



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

**Date: April 9, 2014**

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

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

IN THE MATTER OF:	:	CASE NUMBER: 08-75220-PWB
	:	
NICK N. MODARES,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
TERESA FABIAN MODARES,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 08-6610
NICK N. MODARES,	:	
	:	
Defendant.	:	

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

Teresa Fabian Modares (the “Plaintiff”) seeks summary judgment on her claims that debts owed to her by her former spouse, Nick N. Modares (the “Debtor”), pursuant to a divorce

decree and subsequent related orders are nondischargeable pursuant to 11 U.S.C. §§ 523(a)(5) and 523(a)(15). For the reasons stated herein, the Plaintiff's motion is granted.

The Plaintiff and the Debtor were formerly married. Following a jury trial, a Final Judgment and Decree of divorce was entered in *Modares v. Modares*, Case No. 2005-cv-107455, in the Superior Court of Fulton County, Georgia, on December 28, 2006. The Final Judgment and Decree contains specific enumerations regarding alimony, child support, and the equitable division of marital property and marital debts. [Doc. 13, Exh. A].

On March 27, 2009, this Court modified the automatic stay to permit the parties to proceed in litigation related to the divorce, including the Plaintiff's motion for new trial and contempt related matters.

On June 18, 2013, the Fulton County Superior Court entered a "Final Order on Motion for Contempt" following a bench trial that resolved the parties' various pending motions (the "2013 Order"). [Doc. 12, Exhibit A]. The 2013 Order establishes current amounts owed by the Debtor to the Plaintiff for a property settlement award and alimony, corrects an error of fact with respect to the ownership of a financial account, and orders the Debtor to pay to the Plaintiff's attorney \$28,000 in attorney's fees.

Nearly seven years after their divorce, on July 18, 2013, the Plaintiff filed a "Motion for New Trial, Incomplete Identification of Findings of Fact and Motion for Court to Reconsider" in the Fulton County Superior Court action. The Plaintiff requests the Court grant her motion for summary judgment with respect to the Superior Court's findings and conclusions to date "without prejudice to her right to re-file a Complaint to Determine Dischargeability of Debt upon conclusion of the Fulton County Superior Court proceedings." [Doc. 13, ¶ 13].

The Debtor, proceeding pro se, opposes the Plaintiff's motion for summary judgment. He contends that the Fulton County action is "an open and ongoing case" and the parties are "waiting for a new hearing to sort out the facts and figures and finalize the case." [Doc. 17, ¶ 1]. The Debtor, who apparently has filed his own motion for a new trial in the Superior Court action [*Id.*, ¶ 2], contends that material facts are in dispute that preclude entry of summary judgment.

For purposes of this dischargeability proceeding, the Court concludes that no material facts are in dispute and that it is appropriate to grant the Plaintiff's motion for summary judgment.

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), but dischargeability of any other divorce-related debts not in the nature of alimony, maintenance or support (such as a property settlement) under § 523(a)(15) depended on a test of the Debtor's ability to pay and a balancing test of the benefits and burdens to each party.

Under BAPCPA, § 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.

Section 523(a)(15), however, 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.

The effect of the BAPCPA amendment to § 523(a)(15) is to render nondischargeable any other divorce-related debt set forth in a court order that is not alimony, maintenance, or support.

This means that any debts owed by the Debtor to the Plaintiff pursuant to the divorce decree and later, related court orders of the Fulton County Superior Court in the divorce and post-divorce proceedings are excepted from discharge under either §§ 523(a)(5) or (a)(15).

The Fulton County Superior Court's orders speak for themselves. No material disputes of fact before this Court preclude entry of summary judgment for the Plaintiff. Even if disputed facts exist about any amounts owed in the divorce litigation, the appropriate forum for their resolution is the Fulton County Superior Court.

The parties are free to continue to litigate these issues in the Fulton County Superior Court years after the entry of their divorce decree. But the Court need not delay consideration of the motion for summary judgment or hold open this adversary based on the existence of pending motions for new trials. If the Fulton County Superior Court revisits, amends, supplements or vacates any of its findings and commemorates such findings and conclusions in a court order, that order controls.

Based on the record, the Plaintiff's motion for summary judgment is granted. The debt owed by the Debtor to the Plaintiff for alimony is excepted from discharge under § 523(a)(5). It is unnecessary for the Court to determine if a debt related to the division of marital property, attorney fees, or any other award set forth in a court order is in the nature of support for purposes of § 523(a)(5), because, even if not, the debt is a debt to the Plaintiff incurred by the Debtor in connection with the divorce decree and set forth in a court order. As a result, it falls within the category of debts that § 523(a)(15) excepts from discharge. Of course, this Court is not determining how much, if anything, the Debtor owes. Such determinations are for the Superior Court. Accordingly, it is

ORDERED that the Plaintiff's motion for summary judgment [Doc. 13] is granted. A separate judgment shall be entered herewith.

End of Order

Distribution List

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