UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
BRADLEY S. LINN,	)	CASE NO. 09-34830 HCD
	)	CHAPTER 7
DEBTOR.	)	
	)	
	)	
PENNY R. LINN,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 10-3001
	)	
BRADLEY S. LINN,	)	
	)	
DEFENDANT.	)	

Appearances:

Jeffrey S. Arnold, Esq., attorney for plaintiff, 209 West Van Buren Street, Columbia City, Indiana 46725; and

Steven J. Glaser, Esq., and Christopher D. Schimke, Esq., attorneys for defendant, 116 Est Berry Street, Suite 1900, Fort Wayne, Indiana 46802.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 8, 2010.

Before the court is the Amended Complaint to Determine Dischargeability filed by the plaintiff Penny R. Linn ("plaintiff") against her former spouse Bradley S. Linn, chapter 7 debtor ("defendant" or "debtor"). After the defendant filed an Answer, the court held a pre-trial conference on the matter. The parties then filed stipulated facts and briefs concerning the dischargeability of property settlement obligations pursuant to 11 U.S.C. § 523(a)(15), and the court took the Complaint under advisement. The court now determines that the defendant's obligation to the plaintiff is excepted from his discharge.[1]

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[1] The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

BACKGROUND

The material facts are not in contention. On July 11, 2008, plaintiff Penny Linn and defendant Bradley Linn, her former spouse, were divorced; the Judgment Dissolving Marriage ("Judgment") was entered in the Kosciusko Circuit Court, Warsaw, Indiana. *See* R. 6, Ex. A. In the Settlement Agreement and Decree of Dissolution of Marriage ("Settlement Agreement") incorporated into the Judgment, the parties agreed that Penny Linn had sole physical custody of their child. Bradley Linn had reasonable visitation rights and was delegated the responsibility of maintaining insurance for their child through his employment, although Penny agreed to pay 50% of the cost. They divided their marital debts as follows: Bradley agreed to be solely responsible for the accumulated debts owed to the Discover Card ($4,178.55), Chase ($3,842.67), FIA Card Services ($2,610.89), CitiFinancial ($13,174.42), and Capital One ($500.00); and Penny agreed to be solely responsible for the debts to Fifth Third Bank ($66,000.00), CitiFinancial ($19,000.00), and AmeriCredit ($11,000.00). The Agreement further stated that each party "shall hold" the other one harmless from those debts. In the Judgment, the court found the Agreement to be fair and reasonable; it ratified the Agreement and made it binding on the parties. *See id.*, Ex. A at 2.

Fifteen months later, on October 8, 2009, Bradley Linn filed for chapter 7 relief. On his Schedule F, the debtor listed the credit card debts that he had assumed under the Settlement Agreement as unsecured, nonpriority obligations. He did not list them as joint debts. Penny Linn, as plaintiff, timely objected to the dischargeability of the Settlement Agreement debts by filing a Complaint. She asserted that those debts were joint obligations for which the debtor was required to hold the plaintiff harmless, and she pointed out that she would be required to pay the bills if the debtor did not. She asked the court to find those debts nondischargeable. The defendant responded, in his Answer, that he was entitled, under § 523(a)(15), to a discharge of his obligation to repay the credit card creditors because they were not debts owed directly to the plaintiff, who was a "former spouse." Following a pre-trial conference and the parties' filing of stipulated facts and briefs, the court took the matter under advisement.

DISCUSSION

The plaintiff asks that the Settlement Agreement debts at issue be held nondischargeable under 11 U.S.C. § 523(a)(15). The statute declares that a debt "to a spouse, former spouse, or child of the debtor . . . 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. . ." is excepted from a debtor's discharge under § 727. The plaintiff has the burden of proving that she holds a § 523(a)(15) claim. *See Matter of Crosswhite*, 148 F.3d 879, 884 (7th Cir. 1998). Because the debtor defendant filed his bankruptcy case after October 17, 2005, the date on which the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") amendments became effective, this court must interpret and apply those amendments to § 523(a)(15) in this adversary proceeding.

Under BAPCPA, § 523(a)(15) of the Bankruptcy Code was modified; the two affirmative defenses of undue burden and the balancing test formerly found at § 523(a)(15)(A) and (B) no longer apply under the statute. With those defenses eliminated, "property settlement provisions in state court divorce judgments are now almost always nondischargeable." *Lewis v. Lewis (In re Lewis)*, 423 B.R. 742, 744 (Bankr. W.D. Mich. 2010). As our sister court in Indiana explained,

> [t]he collective effect of the BAPCPA amendments to § 523(a)(5) and (a)(15) in chapter 7 cases is that it has eliminated the distinctions between "support and maintenance" and "property settlement" in that all debts[] arising from a divorce decree from any court of record are nondischargeable.

Gustin v. Miller (In re Miller), 2009 WL 212125 at *2 (Bankr. S.D. Ind. Jan. 27, 2009) (citing *In re Golio*, 393 B.R. 56, 61 (Bankr. E.D.N.Y. 2008)). To succeed on a § 523(a)(15) claim, therefore, a plaintiff must provide evidence that the debt is to a spouse, former spouse, or child of the debtor; that it is not a support obligation of the type set forth in § 523(a)(5); and that it was incurred in a separation agreement, divorce decree or other court order. *See id.*; *see also Schweitzer v. Schweitzer (In re Schweitzer)*, 370 B.R. 145, 150 (S.D. Ohio 2007); *Cooper v. Cooper (In re Cooper)*, 2010 WL 1992372 at *3 (Bankr. E.D. Tenn. May 10, 2010); *Damschroeder v. Williams (In re Williams)*, 398 B.R. 464, 468 (Bankr. N.D. Ohio 2008); *Burckhalter*

v. Burckhalter (In re Burckhalter), 389 B.R. 185, 188 (Bankr. D. Colo. 2008). A debtor defendant then must challenge any or all of those three criteria.

It is clear from the Stipulation of Material Facts that the second and third elements of proof are not at issue. The parties conceded those factors by agreeing that the obligations at issue were incurred in a Settlement Agreement and were credit card debts, not support obligations.[2] *See* R. 15, ¶ 10. The parties also stipulated that the credit card debts at issue were joint obligations and that the defendant was ordered by the state court to pay them and to hold the plaintiff harmless. *See id.*, ¶¶ 8, 10, 13.

The parties focused on the first criterion and debated whether the defendant's obligation to pay the joint credit card debts to the credit card companies, which are third parties, was an obligation to the former-spouse plaintiff. The plaintiff insisted that the defendant was indebted to her to the extent of the debts listed in the Settlement Agreement because he was required by court order to hold her harmless from those debts. The defendant countered that the Settlement Agreement debts could be discharged because they were debts to credit card companies, not debts "to a spouse [or] former spouse."

The court finds that the defendant's argument cannot succeed, either under pre-BAPCPA interpretations of § 523(a)(15) or under the BAPCPA revisions. The pre-BAPCPA Congressional legislative history of § 523(a)(15) "makes clear that the provision covers debts owed to third parties as well, because the obligation to hold the former spouse harmless is what is presumed to be non-dischargeable under this section."[3] *Schuett v. Finkey (In re Finkey)*, 2008 WL 2165979 at *2 (Bankr. D. Neb. May 21, 2008) (citing

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[2] Courts have found that hold harmless agreements for credit card debts are not domestic support obligations that would be nondischargeable under § 523(a)(5); instead, they are property settlement obligations that fall within the exception to discharge of § 523(a)(15). *See In re Schweitzer*, 370 B.R. at 152; *see also* 4 Collier on Bankruptcy ¶ 523.11[1], at 523-80 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed.) (stating that, in chapter 7, 11 and 12 bankruptcy cases, the distinction under § 523(a) dischargeability cases "between a domestic support obligation and other types of obligations arising out of a marital relationship is of no practical consequence").

[3] The court notes that, in this Settlement Agreement, the defendant expressly agreed to hold the plaintiff harmless. Although there is some pre-BAPCPA case law support for the position that joint credit card debt is subject to discharge when there is *no* hold harmless or indemnification agreement in the divorce decree (continued...)

case and Congressional Record). Under pre- and post-BAPCPA case law, when the settlement agreement or divorce decree contains a hold harmless requirement, courts reviewing whether the debtor owes a debt to the former spouse or to the credit card company regularly conclude that a hold harmless provision creates a new debt from the debtor to the former spouse, a debt that is nondischargeable under § 523(a)(15). *See, e.g., In re Williams*, 398 B.R. at 469-70; *Corn v. Corn (In re Corn)*, 2008 WL 2714404 at *6 (Bankr. W.D. Tex. July 9, 2008); *Higgins v. Harn (In re Harn)*, 2008 WL 130914 at *3 (Bankr. C.D. Ill. 2008); *Davis v. Hosterman (In re Hosterman)*, 2007 WL 2973592 at *3 (Bankr. N.D. Okla 2007).

This court finds that the Settlement Agreement in this case imposed on the defendant the obligation to hold the plaintiff harmless from specified credit card debts. In agreement with the clearly developed case law analyzing § 523(a)(15), it concludes that such an obligation "falls squarely within the exception to discharge set forth in § 523(a)(15)." *In re Schweitzer*, 370 B.R. at 152 (citing *In re Gibson*, 219 B.R. at 202-203). The debtor's obligation, arising directly from the Settlement Agreement ratified by the state court Judgment, is a debt incurred "to a former spouse," not for domestic support, and "in connection with a . . . divorce decree or other order of a court of record." It is excepted from discharge under § 523(a)(15).

