

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Clayton E. Pearson,
Debtor.

Chapter 7 Case
99-11311

Clayton E. Pearson,
Plaintiff,
vs.
Sandra J. Pearson,
Defendant.

Adversary Proceeding
00-1059 cab

Counsel: Debra L. Leahy, Esq.
Bethel, VT
Attorney for Debtor/ Plaintiff

Jay Abramson, Esq.
St. Johnsbury, VT
Attorney for Defendant

MEMORANDUM OF DECISION DENYING
MOTIONS FOR SUMMARY JUDGMENT

The plaintiff, Clayton E. Pearson, filed a *Motion for Summary Judgment* dated December 15, 2000 [Dkt. #11-1], and the defendant, Sandra J. Pearson, filed a *Response in Opposition to Debtor's Motion for Summary Judgment [and] Defendant's Cross-Motion for Summary Judgment and Memorandum of Law in Support* dated December 21, 2000 [Dkt. # 14-1], pursuant to Bankruptcy Rule 7056. For the reasons set forth below, both motions are denied.

Jurisdiction

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

Facts

The parties, Clayton E. Pearson and Sandra J. Pearson, were granted a divorce pursuant to the Final Order and Decree ("Divorce Decree") issued by the Caledonia Family Court of Caledonia County,

Vermont (Docket No. 50-3-98 Cadm) on November 6, 1998, based upon a stipulation of the parties. In pertinent part, the Divorce Decree provides that Clayton E. Pearson agreed to pay *inter alia* certain credit card debts and to indemnify and hold harmless Sandra J. Pearson from these credit card debts.¹ It is undisputed that at some point thereafter, the plaintiff fell into arrears on the credit card debt reportedly due to an inability to pay it.

On September 28, 1999, the plaintiff filed a petition for relief under Chapter 7 of Title 11 U.S. Code (“the Bankruptcy Code”). The defendant/ former spouse, Sandra Pearson, was listed in Schedule F as a creditor holding a general unsecured claim. The debtor described the consideration for her claim as “various” and indicated that it was contingent, unliquidated, and disputed. The defendant was also listed as a co-debtor on Schedule H regarding the CitiBank MasterCard obligation. The defendant received notice of the filing of the case and was included in the mailing list thereafter. A discharge in favor of the plaintiff was entered on January 19, 2000. To date neither party has filed a complaint requesting a determination by this Court as to whether any portion of the credit card debt was non-dischargeable.

On February 11, 2000 (approximately three weeks after the entry of the Order of Discharge), the defendant filed a *Motion for Modification of Spousal Support* in the state court divorce action. The defendant’s motion to modify the support provisions contains the following allegations, which I find to be germane to the instant summary judgment motions:

1. On November 6, 1998 this Court [Caledonia County Family Court] entered an Order requiring Plaintiff, Clayton E. Pearson, to pay spousal maintenance of \$1 per year until he has paid the Citibank and Chase VISA debt in full or has refinanced the debts to remove Defendant from liability. . . .
...

¹ While the provision specifically relates to credit card debt due and owing to CitiBank MasterCard and Chase VISA, plaintiff maintains that only the CitiBank MasterCard debt involved a joint obligation of the parties. The defendant does not contest the plaintiff’s Statement of Material and Undisputed Facts in this regard. Accordingly, the remaining credit card debt appears to have been the sole obligation of Clayton E. Pearson.

3. Plaintiff filed for Chapter 7 bankruptcy protection and a discharge has been entered by the United States Bankruptcy Court, District of Vermont, Case No. 99-11311 rlk on January 19, 2000. **This effectively discharged the Plaintiff's obligation to pay the debts listed in paragraph 15 of the Final Order and Decree.** [emphasis added]
...
5. At the time of the Final Order the Plaintiff Clayton E. Pearson was unemployed. He became unemployed on August 13, 1998 after working in a supervisory capacity (supervising some 90 employees) for NSA Industries for many years and earning around \$40,000. Plaintiff was employed for 19 continuous years prior to his unemployment during the divorce proceedings.
6. In January of 1999, 4 weeks after the divorce was final, Plaintiff was re-hired by NSA and continues to work there. Upon information and belief, his current wages are substantially the same as before he left NSA.
...
8. Plaintiffs [sic] filing bankruptcy has deleteriously impacted the Defendants [sic] credit record hampering her ability to refinance the home as required by Paragraph 6 of the Final Order. The Final Order made Defendant liable for the existing mortgage payments totaling \$1,150.31 per month ...
...
10. Plaintiff's action in not paying the Citibank and Chase debt is a willful violation of the Court's Final Order.
11. Plaintiff's failure to pay the Citibank and the Chase credit cards, as well as his re-employment immediately after the divorce became final constitutes a real, substantial and unanticipated change in circumstances justifying a modification of the maintenance award.

WHEREFORE, the Defendant respectfully requests that this Court grant an Order increasing the maintenance award to \$550 per month for the next 4 years (**representing the amount of credit card debt Plaintiff was obligated to pay**), requiring Plaintiff to designate Defendant as his beneficiary on his employer sponsored life insurance during the next 4 years as security for payment of the maintenance, costs and attorneys fees. [emphasis added]

It therefore appears that the defendant's motion for modification of maintenance is based upon the following three allegedly unanticipated and material changes in circumstances: (1) that the defendant became solely liable for the joint credit card obligations because of the plaintiff's chapter 7 discharge; (2)

that the plaintiff is now earning much more than he was at the time of the divorce (about \$40,000 per year more according to the defendant); and (3) that the plaintiff's bankruptcy filing has interfered with defendant's ability to refinance the home as required under the Divorce Decree. It is very significant that the relief the defendant requests is tied directly and unequivocally to the amount of the credit card debt defendant alleges was discharged by the debtor/plaintiff.

In response to the modification motion filed in state court, the plaintiff successfully moved to re-open his bankruptcy case [Dkt. #22-1] to file an adversary proceeding [AP #00-1059]. The Amended Complaint filed therein alleges that the defendant is violating 11 U.S.C. § 524 by attempting to modify spousal support based upon the discharge of joint indebtedness. Plaintiff further contends that defendant's failure to object to the discharge of the credit card objections pursuant to 11 U.S.C. § 523(a)(15) precludes the defendant from seeking what is ultimately the same relief via her request for modification of spousal support. In her Answer, the defendant admits that she "failed to file an Objection to Discharge pursuant to 11 U.S.C. § 532(a)(15) [sic] [and thus] may not seek the same relief under the guise of a modification of spousal support" [see Amended Complaint; Answer, at par 9]. However, she denies that the basis of her modification motion is plaintiff's discharge in bankruptcy. This is not evident from the motion.

On October 30, 2000, a Scheduling Order was entered requiring a Stipulation of Facts and Pre-Trial Statement to be filed by December 8, 2000, and all dispositive motions to be filed by December 15, 2000. Plaintiff filed his *Motion for Summary Judgment* [Dkt. #11-1] on December 15, 2000, asserting that the joint credit card obligation constitutes a dischargeable "property settlement" that may not be re-imposed by a state court as an "end run" around the bankruptcy discharge. Defendant filed her *Response in Opposition to Debtor's Motion for Summary Judgment [and] Defendant's Cross-Motion for Summary Judgment and Memorandum of Law in Support* (hereafter "Defendant's Cross Motion for

Summary Judgment”) [Dkt. # 14-1] dated December 19, 2000 on December 21, 2000. Defendant’s Cross Motion for Summary Judgment contends that the dispute “does not concern modification of the debtor and creditors rights.” Rather, she maintains that the subject Divorce Decree expressly provided for “spousal maintenance” and that the state court motion for modification is merely a permissible request that the state court modify the support provisions under all the circumstances, including the plaintiff’s change in employment status and other permissible factors.

In his *Plaintiff’s Response to Defendant’s Cross Motion for Summary Judgment* (hereafter “Plaintiff’s Response”) [Dkt. # 18-1] dated December 29, 2000 the Plaintiff contends that the Defendant’s Cross Motion for Summary Judgment is untimely, disputes that the subject joint credit card obligation constitutes “spousal maintenance”, and asserts that the subject credit card debt is a “property settlement.” The parties did not submit a joint Stipulation of Facts. Instead, each party filed a separate Preliminary Pre-Trial Statement.

Based upon the allegations contained in the two summary judgment motions and supporting documents, it appears to me that the parties emphatically disagree as to whether the credit card obligations are properly categorized under the Bankruptcy Code as non-dischargeable “maintenance” or a dischargeable “property settlement” [as those terms are defined in 11 U.S.C. § 523 (a)(5) and the cases decided thereunder]. Interestingly, both parties direct the Court to rely upon the provisions of Paragraph 15 of the Divorce Decree to support their position. That provision states:

Maintenance and Alimony

15. Defendant, Sandra J. Pearson, is awarded \$1 per year spousal maintenance payable on December 1, 1998, and on such first day of December each year thereafter until such time as Plaintiff has paid the CitiBank [MasterCard] and Chase VISA debts in full, or has refinanced the debts to remove Defendant from liability thereon.

The Divorce Decree also provides in pertinent part:

Marital Debt

12. Each party shall assume sole responsibility of any debt incurred by them personally, since the date of separation, December 28, 1997, and each part shall hold the other harmless therefrom.
13. Plaintiff, Clayton E. Pearson, shall be solely responsible for the payment of the credit card debt to CitiBank MasterCard and Chase VISA.
14. Each party shall indemnify and hold the other party harmless from the debt he or she is ordered to pay.

Both parties contend that the material facts are undisputed and that they are entitled to summary judgment as a matter of law.

