

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

IN RE:	:	CASE NO. G13-20512-REB
	:	
JOEL SMITH,	:	
	:	
Debtor.	:	
	:	
_____	:	ADVERSARY PROCEEDING
PAMELA H. SMITH,	:	NO. 13-2027
	:	
Plaintiff,	:	
	:	
v.	:	CHAPTER 13
	:	
JOEL SMITH,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE

SUPPLEMENTAL JUDGMENT

On October 3, 2013, this Court entered a Judgment (Docket Entry No. 21) on various claims as asserted in the complaint of Plaintiff Pamela H. Smith, former spouse of Defendant-Debtor Joel Smith, as filed herein on March 28, 2013. In the complaint, Plaintiff sought a determination that certain obligations as created in the Final Judgment and Decree of Divorce entered by the Superior Court for White County, Georgia, on March 2, 2012, and the Joint Order entered on August 13, 2012 (*Smith v. Smith*, Civil Action File No. 2011-CV-0022-DB and 2012-CV-0200, respectively), should be excepted from Debtor's discharge in this Chapter 13 case as domestic obligations covered under 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 1328. See Exhibits "A" and "B," attached to Plaintiff's Complaint.¹

¹ As previously discussed by the Court, analysis into whether an obligation is in the nature of support or a division of property remains relevant herein since an obligation that is

In its Judgment, this Court observed that based upon its understanding, it appeared that a portion of the Joint Order entered by the state superior court, in which it found Debtor in contempt, was on appeal before the Georgia Supreme Court. Debtor appealed the state court's award of compensation to Plaintiff as determined by the monetary value of personal property awarded to her in the divorce decree that Debtor allegedly removed from the marital home before Plaintiff took possession. In view of this status, in its Judgment this Court entered no decision with respect to the nature of Debtor's obligation to pay \$33,791.00 in relation to this personal property. Instead, the Court announced its intention to await the ruling of the Georgia Supreme Court finalizing this particular award and the means for its satisfaction before entering judgment on the issue of nondischargeability of this obligation in this adversary proceeding as necessary.²

This Court has now learned that in an Opinion entered on September 9, 2013, the Georgia Supreme Court affirmed the ruling of the state superior court holding Debtor in contempt. In its ruling, the state Supreme Court concluded, among other things, that in awarding Plaintiff monetary compensation in lieu of certain personal property as a remedy for Debtor's contempt in refusing to turn over same, the state trial court did not improperly modify the original decree. In addition, the state supreme court ruled that even if the final judgment of the state court failed to award specific items of personal property or dispose of all marital property, the judgment is

characterized as a property settlement, even if arising in the context of marital dissolution proceedings, can be discharged under Chapter 13 as a debt provided for by the Debtor's plan. *See* 11 U.S.C. § 1328(a)(2) and 11 U.S.C. § 523(a)(15).

² As stated in its Judgment, the Court entered final judgment on certain other claims as then addressed in accordance with Federal Rule of Civil Procedure 54(b), applicable herein through Federal Rule of Bankruptcy Procedure 7054, with the exception of the issue pertaining to the personal property as on appeal before the Georgia Supreme Court.

not rendered void as a result. *See Smith v. Smith*, 293 Ga. 563, 748 S.E.2d 456 (2013).

As a result of this ruling, this Court now examines the dischargeability of the state court award of the monetary value of the personal property in question in the context of this bankruptcy case. In its prior Judgment, this Court noted that as compared to an award of alimony, maintenance, or support, certain property division obligations are also excepted from discharge under Section 523(a)(15) if they arise in the context of marital dissolution proceedings under changes to the law in 2005.³ As the Court further observed, however, in a case under Chapter 13, while debts properly described under Section 523(a)(5) as support cannot be discharged, obligations created as part of a property division, otherwise encompassed by Section 523(a)(15) as amended in 2005, *are* dischargeable.

This conclusion follows because Section 1328(a)(2), as applicable in this Chapter 13 case, *omits* any reference to Section 523(a)(15). As such, property settlement obligations arising in a marital dissolution context that are payable pre-filing *can be* discharged in *a case under Chapter 13* since a discharge is granted to *all* claims treated in a debtor's plan *upon* completion of the plan. *See* 11 U.S.C. § 1328(a). And, this conclusion is unaltered by the fact that the obligation could otherwise be analyzed under Section 523(a)(15) in *another* chapter of the Bankruptcy Code.⁴

³ *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”).

⁴ Therefore, the same factors used before 2005 to analyze an obligation (i.e., whether it is in the *nature* of alimony, maintenance, or support *or* whether it constitutes a division of property) still apply as the distinction between domestic support obligations and *other* debt obligations arising from the dissolution of a marital relationship *remains critical* in Chapter 13 cases where the debtor is not receiving a hardship discharge under Section 1328(b).

From its review of the record, and applying the factors as discussed in its prior Judgment, this Court concludes that the state superior court intended to divide and/or dispose of certain identified items of marital property between the parties as a settlement of such property. The court's award was not dependent on Plaintiff's future marital state or whether she survived the Debtor. Though Debtor's apparent efforts to impede her from taking possession affect her economic well-being, it does not appear that the intent of the award was to address Plaintiff's economic security as in the nature of an award of alimony.

Further, the character of such an award as a property settlement is not modified by the fact that the state court deviated from the letter of the original divorce decree in its subsequent joint order. In crafting a remedy for contempt to account for the harm caused by Debtor's failure to comply with the award in the decree, it appears that the state court was merely attempting to enforce its intent to realize a settlement of property between these parties. In awarding monetary compensation, the court sought to provide a means by which Debtor could convey the value of the personal property he was obligated to turn over but failed to do.⁵

Therefore, based upon the above discussion, it is

ORDERED, ADJUDGED, AND DECREED that relief is denied on Plaintiff's complaint to the extent that the contempt award of the state superior court, by which Debtor was ordered to pay monetary compensation to Plaintiff equal to the fair market value of certain

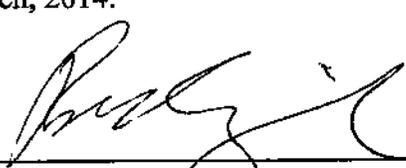
⁵ The current whereabouts of this property is unclear from the record. The Court also notes that while the ruling herein may not have been projected by the state court in that Debtor is seemingly allowed to benefit from his actions in preventing a turn over of the subject property, after close analysis, the facts and law dictate this Court's decision on the limited issue of whether or not the obligation in question is in the nature of alimony, maintenance, or support under Section 523(a)(5), and hence, whether same is excepted from discharge in this Chapter 13 bankruptcy case.

personal property of which Debtor had a pre-filing obligation to turn over to Plaintiff under the terms of their decree of divorce, but failed to perform, is in any event not in the nature of alimony, maintenance, or support and constitutes a property settlement and it is, therefore, dischargeable herein as provided by 11 U.S.C. § 1328.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, counsel for Defendant-Debtor, the Chapter 13 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 4th day of March, 2014.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE