

## ALIMONY AND BANKRUPTCY

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### Debt is Alimony in gross = constitutes a division of the marital assets

523(a)(5) Defendants claim of property settlement

Court may look beyond 4 corners of the doc. & labels placed by State Court proceedings.

In Re Dennis 25 F3d 274,277 (5<sup>th</sup> Cir 94).

The Court may look beyond labels to determine true intent. Tilley v. Jesse , 789 F2d 1074,1078 (4<sup>th</sup> Cir 1986). –

A structurally –drafted separation agreement that deals with support and property settlement in distinct segments of the doc. May be over come by true intent.

### Court Inquiry:

1. Did parties intend to create support obligation?
2. Obligations necessary to meet the needs of former spouse. In Re Johnson, 156 BR 338, 341 (MD 93).
3. Practical purpose of obligation
4. Obligation reasonable . Fitzgerald v. Fitzgerald , 9F 3d 517 (6<sup>th</sup> Cir 93), In Re Harrell, 754 F 2d 902.
5. Property brought to marriage by each party.
6. Defendants excessive disposable income.

Cempbell b. Campbell, 30 BR 664, 666 N.6 ( BankRe D.S. c. 1983)

### Burden of Proof:

Robb v. Robb, 23 F 3d 895 (4<sup>th</sup> Cir 1994)

Hardeman v. Haney, 33 BR 6( Bankr ND Ala 1983)

Rovinson v. Cross, 666 F 2d 873, 880 (5<sup>th</sup> Cir. 1983)

### Standard Of Proof – Preponderance of Evidence:

Gregan Garner, 498 U.S. 279, 111 S.Ct 654, 112 L. ed 2d 755 (1991)

### **In Discharge ability Complaints Under Statutes 523 (a) (5)(15)**

Bankruptcy Court does not have exclusive Jurisdiction, but concurrent jurisdiction – the non-bankruptcy Court should be given res judicata effect so as to prohibit the bankruptcy court from inquiring into dischargeability. Spilman v. Harley, 656 F 2d 224, 226 (6<sup>th</sup> Cir 1981); Kuzminski v. Peterman, 5 BR 687, 691 ( Bankr. ED Pa 1980).

### **Res judicata**

1. Final Judgment on the merits in an earlier suit.
2. An identity of the cause of action in both the earlier and the later suit.
3. An identity of parties or their privies in or the privies in the two suits.  
See Nash County Bd of Edvc v. Biltmore Co, 640 F 2d 484, 486 (4<sup>th</sup> Cir) cert denied, 454 US 878, 102 S CT 359, 70 L. Ed 2d 188 (1981).

Res Judicata ensures finality of decisions. “a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. Montana v. U.S., 440 U.S 147, 153 (1979).

Res Judicata prevents litigation of all grounds for, or defenses to, recovery that were previous available to the parties, regardless of whether they were asserted or determined in the prior proceeding.

Brown v. Felson, 442 U.S. 127, 131, 99S CT 2205, 606 L. Ed 2d 767 (1979)

See In Re Gober, 100 F 3d 1195, 1200 N2 (5<sup>th</sup> Cir 1996)

523(a)(5)

Court may look beyond labels placed by the State Court to 4 corners of the agreement.

See kolodzieg v. Reins (In Re Reines), 142 F 3d 970 (7<sup>th</sup> Cir 1998) In re Dennis 25 F 3d 274, 277 ( 5<sup>th</sup> Cir. 1994).

Look beyond labels to determine true intent of the parties Tilley V. Jesse ( In Re Tilly) , 789 F2d 1074, 1078 14<sup>th</sup> Cir. 1986)

A structurally –drafted separation agreement that deals with child support and property settlement indistinct segments of the doc. Maybe overcome by true intent.

(523)

1. Nature of Alimony maintenance or support
2. owed to spouse
3. connection with divorce

### **Court Inquiry**

1. Did parties intend to create support obligation?
2. Obligation necessary to meet needs of former spouse
3. Practical purpose of obligation.
4. Is obligation reasonable see Fitzgerald v. Fitzgerald, (In Re Fitzgerald) 9 F 3d 517 (6<sup>th</sup> Cir 1993)

See In Re Harrell, 754 F 2d 902 (11<sup>th</sup> Cir. 1985)

Leave inquiry to financial circumstances to State Court

### **Nec of Life**

1. In Re Johnson, 156 B.R, 338, 341 (Bankr MD Fla 1993)  
Debtor's obligation to pay former spouse her share of equity in former marital residence was non-dischargeable support necessary to enable her to re-invest in a new home.
2. Wester v. Wester, ( In Re Wester) 187 BR 358 (Bank MD 1995)
3. The property brought to the marriage by each party. In Re Johnson
4. Business opportunities of the parties whether payments are intended.
5. To be economic security.

### **Alimony in gross- Alimony that constitutes a division of the marital assets and liabilities**

Alimony that is intended to be a substitute for marital support is a non-dischargeable obligation. See Carcifero v. Carcifero, (In Re Carcifero)28 BR 159 (Bankr SD Ohio 1983)

Carrigg v. Carrigg, (In Re Carrigg) 8BCD 330, 14 BR 658, SCBC 2d 446 (Bankr DSC 1981)

523 (a) (15)

Discharge of the debt would result in a benefit to the debtor that outweighs the detrimental consequences to former spouse.

1325 (b)(2) Disposable Income Test.

Debtor has ability to pay

Totality of circumstances

Fin. Of adult child living at home. Gamble v. Gamble, (In Re Gambel) 143 F3d 223 (5<sup>th</sup> Cir 1998). Jodoin v. Samayoa, ( In Re Jodoin) 209 BK 132 (Bankr 9<sup>th</sup> Cir 1997).

Smolinski V. Arnott, (In Re Arnott) 210 B.R. 651 (Bankr. S.D. FL 1997)

1325 (5) Disposable Income Test

Excess disposable income of Defendant.