

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SHERRI L. RICHARDSON,) CASE NO. 06-62465 JPK
) Chapter 13
Debtor.)

ORDER CONCERNING FURTHER PROCEEDINGS
WITH RESPECT TO CONFIRMATION OF PLAN

On March 29, 2007, a telephonic pre-hearing conference was held with respect to the objection to confirmation of the debtor's Chapter 13 plan filed by Frank Cunningham. The debtor appears by Dan L. Whitten; the objectant Frank Cunningham appears by counsel Joseph B. Cioe.

The objectant contends that the debtor's plan fails to provide for the objectant's claim in the manner required by applicable law. The objectant contends that his claim is entitled to priority pursuant to 11 U.S.C. § 507(a)(1)(A), and that as a result, the debtor's plan must provide for that claim in the manner required by 11 U.S.C. § 1322(a)(2)/11 U.S.C. § 1325(a)(1).¹ The debtor asserts that the claim is not within the provisions of § 507(a)(1)(A), but rather is a debt of the nature of that described in 11 U.S.C. § 523(a)(15), a contention which, if sustained, would result in the objectant's claim being a general unsecured claim with respect to the debtor's case and subject to discharge pursuant to 11 U.S.C. § 1328(a).

The documentation provided by the objectant to the Court – specifically a copy of the state court judgment under which the debtor's obligation to the claimant/objectant is asserted to arise – appears to the Court to be other than a "domestic support obligation" as defined by 11 U.S.C. § 101(14A), and thus a general unsecured claim not entitled to priority and a claim subject to discharge upon its appropriate treatment in the debtor's plan as a general unsecured claim and the debtor's receiving a discharge pursuant to 11 U.S.C. § 1328(a). However, as addressed by the

¹ If the objectant's claim is in fact a claim within the provisions of 11 U.S.C. § 507(a)(1)(A), it is also within the provisions of 11 U.S.C. § 523(a)(5) and would be excepted from discharge in the debtor's case by operation of 11 U.S.C. § 1328(a)(2).

Court with the parties at the pre-hearing conference, the Court has reservations about making this determination in light of the judgment entered by the state court. Although it is beyond question that a federal question is presented by whether a particular obligation arising from a state court determination in a domestic relations matter constitutes a claim under 11 U.S.C. § 523(a)(5)/11 U.S.C. § 101(14A), or whether that claim is within the provisions of 11 U.S.C. § 523(a)(15) – other factors must be considered by the Court. First, under the law applicable to this case (BAPCPA), United States Bankruptcy Courts no longer have exclusive jurisdiction to determine whether or not a claim arising from a domestic relations matter falls within the provisions of 11 U.S.C. § 523(a)(15).² Any determination of the nature of that invited by the objection to confirmation of the debtor's plan potentially invokes the "Rooker-Feldman" doctrine, which precludes a federal court, such as the United States Bankruptcy Court, from reviewing determinations made in state court judgments; *See, Taylor v. Federal National Mortgage Assn, et al.*, 374 F.3d 529 (7th Cir. 2004). Although the objection does not invite this Court to overturn a determination of a state court, by requesting the United States Bankruptcy Court to construe a determination of a state court, the potential exists for the federal court to overturn the decision of the state court by not construing the state court's determination in the manner intended by that court. Additionally, the ability of federal courts to exercise any jurisdiction in domestic relations matters is circumscribed by the "domestic relations exception" to federal court jurisdiction; *See, Marshall v. Marshall*, 126 S.Ct. 1735 (2006); *Ankenbrandt v. Richards*, 112 S.Ct. 2206 (1992). By construing the intent of the state court with respect to whether or not the obligation asserted by the objectant is a "domestic support obligation" or is "other than" a domestic support obligation, this Court may implicate the domestic relations

² Under both pre-BAPCPA and post-BAPCPA law, United States Bankruptcy Courts did not have, and do not have, exclusive jurisdiction to determine whether or not a claim in a domestic relations matter falls within the provisions of 11 U.S.C. § 523(a)(5), and whether such a claim is within the definition of a "domestic support obligation" defined by 11 U.S.C. § 101(14A).

exception and thus be beyond its jurisdiction.

28 U.S.C. § 1334(c)(1) provides a mechanism by which the Court may abstain from determination of the nature of the objectant's claim, and defer the determination of the nature of that claim to the state court which issued the judgment upon which that claim is based. Whether or not this Court should exercise its discretion with respect to abstention is a determination which involves a multi-faceted review which the Court will not undertake in this order.

The sum of the foregoing is that the Court is inclined to exercise its discretion under 28 U.S.C. § 1334(c)(1) to abstain from determination of the nature of the obligation sought to be asserted by the objectant, but is unwilling to do so without further proceedings.

IT IS ORDERED that a hearing will be held on **May 21, 2007, at 1:00 P.M.** – on the record in open court – to determine the manner in which the Court will proceed with respect to the objection of Frank Cunningham to confirmation of the debtor's Chapter 13 plan.

Dated at Hammond, Indiana on April 20, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
Attorney for Creditor