In box 5, the amount of \$274,572.86 was identified as a priority claim pursuant to 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). [BK Claim 5-2].

On November 11, 2013, Plaintiff filed a Second Amended Plan of Reorganization (the “Amended Plan”) [BK Doc. 120], which provides for treatment of Defendant’s claim in Class 5. *Id.* ¶ 4.5. In addition, the Amended Plan provides for an effective date of 15 days

following entry of the Confirmation Order. *Id.* at ¶ 2.1.27. With respect to a default by Debtor, it provides:

In the event of a default by Debtor in payments under the Plan or otherwise, the Holder of such Claim must send written notice to Debtor If such default is a monetary default, Holder must provide Debtor with the amount of the default and the address to where the payment should be sent in order to cure the default. Debtor shall have ten (10) days from the Debtor's receipt of the notice of default to cure such default.

Id. ¶ 2.3. The Amended Plan provides that “the Distributions and rights that are provided in this Plan shall be in complete satisfaction, discharge, and release of all Claims ... that arose prior to the entry of the confirmation order.” *Id.* ¶ 10.2 It further provides for Debtor's right to seek a discharge upon completion of all plan payments but that “the Plan shall not be construed as attempting to discharge any debt that is excepted from discharge pursuant to Bankruptcy Code sections 1141(d)(2) and 523(a)(1).” *Id.* A separate provision of the Amended Plan sets out more fully the releases given by holders of claims as follows:

Except as otherwise specifically provided for in the Plan, upon the entry of a Confirmation Order (a) each Person that votes to accept the Plan or is presumed to have voted for the Plan pursuant to Section 1126(f) of the Bankruptcy Code; and (b) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the entry of the Confirmation Order, each Entity or Person, that has held, holds, or may hold a Claim or interest (each, a “Release Obligor”), in consideration for the obligations of Debtor and Reorganized Debtor under the Plan and the case, shall have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged Debtor and Reorganized Debtor from any Claim or claim of action existing as of the entry of the Confirmation Order arising from, based on or relating to, in whole or in part, the subject matter of, or the transaction or event giving rise to the Claim or claim for relief of such Release Obligor, and any act, omission, occurrence or event in any manner related to such subject matter, transaction or obligation;

Id. ¶ 10.3. The Amended Plan includes an injunction provision as follows:

Regardless of whether the Court has entered a final decree in the Bankruptcy Case, so long as Debtor is in compliance with the Plan or the Court has entered an order granting Debtor a discharge under section 1141(d)(5) of the Bankruptcy Code, the Plan provides for a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of [sic] provided for under the Plan, except as provided for in the Plan, to the fullest extent authorized or provided by the Bankruptcy Code.

Id. ¶ 10.5. Finally, the Amended Plan provides for retention of jurisdiction by this Court to, among other things, “remedy any defect or omission or reconcile any inconsistency in this Plan, as may be necessary to carry out the intent and purpose of this Plan” and “construe or interpret any provisions in this Plan and to issue such orders as may be necessary for the implementation, execution and consummation of this Plan, to the extent authorized by the Bankruptcy Court [sic][.]” *Id.* ¶¶ 12.1.6, 12.1.7.

On December 19, 2013, Plaintiff filed a Modification to Plan of Reorganization (the “Modified Plan”) [BK Doc. 136] that modified the treatment of Defendant’s claim, and provides as follows:

Class 5 consists of the claim of Judy Yeager in the amount of \$300,000.00. Such claim consists of an award of alimony pursuant to the Final Judgment and Decree of Divorce in the Superior Court of Newton County, Alcovy Judicial Circuit, State of Georgia, Civil Action No. 11-1-933-5 in the amount of \$250,000.00 and a claim for her half interest in the marital property (the “Class 5 Claim”). Debtor shall pay Judy Yeager (a) \$300,000.00 plus (b) interest on the outstanding balance of such amount from the entry of the Confirmation Order to the date of the final payment at the rate of 5.5% per annum. in satisfaction of the Class 5 Claim (the “Class 5 Obligation”). \$50,000.00¹ shall be paid upon the entry of a Confirmation Order. Debtor shall pay the remainder of the Class 5 Obligation through the liquidation of the vehicles² identified below or with non-debtor, third party funds from Debtor’s businesses. In order to secure Debtor’s Class 5 Obligation, Any proceeds from the sale of the Vehicles will be pledged to Yeager in satisfaction of the Class 5 Obligation and the Confirmation Order shall include an express provision regarding such right. Yeager’s claim to the

proceeds of the sale of the Vehicles shall be deemed satisfied only upon payment of the Class 5 Obligation in full. Debtor shall pay the Class 5 Obligation no later than the Effective Date of the Plan.

Class 5 Vehicles

1. 1981 Delorian DMC-12 (This vehicle is subject to a pending insurance claim. The proceeds shall be remitted to Yeager);
2. 1970 Ford Mustang;
3. 1954 Lincoln Hardtop;
4. 1970 Chevrolet Chevelle;
5. 1927 Ford Model T;
6. 2007 Dodge Charger;
7. 2007 Toyota Tundra;
8. 1966 Ford Mustang;
9. 1996 Dodge Viper;
10. 1990 Chevrolet Lumina;
11. 1959 Ford Galaxy;
12. 2005 Ford Mustang;
13. 1965 Dodge D-100;
14. 1969 Ford Mustang;
15. 1987 Rolls Royce Corniche II;
16. 1955 Ford T-Bird;
17. 2007 Ford Mustang; and
18. 1970 Ford Mustang

Additionally, Judy Yeager asserts a claim for a 50% interest in marital property, a 50% interest in the Debtor's residence and a gift of five cars all of which shall be deemed satisfied upon payment of the Class 5 Obligation.

Residence:

During the course of the marriage, Debtor and Yeager resided at 5012 Park Street SW, Covington, Georgia 30014 ("Residence"). On September 11, 2009, the Internal Revenue Service filed its Federal Tax Lien No. 005079, with the Clerk of Superior Court, Newton County (the "Tax Lien"). The Tax Lien is in the amount of \$2,131,357.34 and fully encumbers the Residence. On December 30, 2009, Debtor filed his Deed of Gift with the Superior Court of Newton County, Deed Book 2785, Page 99-100 whereby Debtor conveyed an undivided ½ interest in the Residence to Yeager. Such conveyance has no monetary value as the Residence was fully encumbered at the time of the conveyance and pursuant to the Class 1 Secured Claim of the Internal Revenue Service, all

proceeds from the sale of the Residence will go towards satisfying the Class 1 Secured Claim. Yeager will receive no monetary distribution from the sale of the same and will convey her 50% interest in the Residence to Debtor (via quit claim deed) upon satisfaction of the Class 5 Obligation.

Marital Property:

Yeager holds a claim to a 50% interest in the Marital Property, as defined by the pre-nuptial agreement. Debtor recently had the contents of his properties located at 5012 Park Place and 1012 Huntington Place appraised by Allan Baitcher of Personal Property Appraisals. The fair market value of the contents of the properties is \$33,400.00. Yeager shall receive no payment for such portion of her proof of claim.

Five Vehicles:

Debtor disputes that Debtor gifted the five cars referenced in Amended Proof of Claim No. 5 to Yeager. Debtor will object to the same as it was untimely and asserts a new claim. Yeager shall receive no payment for such portion of her proof of claim.

Pre-Marital Property

Debtor will return the following pre-marital property to Yeager: (a) Leopard Vase, (b) Golf Lamp, (c) Holiday Items, (d) Hope Chest, (e) Black Chair, and (f) Green Bookshelf. Items a, b and c are located in Atlanta and will be delivered to Yeager within 15 days of the entry of the Confirmation Order. Items d, e, and f are located in Florida and such items are available for pick up any time by Yeager.

The Holder of the Class 5 Claim is impaired and entitled to vote to accept or reject the Plan. Nothing contained herein shall prohibit the Debtor from objecting to the Class 5 Claims for any reason.

¹ Such funds shall be deposited into Debtor's counsels IOLTA account prior to confirmation.

² Debtor intends on selling the vehicles at the Barrett Jackson Auction in Scottsdale, Az in January 2014. Debtor listed the values of the Vehicles pursuant to the Black Book's Cars of Particular Interest ("CPI") Vehicle Value Guide which contains pricing on more than 15,000 vehicles dating from 1946 to current model years. CPI attends more than 60 auctions nationwide every week gathering the data to report the market. CPI is published daily. See www.cpivalueguide.com.

[BK Doc. 136]. The other provisions of the Amended Plan were not changed. *Id.* ¶ 4.

The Court entered a Confirmation Order on December 23, 2013, after a confirmation hearing at which counsel for Plaintiff and counsel for Defendant advised the Court that the parties had agreed to certain additional modifications to the Modified Plan with regard to Defendant's claim which resolved Defendant's objection to confirmation.² [BK Doc. 168]. The Confirmation Order was prepared by Plaintiff's counsel and signed as without opposition by Defendant's counsel [BK Doc. 142]. As announced at the confirmation hearing, the Confirmation Order further modified the Amended Plan and Modified Plan to provide for an effective date of February 28, 2014, and 6.25% interest on Defendant's claim (collectively with the Amended Plan and Modified Plan, the "Confirmed Plan" or the "Plan"). *Id.* These two changes as well as the changes in the Modified Plan were the result of negotiations between Defendant and Plaintiff with the advice and assistance of counsel on both sides. The Confirmation Order further provides that Plaintiff, creditors, and entities receiving property under the Plan were bound by the provisions of the Confirmed Plan and that the automatic stay would continue in effect until the effective date of the Plan. *Id.* Upon confirmation, property of the bankruptcy estate revested in Plaintiff. [BK Doc. 120 ¶ 10.1].

Defendant received the initial \$50,000 payment required by the Plan. [AP Doc. 12, Exhibit 4]. However, Plaintiff failed to pay the \$250,000 balance by the effective date as required. [AP Doc. 1 ¶ 43; AP Doc. 9 ¶ 43]. On March 18, 2014, Defendant filed a Motion to Lift Automatic Stay "for the purpose of allowing her to enforce the Superior Court's Divorce

² Specifically, counsel for Plaintiff stated, "[o]ne objection to the Plan was filed by creditor Judy Yeager, which was conditional. Ms Yeager is now in support of the Plan with two modifications. One, the effective date being changed to February 28th and number two, that her class five claim will accrue interest at the rate of 6.25 percent instead of 5.5 percent." [Doc. No. 168, p. 3] And, Defendant's counsel, advised, "I have agreed that the order is going to reflect that as of the entry of the order that counsel is going to pay on – as part of the domestic support obligation, that their office is going to pay down \$50,000.00 and that interest is going to accrue until the rest of the claim is going to be paid in full at 6.25 percent, and there's going to be some property – pre-marital property exchange between now and then." [Doc. 168, p. 11].

Decree through final contempt hearings” or alternatively for “a declaratory judgment that there is no automatic stay in place” [BK Doc. 147 ¶ 6]. The motion further stated that Defendant intended to “pursue all of her State law rights and remedies under the pre-petition divorce decree.” *Id.* ¶ 7. Following a telephone conference and a hearing, the Court entered an order finding that stay relief was unnecessary because the Confirmation Order provides that the stay was terminated on the effective date of the Plan. [BK Doc. 159]. The order further provides that “[a]lthough unnecessary this Court finds good cause to enter this Order to clarify matters as between the federal and state courts as requested by Movant.” *Id.* at 2. In other words, the order merely put all interested parties, including the Superior Court, on notice that the automatic stay was no longer in effect. In no way did the order purport to authorize Defendant to pursue all her rights under the divorce decree or to make any determination as to whether such action would be consistent with or allowable under bankruptcy law and/or the Confirmed Plan. Any contrary assertion by Defendant either here or in the Superior Court is inaccurate.

After resolution of the stay issues, Plaintiff filed an application for final decree. [BK Doc. 161]. On July 24, 2014, the Court entered a final decree providing that (1) Plaintiff and creditors were bound by the Plan; (2) all property of the estate was vested in Plaintiff; (3) except as provided in the Plan all property dealt with by the Plan is free of all claims and interests; (4) except as provided in § 1141(d) and the Plan, Plaintiff was discharged of pre-confirmation debts; (5) Plaintiff would continue to file monthly operating reports for all periods through entry of the final decree; (6) Plaintiff would timely pay quarterly U.S. Trustee fees; and (7) all creditors were enjoined “from pursuing or attempting to pursue any action, commencing or continuing any action, employing any process or any act against Debtor or its property” based on a prepetition

claim, “except with respect to claims, rights, or interest arising out of the Plan or orders of this court[.]” [BK Doc. 166].

C. The Post-Confirmation Contempt Action in Superior Court

After entry of the order confirming the stay was no longer in effect, Defendant filed her Motion for Contempt in the Superior Court. [AP Doc. 1, Exhibit F; AP Doc. 12, Exhibit 4]. The Motion for Contempt contains six counts: (1) contempt for Plaintiff’s failure to post a supersedeas bond of \$250,000 as required by prior order of the Superior Court; (2) contempt for Plaintiff’s failure to pay his income taxes as required by the prenuptial agreement which resulted in a tax lien on the marital home, and a request for one-half the monthly rental value of the house; (3) return of Defendant’s separate property still in the possession of Defendant; (4) contempt for failure to divide the marital property, a request that the marital property be collected for auction, and a request that the marital home be sold after satisfaction of the tax lien and that Defendant receive half of the sale proceeds; (5) contempt for failure to pay in full the \$250,000 in alimony due under the prenuptial agreement, a request for interest on the unpaid amount, and a request to incarcerate Plaintiff until paid in full; and (6) a request for Plaintiff to pay all Defendant’s post-judgment attorney fees. *Id.*

During the pendency of the Motion for Contempt, Plaintiff paid Defendant \$90,000 on or about December 20, 2014. [AP Doc. 9 ¶ 42]. On January 8, 2015, he made another payment in the amount of \$174,226.68, which represents the remaining principal due on the \$300,000 plus interest owed under the Confirmed Plan. [AP Doc. 1 ¶ 43; AP Doc. 9 ¶ 42]. On March 30, 2015, Plaintiff filed a Motion to Enforce Settlement Agreement in the Superior Court in which he contended that the Confirmed Plan constituted an offer and acceptance to settle Defendant’s claims against Plaintiff, that he had complied with his obligations under the

settlement agreement, and that Defendant was barred from seeking any further recovery (the “Motion to Enforce Settlement”) [AP Doc. 12, Exhibit 8; AP Doc. 14, Exhibit F]. The following day, the Superior Court held a hearing on Defendant’s Motion for Contempt, at which time it considered Plaintiff’s Motion to Enforce Settlement. [AP Doc. 12, Exhibit 9; AP Doc. 14, Exhibit G]. By order entered April 13, 2015, the Superior Court denied the Motion to Enforce Settlement (the “State Court Order”). *Id.* The Superior Court observed that the Motion to Enforce Settlement was a threshold issue with respect to the Motion for Contempt, that the Plan provided for payment of \$300,000 by the effective date, and that the Plan provided for a release of Defendant’s claims in excess of \$300,000. *Id.* However, setting aside Plaintiff’s failure to pay by the effective date, the “Bankruptcy Plan did not and could not preclude [Defendant’s] ability to pursue her claims” because they are non-dischargeable under 11 U.S.C. § 523(a)(5) and/or (a)(15). *Id.* Plaintiff sought an interlocutory appeal of the State Court Order, but his application for review was denied by the Georgia Supreme Court on June 3, 2015. [AP Doc. 12, Exhibits 15, 16, 17].

D. The Adversary Proceeding

On October 9, 2015, Plaintiff filed this proceeding in which he seeks: (1) to hold Defendant in contempt for violating the Confirmed Plan, Confirmation Order, and Final Decree; (2) to enjoin Defendant from taking further action to pursue her prepetition claims; (3) to require Defendant to convey her interest in the marital residence to Plaintiff; (4) damages and attorney fees; and (5) a declaratory judgment that Defendant’s interest in the residence and five vehicles was established by the Plan. [AP Doc. 1]. The issues having been fully briefed and argued, this Order addresses each of Plaintiff’s claims.

II. Legal Analysis

A. The *Rooker-Feldman* Doctrine

In ruling on Plaintiff's Motion to Enforce Settlement, the Superior Court entered the State Court Order in which it determined that Defendant's debt is non-dischargeable. Based on this, the Superior Court concluded that the Confirmed Plan could not and did not prevent Defendant from pursuing her claims under the divorce decree. Defendant contends that the *Rooker-Feldman* doctrine bars this Court from enjoining the contempt proceeding because any injunction that this Court might issue would overrule or undo the State Court Order.

The *Rooker-Feldman* doctrine, generally provides that, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463, 126 S. Ct. 1198, 1201 (2006). The Supreme Court's decision in *Exxon Mobil Corporation v. Saudi Basic Industries Corporation*, 544 U.S. 280, 125 S. Ct. 1517 (2005), clarified the scope of *Rooker-Feldman* as limited to only those "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284, 125 S. Ct. at 1521-22.

In response to *Exxon Mobil*, the Eleventh Circuit Court of Appeals developed a two-stage test for determining applicability of *Rooker-Feldman*. *Velazquez v. South Fla. Fed. Credit Union*, 546 Fed. Appx. 854, 856 (11th Cir. 2013); *see also Nicholson v. Shafe*, 558 F.3d 1266, 1273-74 (11th Cir. 2009). First, the state court proceedings must have ended. 546 Fed. Appx. at 856. Second, the plaintiff's claims must be those of a losing party claiming to be injured by the state court judgment and inviting review and rejection of that judgment. *Id.* at 858. The

Eleventh Circuit has identified three circumstances in which State court proceedings have ended for purposes of application of the *Rooker-Feldman* doctrine:

(1) when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved, (2) if the state action has reached a point where neither party seeks further action, and (3) if the state court proceedings have finally resolved all the federal questions in the litigation, but state law or purely factual questions (whether great or small) remain to be liquidated.

Nicholson, 558 F.3d at 1275 (citing *Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 24-25 (1st Cir. 2005)).

None of the three circumstances are present in this case. First, although Plaintiff requested appellate review of the State Court Order, review was denied. Thus, the State Court Order has not been affirmed (or reversed). Second, the contempt proceeding is ongoing. At the October 28, 2015 hearing, counsel for Defendant conceded that any appeal of a final order on the Motion for Contempt would encompass a review of the State Court Order. Because a final, reviewable order on the Motion for Contempt has not yet issued, the proceedings on the Motion to Enforce Settlement have not yet reached a stage where it may be deemed terminated based on lack of action by the parties (i.e., a failure to timely appeal any final order). Third, the State Court Order did not address or resolve the issue before this Court, that is, the binding effect of the Confirmation Order. For the foregoing reasons, the Court concludes the state court proceedings have not ended for purposes of the *Rooker-Feldman* doctrine.

Under the second stage of the *Rooker-Feldman* analysis, federal jurisdiction may be barred “even where federal claims were not fully addressed by the state court so long as ‘those [federal claims were] inextricably intertwined with the state court’s judgment’” and so long as the party had “‘a reasonable opportunity to raise his federal claims’” in the state court

proceeding. *Velazquez*, 546 Fed. Appx. at 858 (quoting *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009)). “A claim is inextricably intertwined if it would ‘effectively nullify’ the state court judgment ... or it ‘succeeds only to the extent that the state court wrongly decided the issues.’” *Casale*, 558 F.3d at 1260 (quoting *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001) (internal citations omitted)).

The Superior Court concluded, in the State Court Order, that the parties did not have an enforceable settlement agreement and that Defendant’s claims are non-dischargeable. Here, in contrast, Plaintiff seeks a ruling on the effect of a federal statute that establishes the effect of confirmation in a chapter 11 case. As explained more fully below, the existence and enforceability of a settlement agreement as to the amount of Plaintiff’s liability to Defendant is not determined by confirmation of the Plan and the Plan does not and cannot discharge Plaintiff’s debt to Defendant.³ Rather, the issue before this Court is the binding effect of the Plan and the treatment it provides for Defendant’s claim in the bankruptcy case. As a result, a ruling in Plaintiff’s favor would have no effect on the determinations made by the Superior Court in the State Court Order and thus, this proceeding is not inextricably intertwined with the state court proceeding. Consequently, the *Rooker-Feldman* doctrine does not bar consideration of Plaintiff’s claims.

B. The Binding Effect of a Confirmed Plan on Creditors With Non-Dischargeable Debts

Pursuant to 11 U.S.C. § 1141(a), “[e]xcept as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, ... any entity acquiring property under the plan, and any creditor,” whether or not its claim is impaired under the plan

³ Obviously, this does not mean that a non-dischargeable DSO claim cannot be settled by agreement of the parties. Rather, confirmation alone does not result in such a settlement.

and whether or not it voted to except the Plan. Notwithstanding the binding effect of the plan, a Chapter 11 discharge “does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.” *Id.* § 1141(d)(2).⁴ Plaintiff contends Defendant’s Motion for Contempt violates the provisions of the Confirmed Plan, specifically the plan injunction. *Supra* at 5. Defendant contends that pursuant to Eleventh Circuit precedent, the Bankruptcy Court cannot prevent her from pursuing collection of her non-dischargeable debt, regardless of the provisions of the Plan. Both parties are correct. However, neither party’s position provides a complete answer to the issues raised in this proceeding, which highlights the tension between two important bankruptcy policies, “finality of the provisions of a confirmed ... plan, ... and the almost sacrosanct nature of domestic support obligations even from relief in a bankruptcy case” *Fort v. State of Florida Department of Revenue (In re Fort)*, 412 B.R. 840, 857 (Bankr. W.D. Va. 2009).

In *Fort*, the court held that a creditor with a domestic support obligation (“DSO”) was bound by the confirmed chapter 13 plan⁵ with respect to treatment of its claim. *Id.* at 860. Therefore, the DSO creditor could not continue collecting its claim through an employment

⁴ Debts under a divorce decree for support and property division are generally non-dischargeable in Chapter 11 as follows:

A discharge under section ... 1141 ... of this title does not discharge an individual debtor from any debt—

...

(5) for a domestic support obligation; [or]

...

(15) 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[.]

11 U.S.C. § 523(a)(5), (15). A domestic support obligation is defined in 11 U.S.C. § 101(14A). For purposes of this Order, the Court assumes without deciding that Defendant’s debt is non-dischargeable.

⁵ The chapter 13 corollary to § 1141(a) is found in § 1327(a), which provides that the “provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.” Because the language of the two provisions is so similar, cases construing § 1327(a) are helpful for interpreting § 1141(a). *Padilla v. Wells Fargo Home Mortg. (In re Padilla)*, 379 B.R. 643, 663 n.8 (Bankr. S.D. Texas 2007); *see also In re Davis*, 481 Fed. Appx. 492, 495 (11th Cir. 2012).

deduction order during the pendency of the plan. *Id.* However, “the amount owing by [the debtor] and any amount in excess of that for which payment is provided in the confirmed plan will continue to exist until fully paid as a non-dischargeable obligation” *Id.*

The Eleventh Circuit adopted a similar approach in *Florida Department of Revenue v. Rodriguez (In re Rodriguez)*, 367 Fed. Appx. 25 (11th Cir. 2010). In *Rodriguez*, the Court concluded that the bankruptcy court was correct in holding a child support creditor in contempt for engaging in collection activities during the pendency of a chapter 13 plan. *Id.* at 28. After the debtor’s first plan was confirmed, the Florida Department of Revenue (“DOR”) filed a proof of claim for child support delinquency. Thereafter, the debtor filed an amended plan that provided for payment of the arrears and the ongoing monthly payments in the amount ordered by the state court. The debtor later amended his plan again to reduce the ongoing payments to half the amount ordered by the state court. During the pendency of the case, the DOR sent the debtor three collection letters. The debtor filed a motion for contempt, alleging the letters violated the automatic stay. *Id.* at 26. The bankruptcy court ruled in favor the debtor. *Id.* at 26-27. On appeal, the district court found no stay violation, but upheld the contempt order because the DOR had violated the confirmed plan. *Id.* at 27. The Eleventh Circuit affirmed the district court because “the State violated the confirmation order by asserting an interest other than those provided for in the plan after confirmation.” *Id.* at 28 (citing *In re Gellington*, 363 B.R. 497, 502 (Bankr. N.D. Tex. 2007)).

The court in *In re Gonzalez*, No. 11-23183, 2012 WL 2974813 (Bankr. S.D. Fla. July 20, 2012), applied *Rodriguez* when the Florida DOR seized a travel reimbursement check issued to the debtor by the U.S. Treasury, despite the fact that the debtor’s chapter 13 plan provided for payment of the DOR’s claim for child support arrears. *Id.* at *1. The court

considered “whether the actions taken by a creditor are inconsistent with, or at odds with, the confirmed plan.” *Id.* at *3. The court found that the DOR’s interception of the reimbursement check “was contrary to the express provisions of the Debtor’s Plan, which provides that the arrearage of \$2,400 will be paid in full at the end of the first forty five months.” *Id.* The court relied on *Rodriguez* for the proposition that domestic support creditors are bound by the terms of the confirmed plan, and that “so long as the Debtor is meeting his obligations under the Plan, the DOR may not take any action inconsistent with the Plan.” *Id.* at *4. The court held the DOR in contempt for violating the confirmation order.⁶ *Id.* at *5. *See also In re Hutchens*, 480 B.R. 374, 385 (Bankr. M.D. Fla. 2012) (chapter 13 debtor’s ex-wife was “bound by the terms of the confirmed plan” and any attempt to collect prepetition support obligations in state court was “barred by the terms of the confirmation order” such that she “must wait for the bankruptcy case to be closed or dismissed before she may attempt to collect the projected unpaid prepetition domestic support obligation....”).

The holding in *Gonzalez* is also supported by *United States v. White*, 466 F.3d 1241 (11th Cir. 2006). *White* involved a non-dischargeable tax debt in an individual chapter 11 case under pre-BAPCPA⁷ law. The debtor’s plan was confirmed on May 18, 1994 with an effective date of July 17, 1994. On July 4, 1994, the Internal Revenue Service (“IRS”) assessed tax liabilities against the debtor in excess of \$100,000 for failure to pay withholding taxes for his employees, and thereafter sued to collect. *Id.* at 1243-44. Under then applicable law, the debtor had received a discharge upon confirmation of the plan.⁸ *Id.* at 1245. Because the discharge

⁶ The district court affirmed, *State of Fla. Dept. of Rev. v. Gonzalez (In re Gonzalez)*, No. 1:15-cv-20023, 2015 WL 5692561 (S.D. Fla. Sept. 29, 2015), and the case is currently pending on appeal in the Eleventh Circuit Court of Appeals, no. 15-14804 (appeal filed Oct. 23, 2015).

⁷ The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, PL 109-8, 119 Stat 23 (2005).

⁸ By contrast, in this case Plaintiff has not received a discharge and cannot receive one until payments under the Plan are completed, unless the Court orders otherwise for cause. 11 U.S.C. § 1141(d)(5); BK Doc. 120 ¶ 10.2.

served to terminate the automatic stay, the only injunction in effect at the time the IRS took action was the discharge injunction. *Id.* Because the discharge injunction arose at confirmation and because it does not apply to non-dischargeable debts, “once a plan has been confirmed, holders of non-dischargeable debts can generally pursue collection *unless the plan has provided otherwise* or unless the court otherwise orders.” *Id.* at 1246 (emphasis added). The court went on to say, “[i]t is true that a plan can delay the payment of nondischargeable debts, but such provisions require the approval of the bankruptcy judge . . .” *Id.* at 1247.

Similarly, in *In re Brotby*, 360 B.R. 177 (9th Cir. BAP 2003), the Court considered whether a plan provision enjoining collection by a creditor holding a non-dischargeable claim while the debtor makes payments to other creditors under a chapter 11 plan violates §1141(d)(2). The Court held that §1141(d)(2) “preclude[s] a reorganization plan from *discharging* nondischargeable debt; the provision should not restrict a plan from temporarily enjoining collection of a nondischargeable debt if the delay is ““necessary for the success of the plan and the other requirements of §1129 are satisfied.”” *Id.* at 187 (quoting *In re Mercado*, 124 B.R. 799, 801-803 (Bankr. C.D. Cal. 1991))(emphasis in the original). In so holding, the court relied on *Collier on Bankruptcy* which states in part, “. . . performance under the plan requires that creditors participate collectively, [thus] it may be appropriate to enjoin individual collection efforts” and the legislative history for §1141 which makes clear that “a debtor will remain obligated to pay nondischargeable debts after plan confirmation. . .” *Id.* at 187-188 (quoting, *Collier on Bankruptcy* ¶ 1141.05[2] (15th ed. Rev. 2001)). The Court reasoned further, that

The reference to §1141(d)(2) in §1141(a) makes it clear that while all creditors are bound by the provisions of a confirmed plan, this binding effect cannot operate to discharge an otherwise nondischargeable debt. Similarly, by reference to subsection (d)(2) in §1141(c), Congress instructs that while confirmation of a plan releases all property dealt with by the plan from claims of creditors, the plan cannot release property from §523 claims. . . .[Section] 1141(d)(2) was intended

by Congress to answer the question *whether* after confirmation of a plan a creditor can collect a nondischargeable claim, not *when*.

Id. at 189 (citing *Mercado*, 124 B.R. at 804) (emphasis in the original). Not only is *Brotby* consistent with Eleventh Circuit authority, the Court believes its analysis of § 1141 is correct⁹.

C. Limitations on the Bankruptcy Courts' Ability to Determine Liability

These cases make clear that the holder of a non-dischargeable claim is bound by a confirmed plan. This does not mean, however that “the bankruptcy court determines the amount of support, or any other details of the domestic affairs; those remain governed by the state courts.” *Rodriquez*, 367 Fed. Appx. at 29. The Circuit affirmed this principle in *State of Florida Department of Revenue v. Diaz (In re Diaz)*, 647 F.3d 1073 (11th Cir. 2011).

In *Diaz*, a chapter 13 case, the DOR filed a proof of claim for past due child support in the amount of \$67,047.45. *Id.* at 1080. The debtor objected to the interest portion of the claim; the DOR did not respond, and the claim was reduced to \$47,746.49. *Id.* The plan, which was confirmed without objection, provided for full payment of the allowed claim. *Id.* During the plan, the DOR sent collection notices to the debtor but ceased doing so at the debtor's request. *Id.* After the debtor completed his plan payments and the case was closed, the DOR undertook efforts to collect the disallowed prepetition and post-petition interest. *Id.* at 1081. The bankruptcy court held the DOR in contempt for violation of the discharge injunction. *Id.* at 1082.

