

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

IN RE:	:	CASE NO. G12-21600-REB
	:	
BRIAN ROBERT MARTIN,	:	
	:	
Debtor.	:	
	:	
<hr style="width: 40%; margin-left: 0;"/>		
LESLIE ROONEY	:	ADVERSARY PROCEEDING
and JUDY C. KING,	:	NO. 12-2110
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	CHAPTER 7
BRIAN ROBERT MARTIN,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Plaintiffs named above filed a motion for summary judgment on October 12, 2012 seeking a ruling that certain obligations of Debtor-Defendant set forth in a divorce decree and an award of attorney's fees 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). Debtor, who is *pro se*, has filed no response to the motion. The facts appear to be undisputed, though the Court finds no statement of undisputed material facts in the record as referenced, and the issue presented for decision is a legal one. Upon review of same, the Court concludes that the relief requested should be granted.

In the complaint, Plaintiffs state that the Superior Court of Gwinnett County, Georgia entered a Final Judgment and Decree of Divorce on November 1, 2011 and, among other things, ordered Debtor

to pay his former spouse, Leslie Rooney, \$50,000.00 “as a property division” regarding an equity line of credit against the marital residence in the total sum of \$144,000.00 as set forth in Paragraph 10 of a Settlement Agreement between the parties dated October 21, 2011, as incorporated in the Divorce Decree. In addition, by separate Order entered on December 13, 2011, Debtor was directed to pay an award of attorney’s fees in the amount of \$43,000.00 to Judy C. King, who represented Leslie Rooney in the divorce proceedings. *See* Exhibits 1, 2, & 3, attached to complaint herein.

Summary judgment may be granted pursuant to Federal Rule of Civil Procedure 56, applicable herein by and through Federal Rule of Bankruptcy Procedure 7056, if “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In deciding a motion for summary judgment, the court “is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 212 (1986). Further, all reasonable doubts should be resolved in favor of the non-moving party, and “if reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied.” *Twiss v. Kury*, 25 F.3d 1551, 1555 (11th Cir. 1994), citing *Mercantile Bank & Trust Co. v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11th Cir. 1985). Upon review of the record and cited authority, the Court concludes that no fact issue is presented on the complaint and same is subject to disposition by summary judgment in favor of Plaintiffs and against Debtor.

Under the Bankruptcy Code, Section 523(a)(5) states that domestic support obligations, as defined in Section 101(14A) are excepted from discharge.¹ Further, in a case under Chapter 7 as the case

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,

herein, even if the obligations at issue are not domestic support obligations under Section 523(a)(5), all other obligations created in a separation agreement or divorce decree and arising out of a marital relationship are excepted from discharge under the provisions of Section 523(a)(15).² *See generally In*

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

(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 Section 523(a)(15) 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....

re Corn, _ B.R. _, 2008 WL 2714404, * 4 (Bankr. W.D.Tex. July 9, 2008); *In re Schweitzer*, 370 B.R. 145 (Bankr. S.D.Ohio 2007). Read jointly, these subsections provide that obligations created in a divorce decree in connection with family-related debt, regardless of their characterization, are nondischargeable in Chapter 7. Hence, the obligation of Debtor to pay \$50,000.00 to his former spouse on the equity line as set forth in Paragraph 10 of the subject Settlement Agreement is not dischargeable herein by reason of either Section 523(a)(5) and/or Section 523(a)(15). If not in the nature of alimony, maintenance, or support, this obligation was undoubtedly incurred in the course of the dissolution of the parties' marriage relationship.

Further, the award of attorney's fees set forth in the Order of the state court, granting the application of Plaintiff former spouse as contemplated in Paragraph 19 of the Settlement Agreement, and though payable to an individual other than said former spouse, is also not dischargeable under Section 523(a)(15) inasmuch as the obligation was incurred and awarded in connection with the assertion of said former spouse's rights in the course of the parties' divorce proceedings and for her direct benefit. The guiding rationale here is recognition of the overall post-divorce economic security concerns of a family member as determined and addressed by the appropriate state court tribunal. *See Clair, Griefer LLP v. Prensky (In re Prensky)*, 416 B.R. 406 (Bankr. D.N.J. 2009), *aff'd*, _ B.R. _, 2010 WL 2674039 (D.N.J. June 30, 2010).

Accordingly, upon consideration of the motion and for the reasons stated above, the Court concludes Plaintiffs are entitled to judgment as a matter of law on the claims set forth in their complaint, and it is

ORDERED that Plaintiffs' motion be, and the same hereby is, **granted**; and, it is

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

FURTHER ORDERED that the obligation of Defendant-Debtor owed to Plaintiff former spouse Leslie Rooney in the amount of \$50,000.00 as provided for in Paragraph 10 of the Settlement Agreement between said parties dated October 21, 2011, as incorporated in the Final Judgment and Decree of Divorce entered by the Superior Court of Gwinnett County, Georgia on November 1, 2011, Civil Action File No. 10 A 09701-1, be, and the same hereby is, **excepted** from discharge herein under 11 U.S.C. § 523(a)(5) and/or §523(a)(15). It is

FURTHER ORDERED that the obligation of Defendant-Debtor owed to Plaintiff Judy C. King as set forth in the Order of the Gwinnett Superior Court on December 13, 2011 in the form of an award of attorney's fees in the amount of \$43,000.00 be, and the same hereby is, **excepted** from discharge herein under 11 U.S.C. § 523(a)(5) and/or §523(a)(15).

A judgment is entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff former spouse Leslie Rooney, Plaintiff Judy C. King, Defendant-Debtor, the Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 6th day of December, 2012.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE