11 U.S.C. § 523(A)(15)
Fed. R. Bankr. P. 9023

In re Allen Adams, Jr
Elizabeth Adams v Allen Hays Adams, Jr.

Case No. 96-3127

3/12/97 PSH unpublished

Debtor's ex-wife brought an adversary proceeding seeking a determination that certain debts on which she was jointly liable with the debtor were not dischargeable in the debtor's bankruptcy. During the parties divorce the state court entered a letter opinion in which it held that the debtor would be responsible for all debts incurred after the parties separation and hold the wife harmless from those debts. However, the hold harmless provision was inadvertently omitted from the judgment. The debtor argued that the debt was not exempt from discharge under §523(a)(15) because it was not an obligation owed directly to an ex-spouse. The wife argued that the state court intended to include a hold harmless provision in the judgment and that the bankruptcy court had the power under Rule 9023 to amend the state court judgment to include a hold harmless provision.

The court rejected the wife's argument that Rule 9023 empowered it to amend state court judgments. It further held that under the judgment, as written, the debtor had not obligation to the wife and the judgment was therefore not exempt under §523(a)(15).

P97-3(5)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No. 396-30462psh7
ALLEN HAYS ADAMS, JR.,	)	
Debtor.	)	Adversary No.96-3127
ELIZABETH ADAMS	)	
Plaintiff,	)	MEMORANDUM OPINION
ALLEN HAYS ADAMS, JR.	)	
Defendant.	)	

This matter came before the court on the parties cross-motions for summary judgment. Neither party has provided the court with a clear statement of the issue that is to be decided in this case. In her memorandum in support of her motion for summary judgment the plaintiff indicates that she wants the court to interpret a decree of dissolution to include terms that were "inadvertently" omitted when the judgment was entered. Thus it appears that the plaintiff is actually asking the court to amend the judgment and then interpret the amended judgment as imposing upon the debtor a duty to hold the plaintiff harmless from certain debts. Consequently, in this opinion I will

assume that the issue before the court is whether the court has the power to amend a state court judgment to conform to the intent of the court issuing that judgment.

The facts are not in dispute. Plaintiff and the debtor were formerly husband and wife. In 1990 the plaintiff filed for divorce. In February 1992 the state court held a hearing in the dissolution proceeding. Thereafter Judge Roosevelt Robinson, who had presided over the dissolution proceeding, entered a letter opinion in which he divided the parties' assets and liabilities. The letter opinion stated that each party would be responsible for his or her bills acquired or added to after December 30, 1996.

Plaintiff's attorney prepared an Amended Judgment of Dissolution incorporating the division of property provided for in Judge Robinson's opinion. However, she neglected to include in that Judgment a provision that required the debtor to hold the plaintiff harmless from all debts he acquired or added to after December 30, 1990. Subsequent to the divorce each party paid the debts provided for in the Amended Judgment of Dissolution. Although the Amended Judgment did not require the debtor to pay all bills he incurred or added to after December 30, 1990, he, in fact, did so. The debtor subsequently filed bankruptcy.

In this adversary proceeding the plaintiff seeks a ruling that debts incurred by or added to by the debtor after 6December 30, 1996 are nondischargeable under § 523(a)(15). This section exempts from discharge debts:

" ...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, ...unless

> (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor ...
> (B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor....”

“Fundamental to the maintenance of any complaint seeking a determination of the dischargeability of a debt under § 523(a)(15) is the requirement that the debtor must be obligated to the plaintiff under the terms of the requisite agreement or order.” In re LaRue 204 B.R. 531 (Bankr. E.D. Tenn. 1997).

In this case the debtor concedes that he has the ability to pay the debts for which plaintiff is jointly liable incurred or added to by him after December 30, 1990 and that the detrimental effect on the plaintiff of discharging those debts would outweigh the benefit he would receive from the discharge. However, he contends that he does not owe the debts at issue directly to the plaintiff and that they are therefore not exempt from discharge under § 523(a)(15).

Plaintiff admits that under the plain language of the Amended Judgment the debtor has no duty to hold her harmless from any debts incurred or added to by the debtor after 1990. She contends, however, that the state court intended that the debtor be responsible for and hold her harmless from those debts and that this court should amend the judgment to so provide. In support of her contention that this court has the power to amend the judgment the debtor cites Oregon Rule of

Civil Procedure 71A which provides:

> "Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court **at any time** on its own motion or on the motion of any part and after such notice to all parties who have appeared, if any, as the court orders...." (emphasis supplied by plaintiff)

and its Federal Counterpart, Rule 60(a), incorporated by Fed. R. Bank. P. 9024, which contains language identical to that in Rule 71A. In addition the plaintiff relies on Mullinax v Mullinax 292 Or 416, 639 P.2d 628 (1981) and In the Matter of the Marriage of Hopkins 102 Or App. 655, 796 P.2d 660 (1990)(Trial court has the inherent power to amend judgments to correct clerical errors).

This court has no doubt that a trial court has the power to amend its judgments to correct clerical errors. However, the plaintiff has provided the court with no authority for the proposition that a Federal bankruptcy court has the authority to amend a judgment issued by a state trial court. Nor has the court been able to find such authority. In the absence of such authority this court can only interpret the judgment as written.

The Amended Judgment contains a provision requiring the plaintiff to hold the debtor harmless from any liabilities she incurred after December 31, 1990. It also contains a provision requiring the debtor to hold the plaintiff harmless from certain enumerated debts not in dispute in this case. It does not, however, contain any provision requiring the debtor to hold the plaintiff harmless from debts not specifically enumerated in the judgment. Under the terms of the Amended Judgment, therefore, the debtor has no direct obligation to the

plaintiff for any non-enumerated debts. Those debts are therefore not exempt from discharge under §523(a)(15).

An order and judgment consistent with this letter opinion will be entered upon submission of appropriate documents by Mr. Snyder.

POLLY S. HIGDON
Bankruptcy Judge