⁹ The issue whether to construe §1141 narrowly or broadly was at the center of the court's opinion because an earlier BAP panel had rejected the limited approach adopted by *Brotby*. *Brotby* 360 B.R. at 188-189. Courts that adopt the broad approach conclude that “parties holding nondischargeable debts identified in §1141(d)(2) ‘are expressly excepted from those persons who are bound by the provisions of a confirmed plan...’” *In re Amigoni*, 109 B.R. 341, 345 (Bankr. N.D. Ill. 1989)(quoting, *In re Howell*, 84 B.R. 834, 836 (Bankr. M.D. Fla. 1988)). *See also In re DePaolo*, 45 F.3d 373, 376 (10th Cir. 1995); *Grynberg v. U.S. (In re Grynberg)*, 986 F.2d 367, 370 (10th Cir. 1993) cert. denied 510 U.S. 812 (1993); *Goodnow v. Adelman (In re Adelman)*, 90 B.R. 1012 (Bankr. D.S.D. 1988). As discussed previously, the Eleventh Circuit has held that a creditor with a non-dischargeable claim is bound by confirmation, indicating that the limited approach is applicable in this circuit. In any event, the Court believes the narrow approach is the correct approach for the reasons identified in *Brotby* and importantly, because the binding effect in chapter 11 is necessary to facilitate a debtor's fresh start; a fundamental policy embodied in the Code.

The Eleventh Circuit reversed the bankruptcy court, reasoning that the amount of the DOR's debt was not litigated in the bankruptcy court; the court merely determined the amount of the allowed claim—the amount of the debt that would be paid by the bankruptcy estate. *Id.* at 1091. Any debt in excess of that amount was excepted from discharge and attempts to collect it could not run afoul of the discharge injunction. In other words, a determination of the amount of an allowed claim is not preclusive under principles of res judicata or collateral estoppel as to the amount of the underlying debt when the underlying debt is excepted from discharge. *Id.* at 1091-92. A contrary conclusion “could be especially problematic in the context of child-support obligations. If bankruptcy courts could fix a debtor's personal liability for child-support through rulings on a claim objection or confirmation of a Chapter 13 plan, this would often result in a de facto modification of state child-support orders.” *Id.* at 1092 n.16.

The court also noted a distinction between attempts to collect a debt that has already been satisfied, which was not at issue, and attempts to collect a debt in violation of the discharge injunction. *Id.* at 1091 n.15. Because a child support obligation is non-dischargeable, collection activity can never violate the discharge. If, however, the debtor believes the creditor is attempting to collect amounts that have already been satisfied, he may seek a determination of liability from the state court. *Id.* at 1093.

Subsequent to *Diaz*, the Eleventh Circuit decided *State of Florida Department of Revenue v. Davis (In re Davis)*, 481 Fed. Appx. 492 (11th Cir. 2012). *Davis* is a chapter 11 case in which a portion of the DOR's child support claim was disallowed. The chapter 11 plan provided that “failure to submit a claim by the claims bar date would constitute an adjudication, on the merits, of the debtor's liability.” *Id.* at 493. The DOR filed a late claim after the plan had been confirmed, the debtor objected to the claim, and the bankruptcy court disallowed it as

untimely and determined the debtor had no liability on the claim. *Id.* The DOR then attempted to collect the debt in state court. The bankruptcy court enjoined the DOR's collection action on the ground that its determination of debtor's liability on the claim was res judicata as to any other court. *Id.* Once again, the Eleventh Circuit disagreed. *Id.* at 494.

In *Davis*, the court distinguished between the amount of an obligation and the estate's liability for an obligation. As in *Diaz*, the court concluded that the bankruptcy court did not determine the *amount* of the underlying debt. It did, however, purport to determine that the debtor had no liability on that debt, whatever its amount. *Id.* at 495. The Eleventh Circuit said, "the bankruptcy court's decision as to 'liability' for a debt is really only a decision about whether the non-dischargeable debt will be paid by the bankruptcy estate as part of the bankruptcy plan." *Id.* It does not "preclude a creditor from pursuing an unpaid amount of [a nondischargeable claim] post-bankruptcy." *Id.* The court went on to say the debtor was free to litigate the amount of his obligation in the appropriate state court. *Id.* n.2.

It is clear, based on Eleventh Circuit precedent that Defendant is bound by the terms of the Confirmed Plan. It is equally clear, however, that this Court cannot, through entry of a confirmation order or an order on a claim objection, determine the amount of Plaintiff's liability to Defendant under a divorce decree. As a result, upon completion of the Plan or dismissal of the bankruptcy case Defendant may collect any amounts owed on her debt that were not satisfied under the Plan. As a result, the release language in the Confirmed Plan cannot release Plaintiff from any debt established by the divorce decree that remains unsatisfied upon completion of payments under the Plan. Indeed, to the extent Plaintiff's adversary proceeding seeks a ruling that would alter his liabilities under the divorce decree—an order that has been subject to the full panoply of state appellate review—*Rooker-Feldman* would prohibit the Court

from entering such an order. With this framework for analysis in mind, the Court now turns to consideration of Plaintiff's claims in this proceeding.

1. Count 1: Citation for Contempt For Violating the Consent Confirmation Order and Final Decree

Plaintiff seeks to hold Defendant in contempt for asserting claims and engaging in collection efforts contrary to the terms of the Confirmed Plan and for failing to convey her one-half interest in the marital residence to Plaintiff. Defendant contends that she is not in violation of the Confirmed Plan because Plaintiff is not in compliance with the Plan and because her debt is non-dischargeable. This Court has authority to interpret its own confirmation orders and is in the best position to do so. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151, 129 S. Ct. 2195, 2205 (2009); *Finova Capital Corp. v. Larson Pharmacy, Inc. (In re Optical Tech., Inc.)*, 425 F.3d 1294, 1300 (11th Cir. 2005). Further, the Court expressly retained jurisdiction in the Plan to interpret the Plan. [BK Doc. 120 ¶ 12.1.7].

