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Property Settlement Agreement
11 USC § 523(a)(15)

Carlson v. Carlson, Adversary No. 02-6006
In re Scott Carlson, Case No. 01-67039-fra7

12/15/2002 FRA Unpublished

Husband and Wife filed for divorce and prepared and signed a property settlement agreement which, by its terms, was entered into in contemplation of eventual entry into the dissolution proceedings. Husband filed for bankruptcy while divorce proceedings were still pending and Wife filed this adversary proceeding seeking a judgment declaring that the Husband's obligations under the marital settlement agreement are excepted from discharge under Code § 523(a)(15). Husband filed a motion for summary judgment asking that the case be dismissed.

Under Oregon law, a property settlement made in anticipation of a dissolution proceeding is enforceable only when found by the dissolution court to be equitable under the circumstances. Wife wished the dissolution court to enter a decree ratifying the settlement agreement, while the Husband, citing changes in circumstances, seeks difference relief.

The Bankruptcy Court held that any controversy concerning discharge of debts created under the property settlement agreement is not ripe until the decree of dissolution is entered, as the

1 division of property and debts cannot be said to be fixed until the
2 settlement agreement is ratified by the dissolution court. The
3 Bankruptcy Court abated the adversary proceeding until such time as
4 a decree is entered dissolving the parties' marriage or the pending
5 dissolution case is dismissed.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case No.
)	601-67039-fra7
SCOTT MICHAEL CARLSON,)	
)	
<u>Debtor.</u>)	
)	
SHERRYL CARLSON,)	Adversary Proceeding No.
)	02-6006-fra
Plaintiff,)	
vs.)	
)	
SCOTT MICHAEL CARLSON,)	
)	MEMORANDUM OPINION
<u>Defendant.</u>)	

This case demonstrates the difficulties often encountered by parties who simultaneously undertake bankruptcy and dissolution of marriage proceedings. Because I believe that the parties' marital settlement agreement cannot presently be enforced by this Court, I grant the Defendant's motion for summary judgment, and order that this adversary proceeding be held in abeyance.

Scott Michael Carlson, the Debtor/Defendant, and Sherryl Carlson are husband and wife. The essential facts are not in dispute:

1 On August 31, 1999, Wife filed a petition in the Circuit
2 Court for Jackson County, Oregon, seeking to dissolve the parties'
3 marriage. On July 25, 2000, the parties prepared and signed a
4 marital settlement agreement (MSA) dividing their property and
5 providing for support payments. The MSA was, by its terms, entered
6 into in contemplation of the eventual entry of a decree dissolving
7 the parties' marriage. As of this writing, however, no decree has
8 been entered in the dissolution proceedings. I am advised that a
9 trial is set before the Circuit Court in Jackson County for
10 February 27, 2003.¹ Since the execution of the marital settlement
11 agreement, the parties have had some disputes over support, which
12 are not germane to this proceeding. The parties indicated at oral
13 argument on the instant motion that their current posture before the
14 Circuit Court is that the Wife wishes the Court to enter a decree
15 ratifying and enforcing the marital settlement agreement, while the
16 Husband, citing changes in circumstances since the time the
17 agreement was entered, seeks different relief.

18 Husband filed his petition for relief in this Court on
19 September 17, 2001. On January 1, 2002, Wife filed this action,
20 seeking a judgment of this Court declaring that the Husband's
21 obligations under the marital settlement agreement are excepted from
22 discharge pursuant to 11 U.S.C. § 523(a)(15).

23 // // //

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25 ¹ Strictly speaking, the divorce proceedings may be stayed by 11 U.S.C.
26 § 362. However, this Court will enter a separate order pursuant to 11 U.S.C.
§ 362(d) modifying the stay and authorizing the Circuit Court to proceed to enter
any relief available to the parties under O.R.S. Chapter 107.

1 DISCUSSION

2 Code § 523(a)(15) excepts from discharge obligations incurred
3 by the debtor "in the course of a divorce or separation or in
4 connection with a separation agreement, divorce decree or other
5 order of a court of record....", subject to certain affirmative
6 defenses. Clearly, the marital settlement agreement was incurred
7 "in the course of a divorce." The question, however, is whether or
8 not the MSA can be said to be the basis of a claim. This requires
9 an exploration of Oregon law regarding marital settlement
10 agreements.

11 Under Oregon law, a property settlement made in anticipation
12 of a dissolution proceeding is strictly enforceable only when found
13 by the dissolution court to be equitable under the circumstances.
14 In re Marriage of Bach, 27 Or.App. 411, 555 P.2d 1264 (1976). The
15 court is not required to accept the parties' settlement agreement
16 and may, on consideration, reject the agreement as unfair to one or
17 the other of the parties. McDonnal and McDonnal, 293 Or. 772, 652
18 P.2d 1247 (1982). As the Oregon Court of Appeals states:

19 The role of the trial judge in a dissolution case is
20 to ensure the fairness of the property division. If,
21 after the parties have reached an agreement on a
22 property settlement, the judge does not agree that it
is fair, he may disregard it, or treat it as evidence,
and order a contested hearing at any time until the
judgment has been signed by the judge and entered.

23 In the Matter of the Marriage of Wrona and Wrona, 656 Or.App. 690,
24 674 P.2d 1213 (1984).

25 In short, the marital settlement agreement is not binding on
26 the dissolution court, or, for that matter, any reviewing court on

1 appeal, since Oregon courts review decrees of dissolution *de novo*.
2 In the Matter of the Marriage of Ashbury and Ashbury, 129 Or.App.
3 96, 877 P.2d 1213 (1994).

4 It is true that property settlement agreements are generally
5 given effect if found to be just and proper in the circumstances.
6 See, e.g. In the Matter of the Marriage of Mollier and Mollier, 33
7 Or.App. 575, 577 P.2d 94 (1978). However, it is not the province of
8 this Court to review the marital settlement agreement. There is a
9 long established policy that federal courts will abstain from
10 hearing domestic relations matters. See Swate v. Hartwell, 99 F.3d
11 1282,1287 (5th Cir. 1996) (citing Simms v. Simms, 175 U.S. 162, 167
12 (1899)); Forsdick v. Turgeon, 812 F.2d 801,804 (2d Cir. 1987) (citing
13 Simms v. Simms, supra). Moreover, O.R.S. 107.105 requires that the
14 state court, in the course of dissolving the marriage, distribute
15 property, provide for the care, custody and visitation of minor
16 children, and make support awards. The courts are required to
17 consider all of these factors together, a requirement which would be
18 thwarted if another court intervened and allocated property or
19 approved settlement agreements.

20 Since the division of the parties' property and debts, and
21 ensuing obligations, cannot be said to be fixed until the marital
22 settlement agreement is ratified by the dissolution court, any
23 controversy with respect to discharge of those debts is not ripe
24 until the decree of dissolution is entered.

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