UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G04-30538-REB
SANDRA J. STANLEY,	:	
Debtor.	:	
	:	ADVERSARY PROCEEDING
SANDRA J. STANLEY,	:	NO. 05-2002
Plaintiff,	:	
v.	:	
	:	CHAPTER 7
CLINT T. CARPENTER and FORD MOTOR CREDIT,	:	
Defendant.	:	JUDGE BRIZENDINE

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the Court is the motion of Plaintiff-Debtor for summary judgment on her complaint as amended which seeks a determination that a certain joint obligation owed to Co-Defendant Ford Motor Credit, which Plaintiff agreed to pay in connection with a settlement agreement incorporated into a state court divorce decree, is excepted from discharge in accordance with 11 U.S.C. §§ 523(a)(5)(B) and (a)(15). Upon review of the argument and authority cited by Plaintiff and by Co-Defendant Clint Carpenter in his response, the Court concludes that Plaintiff is not entitled to summary judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.

R. Civ. P. 56(c), applicable herein through Fed. R. Bankr. P. 7056; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In deciding whether the moving party has met this burden, all factual inferences reasonably drawn from the evidence presented must be viewed in the light most favorable to the party resisting summary judgment. The Court cannot weigh the evidence or choose between competing inferences. *See Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997); *Raney v. Vinson Guard Serv., Inc.*, 120 F.3d 1192, 1196 (11th Cir. 1997).[1]

The determination of whether a debt constitutes alimony, maintenance, or support under Section 523(a)(5) is fact intensive and governed by federal law. *See Strickland v. Shannon (In re Strickland)*, 90 F.3d 444 (11th Cir. 1996); *In re McClain*, 241 B.R. 415, 419 (8th Cir. BAP 1999). Under this subsection, bankruptcy courts do not sit as appellate courts to reconsider amounts awarded, support needs, or fairness of a property division as set forth in a divorce decree or incorporated settlement agreement. Instead, bankruptcy courts must determine the intent of the parties and/or state court in connection with a specific obligation, guided by state law and by considering the entire agreement or decree for purposes of deciding whether same functions as, or is in the nature of, alimony, maintenance, or support (which is nondischargeable) or in the nature of a property settlement. *See Cummings v. Cummings*, 244 F.3d 1236 (11th Cir. 2001); *see also In re Bamman*, 239 B.R. 560, 562 (Bankr. W.D.Mo. 1999); *In re Robinson*, 193 B.R. 367 (Bankr.

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[1] Once the party moving for summary judgment has identified those materials demonstrating the absence of a genuine issue of material fact, the non-moving party cannot rest on mere denials or conclusory allegations, but must go beyond the pleadings and designate, through proper evidence, specific facts showing the existence of a genuine issue for trial. *See* Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Johnson v. Fleet Finance, Inc.*, 4 F.3d 946, 948-49 (11th Cir. 1993); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993).

N.D.Ga. 1996). In making such a determination under this subsection, bankruptcy courts consider a host of various factors to determine this intent in addition to the characterization of the debt in the divorce decree or agreement. *See e.g. In re Rappleye*, 210 B.R. 336, 340 (Bankr. W.D.Mo. 1997). Further, collateral estoppel does not preclude the Court from examining the award in question under Section 523(a)(5) because the issue of dischargeability could not have been before the state court since the bankruptcy petition had yet to be filed. For these reasons, disposition of this issue by summary judgment herein is not appropriate.[2]

With respect to Section 523(a)(15), debts that are not in the nature of support may still be discharged on appropriate facts. This provision and its two-part test state as follows:

> (a) A discharge under section 727...does not discharge an individual debtor from any debt–
>
> (15) 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, a determination made in accordance with State or territorial law by a governmental unit unless–
>
> (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor...
>
> (B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor....

11 U.S.C. § (a)(15). The Court has carefully reviewed Plaintiff's arguments, but given the fact intensive nature of the two-pronged analysis required under this subsection regarding inability to

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[2] Under Georgia law, collateral estoppel is appropriate if the following are shown: (1) identity of parties; (2) identity of issues; (3) actual and final litigation of the issue(s); (4) essentiality of the prior adjudication; and (5) full and fair opportunity to litigate the issue(s). *See Lusk v. Williams (In re Williams)*, 282 B.R. 267, 272 (Bankr. N.D.Ga. 2002) (cites omitted).

pay and balancing the equities, the Court concludes that Plaintiff has again failed to establish an entitlement to summary judgment.

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment be, and hereby is, **denied** and the trial set for **June 16, 2005**, at 10:00 a.m., Courtroom 103, 121 Spring Street, Gainesville, Georgia on the issues of dischargeability under 11 U.S.C. §§ 523(a)(5)(B) and (a)(15) as raised in the complaint will proceed as scheduled.

The Clerk is directed to serve a copy of this Order upon Plaintiff-Debtor's counsel, counsel for Co-Defendant Carpenter, counsel for Co-Defendant Ford Motor Credit, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 24th day of May, 2005.

ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE