

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
)  
GREGORY C. PHILPOT, ) Bankruptcy Case No. 03-61133  
)  
Debtor. )  
\_\_\_\_\_)  
)  
RENEE LYNN PHILPOT, )  
)  
Plaintiff, )  
)  
vs. ) Adversary Case No. 03-6051  
)  
GREGORY C. PHILPOT, )  
)  
Defendant. )

OPINION

This matter having come before the Court on a Motion for Summary Judgment of Renee Lynn Philpot on Complaint to Determine Dischargeability of Debts Under 11 U.S.C. Section 523(a)(5) or Alternative Motion to Decline Jurisdiction and Counter Motion for Summary Judgment on Complaint to Determine Dischargeability of Debts Under 11 U.S.C. Section 523(a)(5) and Response to Plaintiff's Motion for Summary Judgment Complaint filed by the Defendant; the Court, having reviewed written memoranda filed by the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria

set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy procedure 7056. Rule 56(c) reads in part:

(T)he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed.R.Civ.P. 56(c); See Donald v. Polk County, 836 F.2d 376, 378-379 (7th Cir. 1988).

The United States Supreme Court has issued a series of cases which encourage the use of summary judgment as a means of disposing of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). "The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute." Farriss v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmens Federal Savings & Loan Ass'n, 806 F.2d 146, 149 (7th Cir. 1986). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, 477 U.S. at 256, 106 S.Ct. at 2514. There is no genuine issue for trial if the record, taken as a whole, does not lead a rational trier of fact to find for the non-moving party. Matsushita, 475 U.S. at 587, 106 S.Ct. at 1356. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-250, 106 S.Ct. at 2511.

The Complaint in this matter seeks to have certain debts which were assigned to the Defendant in the parties' Judgment of Dissolution of Marriage be declared non-dischargeable pursuant to the provisions of 11 U.S.C. § 523(a)(5). In the alternative, the Complaint seeks relief under 11 U.S.C. § 523(a)(15) in

the event the Court is unable to determine that the debts are non-dischargeable under 11 U.S.C. § 523(a)(5). Pursuant to 11 U.S.C. § 523(a)(5), debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, is non-dischargeable under Chapter 7 of the Bankruptcy Code. Courts have consistently held that debts that are in the nature of alimony, maintenance, or support are non-dischargeable under 11 U.S.C. § 523(a)(5). In re Daulton, 139 B.R. 708 (Bankr. C.D. Ill. 1999); and In re Reines, 142 F.3d 970 (7th Cir. 1998). It is federal law which governs the determination of whether a debt is actually in the nature of alimony, maintenance, or support. In re Reines, supra, at 972. The determination of whether a debt is in the nature of alimony, maintenance, or support is a fact intensive inquiry requiring the Court to review numerous factors. See: Daulton, supra, at 708; In re Maitlen, 658 F.2d 466 (7th Cir. 1981); and In re Coil, 680 F.2d 1170 (7th Cir. 1982).

In considering the parties' cross motions for summary judgment on the issues under 11 U.S.C. § 523(a)(5), the Court finds that, while there are certain facts which appear to be undisputed, there are not sufficient facts set forth for the Court to make a ruling under 11 U.S.C. § 523(a)(5). Additionally, the Court finds that there are numerous factual questions necessary in a § 523(a)(5) inquiry which have not been addressed in the parties' pleadings. As such, the Court is unable to rule in favor of either party at this point in time.

As for the parties' cross motions for summary judgment as to the issues under 11 U.S.C. § 523(a)(15), the Court finds that the pleadings of the parties do not sufficiently set forth the necessary facts for the Court to determine whether the debts in question meet the requirements set forth in 11 U.S.C. § 523(a)(15), and the cases interpreting that section. See: In re Hill, 184 B.R. 750 (Bankr. N.D. Ill. 1995); In re Smither, 194 B.R. 102 (Bankr. W.D. Ky. 1996); and In re Crosswhite, 148 F.3d 879 (7th Cir.

1998). For these reasons, the Court must find that the motions for summary judgment filed by both parties must be denied.

ENTERED: April 15, 2004.

/s/Gerald D. Fines  
GERALD D. FINES  
United States Bankruptcy Judge