



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

**Date: March 23, 2011**

**W. H. Drake**  
**U.S. Bankruptcy Court Judge**

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
AARON TOBY MATTHEWS,	:	10-11553-WHD
	:	
DEBTOR.	:	
_____	:	
	:	
LOIS EILEEN MATTHEWS,	:	ADVERSARY PROCEEDING
	:	NO: 10-01044-whd
	:	
PLAINTIFF,	:	
	:	
v.	:	
	:	
AARON TOBY MATTHEWS,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEFENDANT.	:	BANKRUPTCY CODE

**ORDER**

Before the court is a Motion to Dismiss Complaint, filed by Aaron Toby Matthews (hereinafter the "Debtor"). The Motion arises in connection with a complaint objecting to

the Debtor's discharge, filed by Lois Eileen Matthers (hereinafter the "Plaintiff"). Accordingly, the matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. See 28 U.S.C. § 1334; § 157(b)(2)(J). Plaintiff opposes the Motion.

### **PROCEDURAL HISTORY AND FACTS**

Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on April 26, 2010. Plaintiff and Debtor are husband and wife and have four children. They were living apart at the time of the commencement of the case, but no formal agreement for the payment by Debtor of child support to Plaintiff had been entered. During the parties' separation, Debtor paid a minimal amount to Plaintiff toward the support of their children.

Plaintiff filed timely a complaint objecting to Debtor's discharge, pursuant to section 727(a)(2)(B). Debtor submits that Plaintiff is not a "creditor" within the meaning of section 727(c)(1) and, accordingly, lacks the ability to file a complaint objecting to his discharge. *See* 11 U.S.C. § 727(c)(1) ("A trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section."). Debtor characterizes the Plaintiff, at best, as a party in interest. Accordingly, Debtor seeks dismissal of Plaintiff's complaint due to lack of standing.

### **CONCLUSIONS OF LAW**

A motion to dismiss for lack of standing may be treated as a motion to dismiss for

lack of subject matter jurisdiction. Rule 12(b)(1), made applicable to this case by Rule 7012(b), governs the dismissal of a complaint for lack of subject matter jurisdiction. *See* Fed. R. Bankr. P. 7012 (incorporating Fed. R. Civ. P. 12(b)(1)). When ruling on a motion to dismiss for lack of subject matter jurisdiction, "[a] court must accept the material factual allegations in the complaint as true, but need not draw inferences favorable to the plaintiff." *In re General Media, Inc.*, 335 B.R. 66, 71-72 (Bankr. S.D.N.Y. 2005) (citing *J.S. v. Attica Cent. Schools*, 386 F.3d 107, 110 (2d Cir.2004), *cert. denied*, 544 U.S. 968 (2005)); *Shipping Fin. Servs. Corp. v. Drakos*, 140 F.3d 129, 131 (2d Cir.1998)). The Court may consider "materials outside of the pleadings to resolve any jurisdictional disputes, but cannot rely on conclusory or hearsay evidence." *Id.* at 72. The plaintiff has the burden of proving the Court's subject matter jurisdiction by a preponderance of the evidence. *See id.* (citing *Luckett v. Bure*, 290 F.3d 493, 497 (2d Cir.2002)).

The Court is inclined to agree with Debtor that Plaintiff is not a "creditor" for purposes of section 727(c). A "creditor" is an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10). In turn, "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." *Id.* § 101(5)(A). Although this term is purposely broad, its bounds are not limitless. Plaintiff asserts that she held a right to payment against Debtor immediately prior to the date of the entry of the order for

relief because the parties were physically separated and Debtor had a legal obligation to pay her for the support of his children. Plaintiff argues that this obligation qualifies as a right to payment, although one that was not liquidated or fixed as of the petition date. Assuming the facts are as stated in the complaint, a question still arises as to whether, under state law, Debtor's obligation to pay Plaintiff for child support incurred between the time of the parties' separation and the filing of a divorce petition arose at the time Plaintiff paid for the support of the children without receiving equal assistance from Debtor (*i.e.*, prior to the petition date), or instead, will arise only at the time a state court makes an award of child support to Plaintiff against Debtor (*i.e.*, after the petition date). *See In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008) ("What claims of creditors are valid and subsisting obligations against the bankrupt at the time a petition in bankruptcy is filed is a question which, in the absence of preempting federal law, is to be determined by reference to state law.").

The parties have not addressed this question in their briefs, and the Court need not answer this question in order to determine that Debtor's motion to dismiss should be granted. Regardless of when such an award is deemed to arise, it is nondischargeable, as it qualifies as a "domestic support obligation" within the meaning of section 101(14A), which specifically includes debts for child support, regardless of whether they accrue "before, on, or after the date of the order for relief." 11 U.S.C. § 101(14A); § 523(a)(5); § 727(b). As noted by the bankruptcy court in *In re Mapley*, 437 B.R. 225 (Bankr. E.D. Mich. 2010), the conclusion that a plaintiff's particular debt is nondischargeable supports a finding

that the bankruptcy court lacks subject matter jurisdiction over such plaintiff's objection to the debtor's discharge.

In *Mapley*, the debtor's former wife objected to the debtor's discharge pursuant to section 727. The court found that, since the former wife's only claims against the debtor were nondischargeable, the former wife could gain nothing from objecting to the debtor's discharge. Consequently, since the former wife could not establish that the entry of the debtor's discharge would cause her an injury, the court concluded she lacked standing to pursue an objection to the discharge and could not satisfy the "Article III "case or controversy" requirement." *Id.* at 229 (citing *Day v. Klingler ( In re Klingler )*, 301 B.R. 519, 523 (Bankr .N.D. Ill. 2003) (objection to discharge is moot if plaintiff's only claim against debtor has already been held nondischargeable)).

This appears to be the case here. The Complaint fails to assert any claim against Debtor that would not already be nondischargeable under section 523(a)(5) or (a)(15). Because the Court finds that Plaintiff lacks standing to object to Debtor's discharge, the Court must dismiss the Complaint unless the Complaint is amended to include additional facts to support the finding that Plaintiff holds claims against Debtor that arose prior to the petition date and would not be nondischargeable under section 523(a)(5) or (a)(15).

The Court will permit Plaintiff twenty (20) days from the date of the entry of this Order within which to file an amended complaint. If no amended complaint is filed within that time, the Court enter a further order dismissing this case for lack of subject matter jurisdiction.

The Clerk is DIRECTED to serve a copy of this Order on Debtor, Debtor's counsel, Plaintiff, Plaintiff's counsel, the Chapter 7 Trustee, and the United States Trustee.

**END OF DOCUMENT**