

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF INDIANA  
 HAMMOND DIVISION

IN RE:	)	
	)	
ZENA DENISE CRENSHAW LOGAL,	)	CASE NO. 05-67947 JPK
	)	Chapter 7
Debtor.	)	
*****		
ZENA DENISE CRENSHAW LOGAL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY NO. 06-6045
	)	
EDUCATIONAL CREDIT MANAGEMENT	)	
CORPORATION, et al.,	)	
	)	
Defendants.	)	

ORDER REGARDING COUNT II OF COMPLAINT

This adversary proceeding came before the Court on July 21, 2006, for hearing on the Motion to Substitute Party filed by Educational Credit Management Corporation. At that hearing, the Court addressed Count II of the complaint, which seeks to assert claims against the State of Indiana and the Supreme Court of the State of Indiana under 11 U.S.C. § 523(a)(15). The plaintiff appeared personally; Educational Credit Management Corporation appeared by counsel Stacia Yoon.

Count II of the complaint premises its claim for relief exclusively upon 11 U.S.C. § 523(a)(15). At the hearing, plaintiff stated that the focus of Count II is to essentially seek a form of hardship discharge as to the indebtedness described in that Count. The plaintiff asserted that § 523(a)(15)(A) could be applied to that indebtedness.

11 U.S.C. § 523(a)(15) states:

(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) 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 unless –

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor; (emphasis supplied)

The Court understands the source of the plaintiff's confusion: the phrase "other order of a court of record" taken in isolation from the remainder of the provision may seem to describe a context other than that to which the statute relates. 11 U.S.C. § 523(a)(15) stands in contrast to 11 U.S.C. § 523(a)(5). The latter refers to the types of debts that are commonly thought of as "alimony", "maintenance", or "support" arising from domestic relations matters, while § 523(a)(15) is focused upon types of obligations arising from domestic relations matters which are commonly thought of as property settlements or property distributions. Section 523(a)(15) applies to debts arising from domestic relations matters which are not alimony, maintenance or support, and yet which are "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" in a domestic relations matter. The phrase "or other order of a court of record" serves the same function in § 523(a)(15) as it does in § 523(a)(5), i.e., to bring within the scope of the statute the types of obligations described therein established by a court order or voluntary arrangement other than a "separation agreement" or a "divorce decree". It is not the intent of § 523(a)(15) to provide a catchall for any and all debts which are established by any "order of a court of record", and to then provide for the defenses to nondischargeability stated in sub-paragraphs (A) and (B) of that statute. To read the statute as the plaintiff apparently asserts would subject

any indebtedness within the scope of any section of 11 U.S.C. § 523(a) to the "hardship" defense stated in § 523(a)(15)(A), a result clearly not intended by Congress, as is readily ascertainable from the specific designation of a "hardship" defense under 11 U.S.C. § 523(a)(8). Thus, if the plaintiff is to seek to challenge any exception from discharge asserted by the defendants with respect to the indebtedness described in Count II, she will have to do so under another section.<sup>1</sup> The record appears to establish that the defendants State of Indiana and Indiana Supreme Court have been properly served with process in this case, and the record certainly establishes that neither of those defendants has appeared in response to the complaint. However, even if the plaintiff were able to establish a technical record by which she might seek to default those defendants on Count II, she would still be required to establish a *prima facie* case of her entitlement to legal relief as a matter of law on that Count, an entitlement that cannot be established under 11 U.S.C. § 523(a)(15). Rather than delay the inevitable result of a motion for default judgment, as would be determined by a hearing pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(2), the Court deems it appropriate at this juncture of the case to address the insufficiency of the legal claim raised by Count II of the complaint, and to provide the plaintiff with an opportunity to amend that Count to seek to state a claim other than one under 11 U.S.C. § 523(a)(15).

The Court's order of June 6, 2006 by which the July 21, 2006 hearing was scheduled – issued under the Court's authority under 11 U.S.C. § 105(d)(1) – specifically caused the legal basis for Count II to be a subject of that hearing. Pursuant to Fed.R.Bankr.P. 7015/ Fed.R.Civ.P. 15(a), the Court determines that the plaintiff should be provided with leave of Court to amend Count II of the complaint to seek to assert a legally sustainable claim.

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<sup>1</sup> Based upon the averments of the complaint, the Court assumes that the defendants may be asserting that the subject indebtedness is excepted from discharge pursuant to 11 U.S.C. § 523(a)(7); however, that is speculation at this point.

IT IS ORDERED that Count II of the plaintiff's complaint as a matter of law fails to state a claim against the defendants State of Indiana and the Indiana Supreme Court under 11 U.S.C. § 523(a)(15).

IT IS FURTHER ORDERED pursuant to 11 U.S.C. § 105(d), Fed.R.Bankr.P. 7016/ Fed.R.Civ.P. 16(a) and (e), and Fed.R.Bankr.P. 7015/Fed.R.Civ.P. 15(a) that the plaintiff is granted leave of Court to file an amended complaint with respect to Count II of the complaint; said amended complaint shall be filed within 30 days of the date of entry of this order.

IT IS FURTHER ORDERED that the Motion to Substitute Party filed by Educational Credit Management Corporation is GRANTED by separate order.

Dated at Hammond, Indiana on July 27, 2006.

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

Distribution:  
Attorneys of Record