

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION**

**IN RE: BRYAN LEE SEIDEL, Debtor**

**No. 3:11-bk-70013  
Ch. 7**

**LORI TALLEY**

**PLAINTIFF**

**vs.**

**3:11-ap-7056**

**BRYAN LEE SEIDEL**

**DEFENDANT**

**ORDER GRANTING PARTIAL SUMMARY JUDGMENT**

Before the Court is the motion for partial summary judgment filed by the plaintiff, Lori Talley [Talley], on October 6, 2011; the response to Talley's motion filed by the defendant, Bryan Lee Seidel [Seidel], on October 20, 2011; and the reply brief filed by Talley on October 27, 2011. The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(I). For the reasons stated below, Talley's motion is granted.

**Background**

Talley and Seidel divorced on October 6, 2010. A Child Custody, Support, Visitation and Property Settlement Agreement [the Agreement] was filed together with the parties' divorce decree in Benton County Circuit Court.<sup>1</sup> In Section IV of the Agreement, Seidel agreed to be solely liable for and to hold Talley harmless from all debts and costs associated with or secured by the parties' real property.<sup>2</sup> In Section VII of the Agreement, Seidel agreed to be solely liable for and hold Talley harmless from all debt in

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<sup>1</sup> The parties and their attorneys discussed the terms of the Agreement on July 21, 2010, in the presence of a court reporter who produced a transcript of the negotiations titled the "Settlement Statement." The Settlement Statement's terms were memorialized in the Agreement and then signed by Talley and Seidel on September 28, 2010.

<sup>2</sup> The parties' real property was comprised of their former marital residence and a veterinary clinic; Seidel took possession of all real property pursuant to the Agreement.

his individual name, debt he incurred after he and Talley separated, all credit card debt in his sole name, all credit card debt incurred prior to the date of separation in Talley's sole name and in their names jointly, all debt secured by or associated with Seidel Enterprises, Inc. or Presley Veterinary Clinic,<sup>3</sup> and the debt secured by any of the real or personal property he acquired as a result of the Agreement. In Section XI, Part I of the Agreement, Seidel and Talley each agreed to be liable for one-half of the cost of counseling services for the parties' minor children that was incurred prior to July 21, 2010.

In Section VIII of the Agreement the parties agreed that in the event either of them filed a petition for bankruptcy, nothing in the filing of bankruptcy would be construed to be a violation of the Agreement, and they agreed to provide any information or documentation necessary to allow the other person to file a bankruptcy petition. In the event Seidel or Talley filed bankruptcy, they each agreed to notify the other party within five days of filing the petition.

On January 4, 2011, Seidel filed a voluntary chapter 7 petition, which included the debts he had agreed to be solely liable for and to hold Talley harmless from in the Agreement; he also included the bill for the minor children's counseling services that he had agreed to split equally with Talley. Seidel named Talley as an unsecured non-priority creditor on Schedule F and listed her as a co-debtor on various debts on Schedule H.<sup>4</sup> Seidel reaffirmed the debts on his residence<sup>5</sup> and on his vehicle, but did not reaffirm any other

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<sup>3</sup> Seidel was the sole shareholder of Seidel Enterprises, Inc., an Arkansas S corporation that operated under the name Presley Veterinary Clinic.

<sup>4</sup> Seidel did not list Talley as a priority creditor on Schedule E of his petition under "domestic support obligations," nor did he include any cost for child support on Schedule J, line 14 where "alimony, maintenance, and support paid to others" should have been disclosed as one of his monthly expenses.

<sup>5</sup> Pursuant to the Agreement, Talley executed a quit-claim deed transferring her interest in the former marital residence to Seidel.

debts listed in his bankruptcy petition.

On April 5, 2011, Talley filed this adversary proceeding to determine the dischargeability of Seidel's debt to Talley, or to deny his discharge. The complaint states that Seidel has failed to indemnify her from several debts he agreed to be liable for and to hold her harmless from pursuant to the Agreement and alleges three separate causes for objecting to the discharge of Seidel's debts: fraud under 11 U.S.C. § 523(a)(2); debt incurred in the course of a divorce or separation under § 523(a)(15); and debt that is a domestic support obligation under § 523(a)(5).<sup>6</sup>

Talley has moved for summary judgment only as to her § 523(a)(15) cause of action<sup>7</sup> and seeks a determination as a matter of law that Seidel cannot discharge debts owed to her that were incurred by him in the course of their divorce proceedings or in connection with their divorce decree and accompanying property settlement agreement. In Seidel's response to the motion, he contends that summary judgment is inappropriate and should be denied because the debts at issue are not domestic support pursuant to § 523(a)(5), nor are they debts to a former spouse within the meaning of § 523(a)(15); he further asserts that the parties' Agreement permits these debts to be discharged through bankruptcy. Seidel argues that because he and Talley have conflicting views about whether the Agreement allows the discharge of his debts in bankruptcy, there is a disputed fact and summary judgment should be denied. In the alternative, Seidel argues that summary judgment is premature because he has not been provided with any evidence that a creditor is attempting to collect a debt from Talley. He also contends that the bankruptcy section of the Agreement, Section VIII, supersedes all other provisions within

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<sup>6</sup> In her prayer for relief, Talley also seeks the denial of Seidel's discharge under § 727(a)(2) or § 727(a)(5) if grounds for doing so exist, a non-dischargeable judgment against Seidel in the amount of \$327,604.27, and her costs and attorney's fees.

<sup>7</sup> Talley argued § 523(a)(5) in her supporting brief but failed to raise it in her motion and it is, therefore, not before the Court.

the document, and that the entire Agreement has been jeopardized by the parties' differing interpretations of the Agreement, making this a matter for Benton County Circuit Court.

### **Summary Judgment**

Federal Rule of Bankruptcy Procedure 7056 provides that Federal Rule of Civil Procedure 56 applies in adversary proceedings. Rule 56 states that summary judgment shall be rendered "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The burden is on the moving party to establish the absence of material fact and identify portions of pleadings, depositions, answers to interrogatories, admissions on file, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (citing to former Fed. R. Civ. P. 56(c)). The burden then shifts to the non-moving party, who must show "that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B). When ruling on a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party and allow that party the benefit of all reasonable inferences to be drawn from the evidence. *Ferguson v. Cape Girardeau Cty.*, 88 F.3d 647, 650 (8th Cir. 1996).

### **Findings of Fact and Conclusions of Law**

Section 523(a)(15) excepts from discharge any debt to a spouse or former spouse 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. 11 U.S.C. § 523(a)(15). For Talley to prevail on her motion for partial summary judgment she must show that (1) there is no genuine dispute as to any material fact regarding whether certain debts Seidel seeks to discharge in his bankruptcy fall under § 532(a)(15) making those debts non-dischargeable as to her, and (2) she is entitled to judgment as a matter of law. Fed. R. Bankr. P. 7056.

Seidel and Talley negotiated the terms of the Agreement with their attorneys present after Talley had filed for a divorce.<sup>8</sup> The Agreement was later incorporated by reference into their divorce decree and filed in Benton County. It is clear from the circumstances surrounding the Agreement's negotiation, as well as its general content, that the Agreement was made in connection with a separation agreement or in the course of the parties' separation and eventual divorce. It is equally apparent that the Agreement resulted in Seidel incurring debts to his spouse or former spouse Talley. In fact, Seidel at least implicitly acknowledges in paragraph 5 of his response and on page 7 of his supporting brief, citing in both instances the case of *In re Douglas*, 369 B.R. 462 (Bankr. E.D. Ark. 2007), that his obligation to hold Talley harmless from debts owed to third parties is non-dischargeable. Judge Audrey Evans explained the obligation more fully in *In re Douglas*:

It is only the obligation owed to the spouse or former spouse which falls within the scope of § 523(a)(15); however, in the case of an obligation to pay a debt owed to a third party, it is the obligation to hold the spouse or former spouse harmless that is presumptively nondischargeable under this section. See 140 Cong. Rec. H10752, H10770. "A property settlement incorporated by a divorce decree that apportions third party debt to one spouse means that the obligor-spouse indemnifies the obligee-spouse in the event that the obligee is required to pay." *In re Sturdivant*, 289 B.R. at 399 (citing *Johnston v. Henson (In re Henson)*, 197 B.R. 299, 303 (Bankr. E.D. Ark. 1996)).

*In re Douglas*, 369 B.R. 462, 464 n.2 (Bankr. E.D. Ark. 2007).

Under § 523(a)(15), any debts Seidel incurred as a result of the Agreement are not dischargeable as to Talley. Stated differently, Seidel's obligation to indemnify Talley survives his bankruptcy. In the event Talley is called upon to satisfy a third-party debt that Seidel agreed to be liable for and to hold her harmless from in their Agreement, his obligation to her remains intact. Seidel argues that Section VIII of the Agreement "supersedes" all other provisions contained within the Agreement. The Court disagrees.

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<sup>8</sup> The Settlement Statement referenced the style and case number of the parties' divorce action pending in Benton County Circuit Court.

Section VIII states:

In the event that either Husband or Wife files a Petition for Bankruptcy, nothing in the filing of that bankruptcy would be construed to be a violation of this Agreement, and the Bankruptcy Court could accept that as not being in violation of the Bankruptcy Code, and nothing in the Bankruptcy Code would prevent the parties from agreeing to the same. Further, Husband and Wife shall cooperate with one another providing any necessary information and documentation to all [sic] the other to file a Petition for Bankruptcy. Husband and Wife shall provide each other with notice of their filing a Petition of Bankruptcy, within five (5) days of the filing of same.


Section VIII of the Agreement addresses the possibility that one or both parties would subsequently file bankruptcy. It provides that the filing of a bankruptcy would not be construed as a violation of the Agreement, instructs the parties to cooperate with one another by providing any documentation or information necessary for the other to file, and states that the parties are to notify one another of any filing within five days of doing so. However, there is no indication in Section VIII or elsewhere in the Agreement that the parties intended for Section VIII to give both parties the unilateral power to render other sections of the Agreement virtually meaningless by filing bankruptcy. While the mere existence of Section VIII shows that the parties contemplated the filing of bankruptcy at some point in the future, the fact that Seidel filed does not alter his obligation to indemnify Talley pursuant to the Agreement. Seidel cannot discharge any debt to Talley that is excepted from discharge by the bankruptcy code, in this instance, § 523(a)(15).

### **Conclusion**

For the reasons stated above, the Court grants Talley's motion for partial summary judgment under § 523(a)(15) and finds as a matter of law that Seidel may not discharge any debt owed to Talley that was incurred by him in the course of their divorce or separation or in connection with their separation agreement, divorce decree, or other order of a court of record. The Court declines awarding a money judgment in favor of

Talley because there is no evidence before the Court of the debts, if any, that Talley has been called upon to satisfy. The Benton County Circuit Court is a proper forum to determine the damages, if any, Talley has incurred as a result of Seidel failing to indemnify her pursuant to § 523(a)(15); likewise, Benton County Circuit Court is the appropriate forum to decide matters concerning the interpretation of the parties' Agreement to the extent such matters are not related to the dischargeability of debts.

IT IS SO ORDERED.

  
Ben Barry  
United States Bankruptcy Judge  
Dated: 11/21/2011

cc: Bryan S. Verneti, attorney for plaintiff  
David L. Ethredge, attorney for defendant  
Jill Jacoway, chapter 7 trustee  
United States Trustee