Two Plan provisions are particularly relevant to this inquiry: the plan injunction and the default provision. The plan injunction provides, in relevant part: "so long as Debtor is in compliance with the Plan or the Court has entered an order granting Debtor a discharge under section 1141(d)(5) of the Bankruptcy Code, the Plan provides for a permanent injunction against any Person commencing or continuing any action ... to collect, offset, or recover any Claim or Cause of [sic] provided for under the Plan, except as provided for in the Plan" *Id.* ¶ 10.5. And the default provision provides, that in the event of a default by Plaintiff, the "Holder of such Claim must send written notice to Debtor If such default is a monetary default, Holder must provide Debtor with the amount of the default and the address to where the payment should be

sent in order to cure the default. Debtor shall have ten (10) days from the Debtor's receipt of the notice of default to cure such default." *Id.* ¶ 2.3.

No discharge has been granted so the Plan injunction applies only if Plaintiff is in compliance with the Plan. If Plaintiff is not in compliance, the default provision requires notice to Plaintiff with time to cure. Neither the default provision nor any other term of the Plan relieves a creditor from its obligations under the Plan or releases a creditor from the binding effect of the Plan upon default by Plaintiff. Further, by providing a means to cure a default under the Plan, the Plan enables Plaintiff to cure a default and come back into compliance with the Plan after a default.

It is undisputed that, at the time Defendant filed the Motion for Contempt, Plaintiff was not in compliance with the Confirmed Plan. Although the record does not reflect whether a default notice was sent, during the hearing on Defendant's motion for stay relief Plaintiff requested that a default notice be sent. Assuming Defendant provided the notice and Plaintiff failed to timely cure, Defendant was entitled to take steps to enforce compliance with the Plan, including filing a contempt action in state court. *In re Curry*, 99 B.R. 409, 410 (Bankr. C.D. Ill. 1989) ("When a Chapter 11 plan is confirmed and the debtor fails to pay, the creditors' remedy is ... to enforce the debtor's obligation to the creditor arising out of the Chapter 11 proceeding."); *see also AMC Mortg. Co., Inc. v. Tennessee Dept. of Rev. (In re AMC Mortg. Co., Inc.)*, 213 F.3d 917, 921 (6th Cir. 2000) ("A failure to make a payment required under the plan is a material default and is cause for dismissal."); 11 U.S.C. § 1142(b). However, to the extent Defendant's contempt action sought to do more than enforce her rights under the Plan, it was inconsistent with the Plan and violated the Confirmation Order.

Once Plaintiff paid the remaining \$250,000 with interest as required by the Plan he was then in compliance with the Plan with respect to Defendant's claim.¹⁰ Defendant argues that Plaintiff can never be in compliance with the Plan because the \$250,000 payment was made after the effective date of the Plan. The Court rejects this argument. As previously noted, the Court considers the fact that numerous parties, in addition to Defendant, are bound by the Plan to be a significant factor in achieving the goals embodied in the Code. Thus, Defendant cannot be allowed to undo the entire Plan—to the possible detriment of other creditors—due to a default as to her claim. The Plan expressly contemplates the ability to cure a monetary default. If the cure did not also serve to reinstate compliance under the Plan the provision would be without meaning or purpose. Further, the fact that Plaintiff may not have cured the default within 10 days of receiving notice of default did not eliminate the possibility of compliance with the Plan; it merely allowed Defendant to pursue other avenues to enforce the Plan. Thus, to the extent Defendant sought to do more than enforce her rights under the Confirmed Plan and to the extent she continued to pursue the contempt proceedings after Plaintiff cured his default—other than to recover her costs—she violated the Confirmation Order and the Plan.

In addition to Plaintiff's obligations under the Plan, the Plan obligates Defendant to quitclaim her interest in the marital residence to Plaintiff once Plaintiff has paid the Class 5 Claim in accordance with the Plan. The Code makes clear that, upon confirmation, property

¹⁰ During the October 22, 2015 hearing, Defendant alleged Plaintiff had defaulted on other provisions of the Plan with respect to her claim by holding Defendant's separate property consisting of antiques at his parents' house in Florida and by holding some marital property in storage that Defendant should have received. With respect to the marital property, the Plan provides that Defendant's 50% interest will be satisfied by payment of the Class 5 obligation, which has occurred. With respect to the property in Florida, the Plan requires Plaintiff to make it available for pick up by Defendant, and counsel for Plaintiff contends it is available. Counsel also alluded to a dispute about when interest began to accrue on the monetary obligation. The Court afforded the parties the opportunity to present evidence and also directed them to address any factual disputes in supplemental briefs. Although both parties filed supplemental briefs, neither side pursued the dispute over Defendant's personal property or over the accrual of interest. Therefore, it appears Plaintiff has satisfied his obligations under the Plan as to Defendant's personal property.

treated under the Plan is free of creditors' claims. 11 U.S.C. §1141(c). With respect to the marital residence, proceeds from the sale of the property are to be paid to the holder of the Class 1 Claim, the U.S. Treasury. This cannot be accomplished without Defendant's compliance with the Plan. Thus, to the extent Defendant has not yet transferred her interest in the marital residence she is in violation of the Confirmation Order and the Plan.

While Defendant may be in contempt of this Court's Confirmation Order, Plaintiff does not come to this Court with clean hands. It was his initial failure to comply with the Confirmation Order that started the parties along this path, and Defendant has recounted continued efforts by Plaintiff to hinder Defendant in the contempt proceeding. Therefore, the Court does not find it appropriate to sanction Defendant or award attorneys' fees at this time. However, if Defendant fails to transfer her interest in the marital residence or otherwise acts in contravention of the provisions of the Plan, the Confirmation Order, and this Order, Plaintiff may renew his request for sanctions.

2. Count 2: Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction

The Court has previously entered a temporary restraining order enjoining Defendant from pursuing her Motion for Contempt except to the extent she seeks to recover her costs for prosecuting the Motion. In light of the above discussion concerning the binding effect of the Plan, the plan injunction, and the default provision, the Court concludes Defendant is enjoined from taking any action inconsistent with the Plan until the Plan is complete¹¹ or until the bankruptcy case is dismissed. In other words, until payments under the Plan are complete, Defendant is limited to seeking payment of \$300,000, return of certain items of personal

¹¹ Upon completion of Plan payments, Plaintiff will be eligible for a discharge. By its terms, the plan injunction ceases upon entry of the discharge.

property, and opportunity to retrieve other items of personal property. She can also seek to recover her costs for enforcing the Plan. Defendant cannot seek to recover any property in excess of what is provided for in the Plan until completion of the Plan. And, Defendant cannot compel any actions inconsistent with the Plan, such as requiring Plaintiff to pay over half the proceeds from the sale of the marital residence, at least until Plan provisions treating the proceeds are satisfied. Such a requirement is consistent with §1141(d)(2) and (c) because, to the extent the sales proceeds from the residence exceed the amounts necessary to fund payments under the Plan, the proceeds would be subject to collection by Plaintiff on account of her non-dischargeable debt¹².