ISSUE

The issue presented is whether the pleadings and cross motions reflect that there is no genuine issue as to any material fact. If so, the Court must determine whether the plaintiff is entitled to an injunction under 11 U.S.C. §524 prohibiting the defendant from proceeding in state court to seek a modification of the maintenance award.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper only if the record reflects that there is no genuine issue as to any material fact and if so, that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); Bankr. R. 7056. A genuine issue exists only when “the evidence is such that a reasonable [trier of fact] could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *see also* Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)(movant need only illustrate by reference to record opponent’s failure to

introduce evidence in support of essential element of claim). “The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Liberty Lobby, 477 U.S. at 247, 106 S.Ct. at 2509. Furthermore, materiality is determined by assessing whether the fact in dispute, if proven, would satisfy a legal element under the theory alleged or otherwise affect the outcome of the case. Id. In making its determination, the court’s sole function is to determine whether there is any material dispute of fact that requires a trial. *See* Waldridge v. American Hoechst Corp., 24 F.3d 918 (7th Cir. 1994). Credibility determinations, weighing evidence, and drawing reasonable inferences are jury functions, not those of a judge deciding a summary judgment motion. Liberty Lobby, 477 U.S. at 255, 106 S.Ct. 2513-14. Accordingly, a genuine issue of material fact precludes summary judgment relief.

DISCUSSION

Both parties assert that there are no genuine issues of material fact and that each is entitled to summary judgment as a matter of law. While the papers filed by the parties in support of their respective positions are conflicting and somewhat unclear in that they appear to be arguing slightly different points, it appears that the plaintiff is essentially asserting that the subject credit card debt was discharged in the bankruptcy case as a “property settlement” not subject to exception from discharge and that any attempt by the non-debtor spouse to reimpose any joint credit card obligation on him through a modification of spousal support after the bankruptcy filing is a prohibited “end run” around his discharge and violates the §524(a)(2) injunction. By contrast, the defendant argues that there is no question that the \$1per month obligation until the credit cards were paid is a non-dischargeable spousal maintenance and alimony provision. [See Defendant’s memo of law, at p.2]. However, the defendant does not articulate specifically whether this means that the obligation to pay the credit cards itself is an obligation which is “actually in the nature of support” as it must be to be non-dischargeable support under §523(a)(5). *See* §523(a)(5)(B); *see also*

In re Wadleigh, 68 B.R. 499 (Bankr.D.Vt. 1986); In re Rosen, 151 B.R. 648, 653 (E.D.N.Y. 1993).

Furthermore, while the defendant argues that this Court's precedent in In re Ladak, 205 B.R. 709 (Bankr. D.Vt. 1997) allows her to seek a modification of spousal support due to a material change in circumstances unrelated to a discharge in favor of the plaintiff, the prayer for relief contained in the subject modification motion specifically seeks to increase the support by the amount of the credit card obligation contained in paragraph 15 cited above.

While both parties invite the Court to interpret Paragraph 15 of the Divorce Decree in their favor, the provision on its face merely requires \$1 per year spousal maintenance payable annually until such time as plaintiff fulfills a certain other obligation. Neither party addresses directly if the plaintiff's duty to fulfill this obligation is indeed a part of the spousal maintenance award; and likewise neither party provides any case law to support their characterization of the obligation (as either maintenance or property settlement).

In sum, the intent of the parties regarding the support and property settlement aspects of the Divorce Decree, however characterized therein, appears at best to be unclear and at worst to be disputed. Since I believe no determination can be made as to whether the motion to modify is a violation of the stay unless there is first a determination as to whether the obligation in question (the payment of the credit card debts referred to in paragraph 15) is a non-dischargeable support obligation, this is a material fact. Additionally, there is a dispute between the parties – and between the allegations of the defendant's response herein and her motion in state court – as to the basis of the motion to modify. Since I find that the basis of the defendant's modification motion is critical to the determination of this issue, this too is a material fact. There is also a factual dispute about whether the motivation for the motion is the fact that the debtor is now re-employed and can allegedly afford a higher level of support or if the defendant is seeking to have the debtor held responsible for debts that were subject to discharge in a bankruptcy case. The intent of the parties again becomes critical and cannot be ascertained without the submission of evidence.

See In re Fulton, 236 B.R. 626 (Bankr. E.D.Tex. 1999)(summary judgment denied where genuine issue of material fact exists regarding whether intent of debtor's obligation was to provide support); In re Vigil, 250 B.R. 394 (Bankr.D.NM 2000)(summary judgment denied where record fails to establish discharge status of marital debt)². Because genuine issues of material fact exist regarding whether the credit card obligation is part of the maintenance obligation, the change in debtor's income and the defendant's basis for seeking modification of maintenance, the plaintiff's Motion for Summary Judgment and the defendant's Cross Motion for Summary Judgment are denied.

The matter shall be set for trial.

February 12, 2001
Rutland, Vermont

/s/ Colleen A. Brown
Colleen A. Brown
United States Bankruptcy Judge

² While the plaintiff requests that the Defendant's Cross Motion for Summary Judgment be denied as untimely under the Scheduling Order, the court has opted in its discretion to deny this requested relief as moot in light of the denial of both motions for summary judgment under the circumstances.