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A Post-Divorce Judgment Stipulation That Modifies Obligations to a Former Spouse Does Not Likewise Modify The Non-Dischargeability of the Debt

*Posted by Jessica Grossarth
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On March 3, 2015, the Honorable Albert S. Dabrowski issued a decision in Swiatowiec v. Swiatowiec (In re Swiatowiec), Adv. Pro. No. 11-2074, concerning the issue of whether obligations to a former spouse incurred in the course of a divorce which are later modified by a post-divorce judgment stipulation constitute non-dischargeable debts. Judge Dabrowski answered that question in the affirmative.

Mark Stanley Swiatowiec (“Husband”) and Cheryl Ann Swaitowiec (“Wife”) were divorced on November 20, 2009. The judgment of dissolution incorporated by reference a Separation Agreement between the parties setting forth a property distribution (the “Agreement”). Among other terms, the Agreement provided that the Husband would pay the Wife for her interest in a business and assets retained by the Husband, the sum of \$250,000 payable in six installments as follows: two installments of \$30,000 payable June 30, 2010 and June 30, 2011; three installments of \$50,000 each on June 30, 2012, June 30, 2013 and June 30, 2014; and a final installment of \$40,000 on June 30, 2015 (the “Payment Schedule”).

Husband failed to comply with the terms of the Separation Agreement resulting in the Wife filing a Motion for Contempt in the Connecticut Superior Court. On October 7, 2010, the parties entered into a post-judgment stipulation to resolve the contempt proceedings (“Stipulation”). The Stipulation extended the Payment Schedule to provide for ten annual installments of \$25,000 each, plus interest, and reaffirmed that all other orders shall remain in full force and effect per the Separation Agreement.

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On May 25, 2011, Husband commenced a Chapter 7 bankruptcy and on October 26, 2011 received a discharge. On September 1, 2011, Husband commenced an adversary proceeding to determine the dischargeability of his obligations to his Wife under the Separation Agreement, as modified by the Stipulation.

Given that the debt at issue in the case was not a “domestic support obligation” and excepted from discharge under §523(a)(5), the Bankruptcy Court evaluated the subject debt under §523(a)(15). Section 523(a)(15) provides that “[a] discharge under section 727...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....” The Bankruptcy Court found that both the Separation Agreement and the Stipulation provide *prima facie* evidence that the debt at issue in the proceeding was “incurred by the debtor in the course of a divorce...or in connection with a separation agreement,” sufficient to bring it within the scope of the discharge exception of §523(a)(15).

The more important point in the case is that the Bankruptcy Court held that despite the modification of the Separation Agreement’s terms per the Stipulation, the nature of the underlying debt as one incurred in the course of a divorce did not change. Absent evidence refuting the language in a divorce settlement modifying the obligation from one “incurred ... in the course of a divorce” to one arising from a breach of contract following entry of the Stipulation, which is what the Husband argued, the nature of the debt will remain one that was incurred in the course of a divorce, and therefore, non-dischargeable.

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