As it appears Plaintiff has fully complied with his obligations to Defendant under the Plan, Defendant is limited to seeking fees and costs for enforcing the Plan, pursuant to Count 6 of her Motion for Contempt. All other counts of the Motion for Contempt are enjoined by the plan injunction and the binding effect of the Plan. However, because Defendant's debt is non-dischargeable, to the extent of any debt owed in excess of amounts paid under the Plan, Defendant will be free to collect any such amounts, such as one half of the value of the marital residence, in the appropriate court after the Plan is complete. Likewise, Plaintiff will be free to raise any defenses at that time, such as his argument that the parties contractually agreed to reduce the amount of the underlying debt¹³ or that no debt remains to be paid.

This raises the question of when the Plan will be complete. Because the record does not reflect the current status of the Plan, the Court will require Plaintiff to file a pleading in the main bankruptcy case that details the payments he has made and the payments that remain to

¹² The Court notes that in addition to proceeds from liquidating Debtor's real and personal property that the Plan requires Debtor to use post-confirmation to fund the Plan such that there may in fact be proceeds subject to Defendant's claim.

¹³ The Court notes that Defendant's acceptance of the Plan could be relevant to the Superior Court's inquiry.

be made. Such a pleading will enable Defendant and other interested parties to determine whether Plaintiff is currently in compliance with all provisions of the Plan.¹⁴ If he is not, they may take appropriate steps to enforce the Plan.

3. Count 3: Request for Specific Performance

Plaintiff seeks to enforce Defendant's obligation under the Plan to convey her one-half interest in the marital residence to Plaintiff. The Plan provides that Defendant "will convey her 50% interest in the Residence to Debtor (via quit claim deed) upon satisfaction of the Class 5 Obligation." [BK Doc. 136 p.3]. Plaintiff has satisfied his Class 5 obligations. Unless Plaintiff can show otherwise, she is obligated to deliver the quitclaim deed to Plaintiff.

4. Count 4: Request for Damages, Including Attorneys' Fees

Plaintiff contends he is entitled to damages and fees because Defendant has acted in bad faith, has been stubbornly litigious, and has caused Plaintiff unnecessary trouble and expense. These adjectives could easily be applied to Plaintiff's conduct in causing and prolonging the current dispute. It was his failure to comply with his obligations under the Plan that necessitated Defendant's Motion for Contempt. Although the Motion exceeded its permissible scope during the pendency of the Plan, Defendant was well within her rights to take action to enforce the Plan. The Court does not find it appropriate to award Plaintiff damages or fees in these circumstances.

5. Declaration That Ms. Yeager's Interest in the Marital Residence and Five Vehicles Was Established by the Plan

Plaintiff contends that under the Plan, Defendant no longer has any interest in the marital residence or five vehicles she claims were gifted to her. Plaintiff seeks a declaratory

¹⁴ Defendant has alleged noncompliance by Plaintiff unrelated to the Class 5 claim, including failure to make arrangements to sell four real properties to satisfy tax liabilities and failure to file post-confirmation operating reports. [AP Doc. 16 p.11-12].

judgment that (a) the Plan established that the Internal Revenue Service's tax lien is superior to Defendant's interest in the residence; (b) Defendant is required to convey her interest in the residence to Plaintiff; and (c) Defendant's claim to the five cars has been extinguished. As explained in *Diaz* and *Davis*, the terms of the Confirmed Plan do not determine the underlying liabilities between Plaintiff and Defendant; it merely provides for treatment of Plaintiff's bankruptcy claim through the Plan. While Plaintiff cannot compel payment of her claim from the vehicles or the residence under the terms of the Confirmed Plan, after the Plan is completed she is free to pursue the value of that property, assuming it comprises a non-dischargeable debt that has not otherwise been satisfied.

III. Conclusion

In summary, the Confirmed Plan does not alter the amount of debt Plaintiff owes under the divorce decree. Thus, to the extent the Plan provides for satisfaction of and release of Defendant's claim, the Plan provisions affect the treatment of the claim in the Plan and not the underlying debt. However, Defendant is bound by the terms of the Confirmed Plan and cannot take any actions inconsistent with the Plan during the pendency of the Plan. Therefore, to the extent her Motion for Contempt seeks to enforce any rights outside of the Plan, it violates the Confirmed Plan and may subject Defendant to sanctions for contempt. To the extent Plaintiff is not in compliance with the Plan, Defendant may seek to enforce the Plan or may seek dismissal of the bankruptcy case. Once the Plan is complete or the bankruptcy case is dismissed, to the extent her debt is non-dischargeable, Defendant can pursue any amounts not satisfied by payments under the Plan in state court. Likewise, Plaintiff can raise any appropriate defenses in state court, such as the existence of an agreement between the parties regarding the amount of his

liability or satisfaction thereof through payment under the Plan. In accordance with the foregoing, it is

ORDERED that Defendant is enjoined from taking any action to collect or enforce her debt that is inconsistent with the provisions of the Confirmed Plan until the earlier of completion of the Plan or dismissal of the bankruptcy case; she may only proceed with her Motion for Contempt to enforce the provisions of the Plan and to recover her costs for enforcing the Plan; it is further

ORDERED that Defendant shall execute a quitclaim deed transferring her interest in the marital residence to Plaintiff; it is further

ORDERED that Plaintiff shall file a pleading in the main bankruptcy case setting forth the current status of his obligations under the Plan, including payments made under the Plan and payments remaining to be made under the Plan; it is further

ORDERED that this Order is without prejudice to either party seeking relief, including sanctions or dismissal of the bankruptcy case, in the event of continued or further noncompliance with the Plan.

END OF ORDER

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