

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

SEP 05 1985

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CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

HAROLD L. SEEGER, f/d/b/a  
Butch's Super Value,

WF7-83-00164

Debtor.

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MARLENE E. SEEGER,

Plaintiff,

Adversary Number:

v.

83-0137

HAROLD L. SEEGER,

Defendant.

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OPINION AND ORDER DETERMINING THAT DEFENDANT'S  
MORTGAGE PAYMENT OBLIGATION IS A NON-DISCHARGEABLE DEBT.

Plaintiff Marlene E. Seeger has filed a complaint objecting to the discharge of an obligation by defendant Harold L. Seeger to pay the mortgage on plaintiff's home. This obligation arises from the 1981 judgment dissolving the marriage between plaintiff and defendant. The final stipulation which was incorporated into the divorce judgment provided that defendant was to be responsible for payment of the mortgage on the home owned by plaintiff

prior to marriage. Plaintiff contends that this obligation is nondischargeable pursuant to 11 U.S.C. § 523(a)(5).<sup>1</sup>

Whether a particular debt is a support obligation or part of a property settlement is a question of federal bankruptcy law, not state law. In re Williams, 703 F.2d 1055, 1056 (8th Cir. 1983). A debt payable to a third person can be viewed as a maintenance or support obligation. Id. at 1057. In this regard, the crucial issue is the function the award was intended to serve. Id. In determining the intended function courts have looked at the form of the award and considered, based on the parties' circumstances, whether a need for support exists at the time the debtor filed his petition. In re Chambers, 36 B.R. 42, 44 (Bankr. W.D.Wis. 1984).

An analysis of the final stipulation between the parties leads to the conclusion that the mortgage payments were intended as support or maintenance. Two provisions of the stipulation concern property settlements. One is labelled "Property Settlement" and addresses personal property. The other is titled "Residence and Business Real Estate" and refers to the grocery

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<sup>1</sup> The relevant portion of sec. 523(a)(5) provides:

(a) A discharge under section 727, 1141 or 1328(b) of this title does not discharge an individual debtor from any debt--

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or property settlement agreement, but not to the extent that--- . . .

business and attached residence which the parties previously owned as joint tenants. These provisions provide for a complete division of the respective property they address and do not refer to any other provision. For example, as her property settlement in the business plaintiff received \$15,000 to be paid in ten years at 15 percent interest and an employment guarantee in the grocery business as long as defendant owned it. Defendant, upon fulfillment of these conditions, was to receive sole ownership of the business. These two provisions constitute the property division portion of the stipulation.

In contrast to these provisions is one making defendant responsible for payment of the mortgage on the residential property owned by plaintiff before marriage. Unlike the "property division" sections, nothing is divided or apportioned in this section. This section places an obligation on defendant. It would be unrealistic to label this provision a property settlement merely because it addresses property. The function of this section is to provide plaintiff with support by requiring defendant to pay the necessary housing expense. In order to obtain a residence plaintiff either had to pay rent or the mortgage on her home.

The circumstances of this case support the conclusion that the mortgage payment obligation was intended to operate as support. Plaintiff's only income after divorce was to have been \$200 a week, before taxes, from working in the grocery business which she was guaranteed as part of the business settlement. On

this income it would be very difficult for plaintiff to pay her reasonable living expenses. In this context, the mortgage payment requirement must logically be viewed as support, not a property settlement. This provision was an essential support provision. Plaintiff's income from the grocery store would be adequate if she did not have to pay rent or a mortgage.

Defendant places great reliance on the fact that the stipulation provides that maintenance to both parties is denied. The label of a state court divorce order or stipulation is irrelevant to the federal law question of whether the debt is for support. Chambers, supra. In this instance an actual maintenance payment was unnecessary, provided plaintiff received the support of defendant's mortgage payment. The fact that the parties chose an alternative method to provide plaintiff with adequate support does not alter the function of that support.

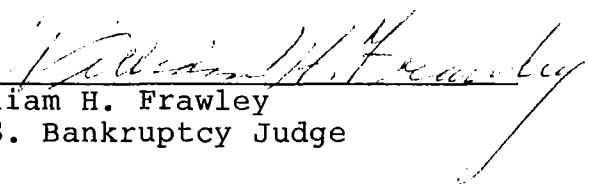
In enacting sec. 523(a)(5) Congress obviously concluded that payment of support, maintenance or alimony was so vital that the usual fresh-start concept of bankruptcy law should be set aside in deference to those payments. Where an obligation, whatever its label, is essentially a support obligation bankruptcy courts are obliged to determine that such debt is nondischargeable. The court is faced with such a situation here. Since the obligation to pay the mortgage was in essence a support obligation, it is a nondischargeable debt pursuant to 11 U.S.C. § 523 (a)(5).

ORDER

IT IS ORDERED THAT defendant's obligation to pay the mortgage on plaintiff's home is a nondischargeable support obligation under 11 U.S.C. § 523(a)(5).

Dated: September 5, 1985.

BY THE COURT:

  
William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Melinda E. Olsen  
Attorney William E. Ray, Jr.