

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

JOAN MARIE STEWART,

Case No. 18-03450

Debtor.

JOHN SPURGEON KEEBLER,

Plaintiff,

v.

Adversary Case No. 19-1002

JOAN MARIE STEWART,

Defendant.

ORDER DISMISSING ADVERSARY CASE WITHOUT PREJUDICE

This case, which arises out of the defendant-debtor's chapter 11 bankruptcy case, came before the court on March 26, 2019 for a scheduling conference. The plaintiff is the defendant-debtor's ex-husband. In his complaint (doc. 1), he asks the court to determine that the debtor's obligations under an indemnification and hold-harmless agreement contained in the parties' 2012 divorce decree is non-dischargeable under 11 U.S.C. § 523(a)(15). That subsection provides in pertinent part that "[a] discharge under [chapter 11] does not discharge an individual debtor from any debt . . . to a . . . former spouse . . . and not [for a domestic support obligation] that is incurred by the debtor in the course of a divorce . . . or in connection with a separation agreement, divorce decree or other order of a court of record" A copy of the divorce decree is attached to the complaint.

Under §§ 523(a)(15) and 1141(d)(2)¹, an individual debtor such as the debtor here is not discharged from debts of the type alleged in the complaint. *See, e.g., In re Proctor*, No. 06-4112, 2007 WL 7141802, at *1-2 (Bankr. N.D. Ga. Mar. 21, 2007). No adversary proceeding is required; subsection (15) of § 523(a) is not included in § 523(c), which requires a creditor to seek a determination from the court that certain types of debts are excepted from discharge. *Cf. Console v. Comm’r of Internal Revenue*, 291 F. App’x 234, 237 (11th Cir. 2008).

Based on the law above, counsel for the plaintiff and bankruptcy counsel for the debtor agreed at the scheduling conference that this adversary proceeding is unnecessary. The court therefore dismisses this adversary proceeding without prejudice. The debtor has not yet filed a chapter 11 plan of reorganization. If she attempts to discharge the debt at issue in this adversary case as part of her chapter 11 case, the plaintiff can object at that time and the court will rule on the matter.

Dated: March 28, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

¹ “A discharge under [chapter 11] does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.”