

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
KUKU BANKOLE BABATUNDE,)	CASE NO. 11-68278 - MHM
)	
Debtor.)	
)	
OMOLOLA M. OWOADE-TAYLOR,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 11-5700
)	
KUKU BANKOLE BABATUNDE,)	
)	
Defendant.)	
)	
OMOLOLA OWOADE-TAYLOR,)	
HEDGEPEETH & HEREDIA, LLC,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 11-5564
)	
KUKU BANKOLE BABATUNDE,)	
)	
Defendant.)	

ORDER GRANTING SUMMARY JUDGMENT

Plaintiffs in the above-styled adversary proceedings filed a joint motion for summary judgment, together with statement of undisputed materials facts, affidavits and memorandum of law April 23, 2012 (Doc. No. 11 and 19) (the "Motion"). Defendant failed to file a response; accordingly, the Motion is deemed unopposed. BLR 7007-1(c).

Additionally, as a result of Defendant's failure to respond to the Motion, Plaintiffs' statement of undisputed material facts is deemed admitted. BLR 7056-1(a)(2).

Plaintiffs' joint motion shows that in the parties' divorce decree entered March 21, 2011, Defendant was ordered to pay \$27,500 in attorney fees to Plaintiff Hedgepeth for the benefit of Plaintiff Owoade-Taylor. Of that amount, \$20,000 was awarded under O.C.G.A. §19-6-2 and \$7,500 under O.C.G.A. §9-15-14. Defendant has paid \$4,500 of the attorneys fees awarded in the divorce decree. Plaintiffs show that both the \$20,000, awarded under O.C.G.A. §19-6-2, and the \$7,500, under O.C.G.A. §9-15-14, should be properly classified as domestic support obligations within the meaning of 11 U.S.C. §101(14A) because the awards were based upon an evaluation of the parties' relative financial condition.

In the 2005 amendments to the Bankruptcy Code, the term "Domestic Support Obligation" was defined in §101(14A) and then used throughout the Code (in §362(b) [exception to automatic stay]; §507 [priority claims], §523(a)(5) [dischargeability of support obligations in a divorce decree]; §547 [preference exception]; §704 [notice]; §707 [dismissal of Ch7 case]; §1129, §1225 and §1325 [plan confirmation]; and §1328 [Ch13 discharge], most notably replacing the provisions of §523(a)(5) with a simple statement that Domestic Support Obligations are not dischargeable. The definition of a Domestic Support Obligation in §101(14A) is almost identical to the pre-2005 definition of a non-dischargeable support obligation contained in §523(a)(5). Therefore, the body of case

law interpreting §523(a)(5) is instructive in interpreting the meaning of Domestic Support Obligation. In a post-2005 opinion examining the dischargeability of divorce-related obligations, including an attorneys fees award, the court applied the same analytical principles used in pre-2005 §523(a)(5) dischargeability issues. *Phegley v. Phegley*, 443 B.R. 154 (8th Cir. BAP 2011).

Under the pre-2005 version of §523(a)(5), the majority rule was that an obligation to pay attorney fees is "so tied in with the obligation of support as to be in the nature of support or alimony and excepted from discharge." *Shaw v. Smith*, 67 Bankr. 911, 912 (Bankr. M.D. Fla. 1986); *see also, In re Cain*, 29 Bankr. 591 (Bankr.N.D.Ind.1983); *In re Porter*, CCH Bankr. L. Rep. ¶64575; *Myers v. Myers*, 61 Bankr. 891 (Bankr. N.D. Ga. 1986); *Patterson & Moseley v. Painter*, 21 Bankr. 846 (Bankr. M.D. Ga. 1982). The obligation of Defendant arising from the divorce decree to pay attorneys fee is in the nature of support and is, therefore, nondischargeable under §523(a)(5) and is entitled to priority under §507(a)(1).

In the Motion's prayer, Plaintiffs include a request for attorneys fees (for bringing the Motion) without explanation or support. Under the American Rule, unless a party is statutorily or contractually entitled to attorneys fees, a prevailing party is not entitled to reimbursement of attorneys fees from the losing party unless the losing party or attorney has acted in bad faith, wantonly, vexatiously, or for oppressive reasons. *Tan How v. Edward J. Gerrits, Inc.*, 961 F. 2d 174 (11th Cir. 1992); *All American of Ashburn, Inc. v.*


Fox, 725 F. 2d 661 (11th Cir. 1984). A party who prevails in a dischargeability proceeding is not entitled to reimbursement of attorneys fees. *Id.* See also, *Gecowetts v. Gecowetts*, 122 B.R. 687 (Bankr. E.D. Va. 1991). Accordingly, it is hereby

ORDERED that Plaintiffs' motion for summary judgment is **granted**: Debtor's obligation to Plaintiffs in the amount of \$23,370.26 is nondischargeable under §523(a)(5) and is entitled to priority under §507(a)(1). It is further

ORDERED that, within 21 days of the date of entry of this order, Plaintiffs may supplement the Motion to set forth any extant legal and factual grounds to support their request for an award of attorneys fees in connection with the Motion. If no such supplement is filed within the time allowed, the request for an award of attorneys fees for the Motion shall stand denied.

The Clerk, U.S. Bankruptcy Court, is directed to serve this Order upon Debtor, Debtor's attorney, Plaintiff, and counsel for Plaintiff.

IT IS SO ORDERED, this the 25th day of June, 2012.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE