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6/14/10

IN RE:	:	CASE NO. G09-21812-REB
	:	
JOHN ROBERT CRACKNELL,	:	
	:	
Debtor.	:	
	:	
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	:	
CHERYL DIANE CRACKNELL,	:	ADVERSARY PROCEEDING
	:	NO. 09-3005
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN ROBERT CRACKNELL,	:	CHAPTER 7
	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Plaintiff named above filed a motion for summary judgment on February 3, 2010 seeking a ruling that certain obligations of Debtor-Defendant set forth in a divorce decree between the parties herein are excepted from discharge in this case under 11 U.S.C. § 523(a)(5) as domestic support obligations and/or under 11 U.S.C. § 523(a)(15). In the motion, Plaintiff contends there is no issue of fact to be decided and that she is entitled to relief as a matter of law. Debtor has filed no response to the motion. Upon review of same, the Court concludes that the relief requested should be granted.

In the complaint as amended, Plaintiff states that the Superior Court of Fannin County, Georgia entered a Final Judgment and Decree of Divorce on March 31, 2009 and among other things ordered Debtor to pay certain debts related to an entity named Blue Ridge Power Equipment, LLC (hereafter “Business”), in which Plaintiff and Debtor each formerly held joint (50%) ownership. In her complaint,

Plaintiff alleges that Debtor has failed to pay the debts in question and Debtor's responsibility was not contingent on the sale of property or any other condition. Further, she states that she specifically negotiated these terms in exchange for surrendering further interest in the Business. Plaintiff also contends Debtor has failed to pay certain child support as ordered in the Decree.

Based on the undisputed facts of record, the Decree provides, among other things, that Debtor shall be solely responsible for payment of all liabilities related to said business, including but not limited to all indebtedness to GE Financial Services and Textron Financial and payment of all past and present payroll taxes and other business taxes payable to the Internal Revenue Service and the Georgia Department of Revenue.

See Final Judgment and Decree of Divorce, Paragraph 3, as attached to Complaint filed herein on August 17, 2009. Under the Bankruptcy Code, Section 523(a)(5) states that domestic support obligations are excepted from discharge.¹ Further, even if the obligations are not domestic support obligations under

¹ A "domestic support obligation" is defined as follows:

(14A) The term "**domestic support obligation**" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, 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...

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) 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

Section 523(a)(5), all other obligations created in a separation agreement or divorce decree are excepted from discharge under the provisions of Section 523(a)(15).² *See generally In re Schweitzer*, 370 B.R. 145 (Bankr. S.D.Ohio 2007); *In re Corn*, _ B.R. _, 2008 WL 2714404, * 4 (Bankr. W.D.Tex. July 9, 2008). Read jointly, obligations created in a divorce decree are nondischargeable under either Section 523(a)(5) or Section 523(a)(15). Hence, the obligation of Debtor to be “solely responsible” for certain liabilities as set forth in Paragraph 3 of the subject Decree of Divorce between the parties herein, as well as the obligations to pay child support contained in Paragraph 2 of said Decree, are not dischargeable herein by reason of Section 523(a)(5) and/or Section 523(a)(15).

Accordingly, upon consideration of the motion and for the reasons stated above, it is

ORDERED that Plaintiff’s motion be, and the same hereby is, **granted**; and, it is

FURTHER ORDERED that any and all obligations of Defendant-Debtor owed to Plaintiff as set forth in the Final Judgment and Decree of Divorce between said parties and entered by the Superior

(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.

11 U.S.C. § 101(14A) (emphasis added).

² This subsection states as follows:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does **not** discharge an individual debtor from any debt –

(15) to a spouse, former spouse, or child of the debtor and **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, or a determination made in accordance with State or territorial law by a governmental unit....

11 U.S.C. § 523(a)(15) (emphasis added).

Court of Fannin County, Georgia on March 31, 2009, Civil Action File No. 2008 V 80, including, but not limited to, the provisions in Paragraph 3 of same regarding Debtor's obligation to Plaintiff to be responsible for payment of all liabilities related to the Business and the obligations to pay child support as set forth in Paragraph 2 be, and the same hereby are, **excepted** from discharge herein under 11 U.S.C. §§ 523(a)(5) and/or (a)(15).

A judgment is entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, Defendant-Debtor, counsel for Defendant-Debtor, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 10th day of June, 2010.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE