UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
JON D. WEETS,	:	Case No. 92-1075-C H
	:	Chapter 7
Debtor.	:	
JON D. WEETS,	:	
Debtor-Plaintiff,	:	Adv. No. 92-92163
vs.	:	
LOUISE M. LAGE-WEETS,	:	
Defendant.	:	

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ORDER--DISCHARGEABILITY OF MARITAL DEBT

The trial on the complaint to determine dischargeability of debt came on for trial on March 10, 1993. Burton H. Fagan appeared for the Plaintiff-Debtors and Patricia E. Zamora for the Defendant. At the conclusion of the hearing, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

The Court now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Debtor-Plaintiff filed his Petition under Chapter 7 on April 3, 1992. He has a high school diploma and two years of college. He worked for eighteen years in project management for the federal government.

2. Louise M. Lage-Weets is a creditor by virtue of a Decree of Dissolution of Marriage entered November 28, 1990 in the Iowa District Court for Scott County. She quit high school in her junior year and did not receive her diploma. She worked as a cook in a nursing home upon terminating high school.

3. The parties met in February 1981 and in April 1981 the parties were engaged to be married. Sometime in mid-1982, they started living together and on May 7, 1986 they were married. No children were born of the marriage.

4. Boozie's Bar and Grill, Inc. (hereafter Boozie's) was opened in September 1981. Plaintiff purchased the business with his own assets and he, the Defendant and Defendant's mother operated the business. In 1982 Plaintiff was experiencing financial problems so he transferred all of his stock in Boozie's to Defendant to shield the asset in bankruptcy. Plaintiff instructed Defendant that she was never to say that she owned Boozie's. Plaintiff did file for bankruptcy some time in 1982 and was represented at that time by attorney Alan R. Havercamp. At Boozie's, Defendant was hostess, waitress, bartender and cook. Plaintiff hired and fired employees and handled the money, though on occasion Defendant balanced the registers. Negotiations with suppliers were handled by Mary Lage, Defendant's mother.

5. In 1986 Defendant's mother, unbeknownst to

Defendant, began loaning money to Plaintiff. From 1986 to 1990 she loaned over $23,000 to Plaintiff for the business.

6. In August 1987 the couple left their small apartment to live in a house, the mortgage to which they had assumed. The house was purchased in Defendant's name with Plaintiff liable on the mortgage.

7. Defendant has had health problems. In 1985 she fractured her wrist in a slip and fall. At work she was instructed by Plaintiff to do most of the heavy lifting rather than have the employees do it. In January 1988 she injured her back at work. Cortisone, codeine and aspirin were prescribed. In January 1989 she had bone spurs removed from her spine. A calcium growth impinged upon the sciatic nerve, which caused pain on her right side. In 1989 Defendant started to suffer from migraine headaches. She was in the hospital several times. While she wanted to see her doctor by herself, Plaintiff always insisted on accompanying her. Moreover, he insisted she just needed to get back to work instead of more time in the hospital as her doctor recommended.

8. In late 1989 a second mortgage on the house was granted to finance the purchase of L & J Design Enterprises, Inc., which was doing business as "The Old Fashioned Inn" (hereafter Old Fashioned). Plaintiff owned 100% of the stock and operated the bar.

9. In April 1990 the parties separated and Defendant

stopped going to Boozie's. She was unable to function and came under psychiatric care. During the negotiation of the dissolution of marriage decree, Plaintiff was aware of Defendant's condition and it was discussed by the parties.

10. Defendant has not worked since the separation. Apart from any support she might receive from Plaintiff, Social Security Income is her sole source of income.

11. The stipulated decree of dissolution of marriage provided generally that Defendant would be awarded the parties' residence at 2511 East 18th Street and that Plaintiff would be awarded all rights, title and interest in Boozie's and the Old Fashioned Inn. More specifically, the decree provided:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgage encumbering the real estate [2511 East 18th Street] shall be the responsibility of the [Plaintiff] and [he] shall pay said mortgage and will indemnify and hold harmless [Defendant] from any and all costs and claims associated therewith. [Plaintiff] shall have the right to refinance the mortgage but not to increase the amount thereof in excess of {$2500 but no part thereof shall inure to benefit of [Plaintiff]}. [Material in braces handwritten on document.] The mortgage will be paid in its entirety within 10 years. (The principal, interest and escrow payments made on the mortgage shall be treated between the parties hereto as alimony as hereinafter provided. As alimony, the same will be deductible by the [Plaintiff] for federal income tax purposes and will be includible in the income of the [Defendant] for federal income tax purposes.) [Defendant] shall join in such new mortgage and note so as to secure the refinancing; provided, however, [Plaintiff] shall use his best efforts to secure the release of [Defendant] from the new note and [Defendant] shall

be required to sign such new note only if Citizens Federal makes it a condition of the loan. If the mortgage is paid for any reason in full in less than five (5) years, [Plaintiff] shall continue none the less to pay the taxes and insurance on the property for the said five (5) year period. All obligations of [Plaintiff] under this paragraph shall cease upon the death, remarriage or co-habitation of [Defendant].

[hereafter referred to as the mortgage obligation]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that [Plaintiff] shall pay to [Defendant] as alimony and not as a property settlement an amount equal to one-half of all the mutually agreed upon maintenance expenses in connection with [2511 East 18th]. Major maintenance expenses are defined to include only those expenses which total more than $350.00 per occurrence. Neither party shall unreasonably withhold approval of such expenses. Any items due to [Defendant] by virtue of deductibles or joint payments shall be due and payable within 30 days following the incurring of such obligations. Such obligation shall continue until the mortgage is paid or for a minimum of five (5) years.

[hereafter referred to as the maintenance obligation]

IT IS FURTHER ORDERED AND DECREED by the Court that [Plaintiff] shall pay to [Defendant] the sum of $650.00 each month as alimony and not as a property settlement. The first alimony payment shall be due on the 15th day of December, 1990, and thereafter on the 15th day of each succeeding month for a total of 60 payments. These payments shall terminate upon [Defendant's] death, remarriage or co-habitation.

[hereafter referred to as the alimony obligation]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that [Plaintiff] will pay to [Defendant] as additional alimony and not as a property settlement, amounts each year for five years sufficient to pay all health insurance for [Defendant]. Such payments shall include any deductible amounts under the health insurance policies. Such policy shall be generally equivalent to that now held.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that after the five year period specified in the preceding paragraph, [Defendant] may continue to be insured through insurance supplied by the [Plaintiff] to [Defendant] but that [Defendant]

> shall be responsible for all premiums and deductible amounts associated therewith. This provision will be binding upon the parties only if it is possible to continue such insurance, each party to make his or her best efforts to obtain such insurance. [hereafter referred to as the health insurance obligation]
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that in connection with the [businesses operated by the parties, Boozies, Old Fashioned, and "J. L. Kattz"] that certain sums were loaned by [Defendant's mother] to the corporations and [Plaintiff]. It is determined that [Plaintiff] shall continue to be responsible for all of these debts and should any of the above-described businesses fail to make their payments on time or should default under their individual notes, then [Plaintiff] shall pay to [Defendant's mother] the sums due thereon. This provision shall likewise be construed as a payment of alimony and shall not be dischargeable in bankruptcy. [hereafter referred to as the business loan obligation]

The dischargeability of the above-quoted obligations are at issue in this trial.

DISCUSSION

Section 523(a)(5) of the Bankruptcy Code excepts from discharge any payments:

> (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, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that--
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> ....
>
> > (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually

> in the nature of alimony, maintenance, or support.

In order to prevail, a claimant must show by a preponderance of the evidence that the mortgage debt sought to be excepted from discharge is a liability in the nature of alimony, maintenance, or support. In re Slingerland, 87 B.R. 981, 984 (Bankr. S.D. Ill. 1988). The question of whether payments under a divorce decree are in the nature of support, alimony or child support is a matter of federal law to be determined by the bankruptcy court. In re Williams, 703 F.2d 1055, 1056 (8th Cir. 1983). A bankruptcy court is not bound by state laws that characterize an item as maintenance or property settlement. Id. at 1057. Nor is a bankruptcy court bound by the labels used in a divorce decree to identify an award as alimony or as a property settlement. Id.; In re Voss, 20 B.R. 598, 601 (Bankr. N.D. Iowa 1982). The court may look behind the decree to determine the real nature of liabilities. In re Ramey, 59 B.R. 527, 530 (Bankr. E.D. Ark. 1986). Whether an obligation in a divorce decree is in fact one for support depends upon the intent of the parties. See Voss, at 601-02.

Courts have considered several factors in an effort to decipher the intention of the parties and the real nature of the liabilities. Those factors include:

> 1) Whether there was an alimony award entered by the state court.

2) Whether there was a need for support at the time of the decree; whether the support award would have been inadequate absent the obligation in question.

3) The intention of the court to provide support.

4) Whether debtor's obligation terminates upon death or remarriage of the spouse or a certain age of the children or any other contingency such as a change in circumstances.

5) The age, health, work skills, and educational levels of the parties.

6) Whether the payments are made periodically over an extended period or in a lump sum.

7) The existence of a legal or a moral "obligation" to pay alimony or support.

8) The express terms of the debt characterization under state law.

9) Whether the obligation is enforceable by contempt.

10) The duration of the marriage.

11) The financial resources of each spouse, including income from employment or elsewhere.

12) Whether the payment was fashioned in order to balance disparate incomes of the parties.

13) Whether the creditor spouse relinquished rights of support in payment of the obligation of question.

14) Whether there were minor children in the care of the creditor spouse.

15) The standard of living of the parties during their marriage.

16) The circumstances contributing to the estrangement of the parties.

17) Whether the debt is for a past or future obligation, any property division, or any allocation of debt between the parties.

18) Tax treatment of the payment by the debtor spouse.

In re Coffman, 52 B.R. 667, 674-75 & n.6 (Bankr. D. Md. 1985). Furthermore, bankruptcy courts are not to examine the present situation of the parties: the crucial question is what function did the parties intend the agreement to serve when they entered into it. Boyle v. Donovan, 724 F.2d 681, 683 (8th Cir. 1984) (bankruptcy court's decision finding consensual obligation to pay for children's higher education nondischargeable was not clearly erroneous); In re Neely, 59 B.R. 189, 193 (Bankr. D. S.D. 1986); but cf. Voss, 20 B.R. at 603 (allowing debtor to show changed circumstances warranting cessation of support).

Each of the five issues stated by the parties' February 23, 1993 Final Pretrial Order will be addressed in order after a review of the general circumstances in this case as they relate to the principles and factors enumerated above. First, the Court notes that the dissolution decree explicitly awards alimony. It is furthermore clear that, given Defendant's physical and mental condition, she had a need for support and the dissolution decree evidences an intention to provide such support. Outside of social security income, Defendant has no other financial resources. Moreover, Defendant's poor health and inability to support herself appear to be directly related to Plaintiff's demands and his treatment of her at the workplace and personally.

Plaintiff's mortgage obligation (as referred to in the findings of fact) is an obligation in the nature of alimony, maintenance, and support and is, therefore, nondischargeable. The decree expressly provides the mortgage obligation is to be treated as alimony and that it shall cease on Defendant's death, remarriage or co-habitation. These facts, along with the general circumstances stated above, indicate the support nature of this obligation.

Plaintiff's maintenance obligation is also in the nature of alimony, maintenance or support and is nondischargeable. The court holds this obligation to be nondischargeable for the reasons stated in the previous paragraph and because of the relationship between this expense and the obligations to pay the mortgage, taxes and insurance on the Defendant's home.

Plaintiff's obligation to pay Defendant $650 each month for 60 months totaling $39,000 is in the nature of alimony, maintenance and support and nondischargeable. The decree states this is alimony and not support and that these payments would cease upon death, remarriage or cohabitation. For these and the general reasons stated above, this debt is not dischargeable.

Likewise, the health insurance obligation is non-dischargeable. It is designated as additional alimony and not property settlement and is limited to five years. Taking, again, the general circumstances into account, it is clear

that this debt should be nondischargeable.

Finally, the business loan obligation, to repay Defendant's mother approximately $20,000 representing loans she has made to Plaintiff, is not in the nature of alimony, maintenance, or support and; therefore, is dischargeable. Notwithstanding the fact that the decree designated the repayment as alimony not dischargeable in bankruptcy, this debt is a business loan. The evidence presented indicates that these loans were capital input for the businesses in which the parties and Defendant's mother participated.

ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that the following obligations as provided in the parties' dissolution of marriage decree are in the nature of alimony, maintenance or support under 11 U.S.C. § 523(a)(5):

1) The mortgage obligation;
2) The maintenance obligation;
3) The alimony obligation; and
4) The health insurance obligation.

IT IS ACCORDINGLY ORDERED that the aforementioned obligations are nondischargeable.

WHEREAS, based on the foregoing analysis, the Court concludes Plaintiff's business loan obligation, as provided by

the parties' dissolution of marriage decree, is not in the nature of alimony, maintenance or support under 11 U.S.C. § 523(a)(5).

IT IS ACCORDINGLY ORDERED that the business loan obligation is dischargeable.

Dated this day of 16th day of April, 1993.

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Russell J. Hill
U.S. Bankruptcy Court