The defendant raised another argument. He pointed out that the plaintiff had filed a chapter 13 bankruptcy case; he then asserted that any debt payments he was required to make must be made to the plaintiff's chapter 13 Trustee, not to the plaintiff. He also claimed that the payments would go into the plaintiff's chapter 13 estate for a pro rata distribution to all creditors, not to the credit card companies.

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[3](...continued)
or property settlement agreement, *see In re Burckhalter*, 389 B.R. at 188-89 (listing pre-BAPCPA cases), the majority of courts have disagreed, finding that a property settlement agreement apportioning third party debt to one spouse requires that party to pay, even if there is no hold harmless language in the decree. *See id.* at 191 ("whether or not the Separation Agreement contains an indemnity or hold harmless provision is immaterial"); *see also Wodark v. Wodark (In re Wodark)*, 425 B.R. 834, 837-39 (10th Cir. B.A.P. 2010); *Johnson v. Johnson (In re Johnson)*, 2007 WL 3129951 at *4-*6 (Bankr. N.D. Ohio Oct. 23, 2007) (citing *Gibson v. Gibson (In re Gibson)*, 219 B.R. 195 (6th Cir. B.A.P. 1998), listing other cases).

These arguments have no merit in this adversary proceeding. In the first place, the statute does not require direct payment of the debt to the former spouse; the payment of a debt to a third party, on behalf of the former spouse, is encompassed by § 523(a)(15). *See In re Gibson*, 219 B.R. at 203; *In re Montgomery*, 310 B.R. 169, 176-77 (Bankr. C.D. Cal. 2004) (citing cases). In the second place, the defendant's obligation to pay the debts to the third party credit card companies and to hold his former spouse harmless from those joint debts is a nondischargeable debt which arose under the Settlement Agreement and was incorporated into the Judgment. Finally, the defendant seems to suggest that the plaintiff is better able to pay the marital debts at issue now because, under her chapter 13 plan, she will not pay the full amounts of the debts. However, he cannot make such an argument in this post-BAPCPA proceeding. A goal of Congress, in revising § 523(a)(15), was "to redefine and reinforce the ability of non-debtor former spouses to recover both support and property settlement obligations from debtors in bankruptcy." *Wodark v. Wodark (In re Wodark)*, 425 B.R. 834, 838 (10th Cir. B.A.P. 2010). Under the BAPCPA amendments to that statute, a debtor no longer may attempt to discharge marital debts by demonstrating that he was unable to pay the debts or that the benefit of discharge to him, a chapter 7 debtor, was greater than the detriment to the plaintiff, his former spouse and a chapter 13 debtor.[4] Thus the issue in this adversary proceeding is only the defendant's obligation under § 523(a)(15) to pay the underlying credit card debts and to protect the plaintiff by holding her harmless from those debts.

After considering the record in this case in light of the statutory language and Congressional intent of § 523(a)(15), the court finds that the plaintiff has met her burden of satisfying each of the required elements of § 523(a)(15): The defendant's obligation to hold the plaintiff harmless on the credit card debts

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[4] In a case with similar circumstances, a pre-BAPCPA case, *Cox v. Brodeur (In re Brodeur)*, 276 B.R. 827 (Bankr. N.D. Ohio 2001), the defendant was a chapter 7 debtor and the plaintiff had filed for relief under chapter 13. The court weighed whether the benefit of discharging the marital debt in the defendant's chapter 7 would outweigh the detrimental consequences to the spouse. It acknowledged that the defendant would greatly benefit from the discharge but declined to award the defendant a discharge under § 523(a)(15)(B) because it could not conclude "that the Defendant's standard of living, as compared to the Plaintiff's, would markedly suffer if he were required to repay his marital obligations." *Id.* at 836.

is a debt to a former spouse, is not a domestic support obligation, and is an obligation that arose directly from the parties' Settlement Agreement and the state court Judgment. The court concludes that the debt to the plaintiff is excepted from the defendant's discharge under § 523(a)(15).

CONCLUSION

For the reasons set forth in this Memorandum of Decision, the relief sought in the Amended Complaint to Determine Dischargeability, filed by the plaintiff Penny R. Linn, is granted. The Settlement Agreement obligation of the defendant Bradley S. Linn to pay the debts to Discover Card, Chase, FIA Card Services, CitiFinancial, and Capital One, and to hold the plaintiff Penny R. Linn harmless from those debts, is excepted from the defendant's discharge pursuant to 11 U.S.C. § 523(a)(15). Judgment on the Complaint is entered in favor of the plaintiff and against the defendant.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT