

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)
) Bankruptcy No. 04-31353-MBM
GERALD B. APPLGATE,)
) Chapter 7
Debtor.)
) Document No. _____
*****)
)
KAREN A. APPLGATE,)
)
Plaintiff,)
)
v.)
)
GERALD B. APPLGATE, Debtor and)
ROBERT L. WILLIAMS, Trustee,)
)
Defendants.)
*****)

COMPLAINT OBJECTING TO DISCHARGE OF DEBT

AND NOW comes Karen A. Applegate (“Plaintiff”), by and through her counsel, J. Michael Baggett and McCann Garland Ridall & Burke, and states as follows:

PARTIES

1. Plaintiff is an adult individual and the estranged spouse of Debtor, Gerald B. Applegate.

2. Debtor, Gerald B. Applegate, is an adult individual whose last known address was P.O. Box 545, Wexford, Pennsylvania 15090. Debtor filed a voluntary petition for relief pursuant to Chapter 7 of the Bankruptcy Code on August 30, 2004.

3. Respondent, Robert L. Williams, is the Chapter 7 Trustee appointed to this case with an address of 5001 Baum Boulevard, Suite 640, Pittsburgh, Pennsylvania 15213.

JURISDICTION

4. This matter is a core proceeding and this Court has jurisdiction pursuant to 28 U.S.C. §157 and 28 U.S.C. §1334. Venue is proper pursuant to 28 U.S.C. §1408 and 1409.

5. Plaintiff objects to the discharge of her claim under 11 U.S.C. §523(a)(15).

RELIEF FROM AUTOMATIC STAY

6. On December 23, 2002, Plaintiff filed a Complaint in Divorce in the Court of Common Pleas of Allegheny County at No. FD-94-002083. This Complaint in Divorce included, *inter alia*, claims for alimony, alimony pendente lite, spousal support, equitable distribution and counsel fees (the “Family Court Action”).

7. Plaintiff and Debtor are owners by the entireties of certain real estate located at 1601 Fieldstone Lane, Sewickly, Pennsylvania 15143 (“Marital Residence”).

8. Plaintiff filed a Motion for Relief from the Automatic Stay in this matter for the purpose of pursuing in state court those claims raised in the Family Court Action.

9. Without objection from Debtor and with the consent of Trustee on February 1, 2005, this Court entered an Order of Court granting Plaintiff’s requested relief allowing her to pursue her Family Court claims including equitable distribution.

10. The date for objecting to the discharge of Debtor’s debts by non-governmental entities is February 7, 2005.

11. To date the Family Court has not entered an order or divorce decree regarding the issue of equitable distribution. However, due to the income disparity between Plaintiff and Debtor and Plaintiff's custody of the parties' two minor children, Plaintiff is of the belief that she will be awarded most, if not all, of Debtor's interest in any equity in the Marital Residence as support and maintenance or under an order of equitable distribution.

12. Although the Family Court has not yet entered an order, Plaintiff, faced with a deadline to object to discharge, objects to the discharge, pursuant to 11 U.S.C. §523(a)(15), of all claims she may have against Debtor.

WHEREFORE, Plaintiff, Karen A. Applegate, respectfully requests this Honorable Court to enter an Order denying Debtor a discharge as to any claims which Plaintiff may have against Debtor.

McCANN GARLAND RIDALL & BURKE

By: /s/ J. Michael Baggett
J. MICHAEL BAGGETT, ESQUIRE
Pa. I.D. # 30651

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ORDER OF COURT

AND NOW, this _____ day of _____, 2005, it is hereby Ordered and Decreed that Debtor, Gerald B. Applegate, is denied a discharge of all claims which Karen A. Applegate has or may have against him arising out of the Family Court Action pending in the Court of Common Pleas of Allegheny County, Pennsylvania at No. FD-94-002083.

BY THE COURT:

United States Bankruptcy Judge