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

In Re:

Case No. 18-02396

CHRISTIAN NICHOLE LAMBERT,

Debtor.

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COLLIN TABB,

Plaintiff,

v.

Adversary Case No. 18-00045

CHRISTIAN NICHOLE LAMBERT,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This adversary case came before the court for trial on August 23, 2019. The court heard testimony from both parties and admitted into evidence plaintiff's exhibits 1-4 without objection. For the reasons discussed below, the court finds that the obligation of defendant-debtor Christian Nichole Lambert ("Ms. Lambert") set forth in the divorce decree with her ex-husband, plaintiff Collin Tabb ("Mr. Tabb"), to refinance a loan that is currently in his name only is nondischargeable under 11 U.S.C. § 523(a)(15).

Findings of Fact

This case arises out of Ms. Lambert's underlying chapter 7 bankruptcy. Mr. Tabb is Ms. Lambert's ex-husband. The parties, who do not have any children together, were divorced in 2014 in the circuit court of Baldwin County, Alabama, case no. 2014-900657. Mr. Tabb was represented in the divorce; Ms. Lambert testified that she could not afford a lawyer to represent her. At the time of the divorce, Mr. Tabb was working part-time for UPS; Ms. Lambert was working at a doctor's office and waiting tables at a local restaurant because the doctor's office had reduced her hours.

The parties have stipulated that the divorce decree required Ms. Lambert to refinance a loan that was in Mr. Tabb's name within six months of the divorce and that she has not done so to date. Specifically, the divorce decree (plaintiff's exhibits 1 and 2) states: "The wife shall refinance her student loan in the approximate amount of $13,735.00 through CHASE or AES that is currently in the name of the husband. This loan must be refinanced within six months of the signing of the agreement." The divorce decree characterizes this obligation as "in the nature of support . . . ." (*See id.*).

Mr. Tabb took out the subject loan for $14,000 in 2007 while Ms. Lambert and he were married. (*See* pltf. exs. 3, 4). Ms. Lambert's grandfather, who is now deceased, co-signed on the loan. Ms. Lambert was not a maker on the note. The loan proceeds were paid into the parties' joint checking account. Around $10,000 of the loan proceeds were used to pay for Ms. Lambert's tuition at esthetician school because her school was not eligible for federal aid.[1] The remaining money was used to pay off joint household debt. Mr. Tabb has been making periodic payments on the loan, and the current balance is approximately $10,000. (*See* pltf. ex. 4).

Conclusions of Law

Mr. Tabb argues that Ms. Lambert's obligation to refinance the loan is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) or § 523(a)(15). Mr. Tabb bears the burden to show by a preponderance of the evidence that this obligation is nondischargeable. *See, e.g.*, *Cummings v. Cummings*, 244 F.3d 1263, 1265 (11th Cir. 2001); *In re Davis*, No. 07-1097, 2007 WL 4510367, at *3 (Bankr. M.D. Ala. Dec. 18, 2007).

[1] Mr. Tabb testified that although he was attending Faulkner State University when he took out the loan, he had a federal student loan to cover his tuition. Even if some of the loan proceeds had helped with Mr. Tabb's tuition, that would not change the court's ruling herein.

Section 523(a)(5)

Domestic support obligations are not dischargeable pursuant to § 523(a)(5). A domestic support obligation (DSO) is a debt "in the nature of alimony, maintenance, or support" of the ex-spouse "without regard to whether such debt is expressly so designated . . . ." *See* 11 U.S.C. § 101(14A). The terms contained in a divorce decree do not necessarily govern whether an obligation should be considered DSO. *See Cummings*, 244 F.3d at 1265; 11 U.S.C. § 101(14A) (DSO determined "without regard as to whether the debt is expressly so designated").

> [A] court should look beyond the label the parties have given to a particular debt and determine whether the debt is actually in the nature of alimony or support. Thus, a debt is [DSO] if the parties intended it to function as support or alimony, even if they called it something else. The court's decision should also be informed by state law. But there are other factors a court should consider as well. They include: (1) the agreement's language; (2) the parties' financial positions when the agreement was made; (3) the amount of the division; (4) whether the obligation ends upon death or remarriage of the beneficiary; (5) the frequency and number of payments; (6) whether the agreement waives other support rights; (7) whether the obligation can be modified or enforced in state court; and finally (8) how the obligation is treated for tax purposes.

In re Benson, 441 F. App'x 650, 651 (11th Cir. 2011) (internal citations omitted); *see also Cummings*, 244 F.3d at 1265-66 (the touchstone is the intent of the parties).

The divorce decree's characterization of the obligation to refinance the loan as "in the nature of support" is not dispositive. The evidence showed that Mr. Tabb was in equal or better financial condition than Ms. Lambert at the time of the divorce; in fact, Ms. Lambert was unrepresented because she could not afford a lawyer. The parties did not have children together, and in the divorce, Mr. Tabb got the house (and mortgage), which he later sold for about $20,000 in net proceeds. There was no evidence that the parties intended for Ms. Lambert to support her ex-husband. Under these circumstances, the court finds that Mr. Tabb has not met his burden of showing that Ms. Lambert's obligation to refinance the loan into her name is nondischargeable DSO under § 523(a)(5).

Section 523(a)(15)

If this were a chapter 13 rather than a chapter 7 case, the court's inquiry would end here and the obligation to refinance the loan would be dischargeable. *See In re Willis*, No. 13-03391, 2014 WL 231982, at *2 (Bankr. S.D. Ala. Jan. 21, 2014). But under 11 U.S.C. § 523(a)(15), a chapter 7 discharge "does not discharge an individual debtor from any debt . . . to a . . . former spouse . . . and not [for DSO] 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 . . . ."

> To be excepted from discharge under this provision, the debt must: (1) be to a spouse, former spouse, or child of the debtor; (2) not be [DSO], and (3) have been incurred in the course of a divorce . . . or in connection with a separation agreement, divorce decree, or order of court.

In re Davis, 2007 WL 4510367, at *3. "Debt" is defined broadly in the Bankruptcy Code as "liability on a claim[,]" 11 U.S.C. § 101(12), and the obligation to refinance qualifies as a debt.

The court has already found that the obligation to refinance the loan is not DSO, and thus the second prong is met.

For the first prong – that the debt be to a former spouse – although the divorce decree requires Ms. Lambert to refinance the loan with a third party, it also creates a direct liability to her former spouse Mr. Tabb to do so. *See id.* at *4. Indeed, Mr. Tabb would have an action for contempt in state court against Ms. Lambert based on her failure to comply with the terms of the divorce decree and refinance the loan into her name. *See, e.g.*, *In re Stanley*, No. 11-00357, 2013 WL 1336103, at *6-7 (Bankr. N.D. Ala. Mar. 29, 2013).

Turning to the third prong, this court agrees with other courts that have interpreted the requirement that the debt have been "incurred in the course of a divorce . . . or in connection with a separation agreement, divorce decree, or other order of court" to mean "the incurrence of a *new* debt in the course of a divorce . . . that was not in existence before the divorce." *See In re Thomas*, No.

18-00095-5-DMW, 2019 WL 2897591, at *4 (Bankr. E.D.N.C. Jun 28, 2019); *see also In re Proyect*, 503 B.R. 765, 775 (Bankr. N.D. Ga. 2013) ("The crucial question is: what were the relative rights and obligations of the debtor and the former spouse before and after the divorce?"). In the usual situation involving joint marital debts, this requirement generally means that the divorce decree must contain an indemnity or "hold harmless" provision because otherwise the spouse would simply be agreeing to pay an old debt for which he or she was already liable.

Ms. Lambert argues that her obligation under the divorce decree does not fall within § 523(a)(15) since it does not require her to indemnify Mr. Tabb or specifically order her to pay the loan. However, the language of § 523(a)(15) is not that limited. Prior to the divorce, Ms. Lambert was not liable on the loan, which was in the name of Mr. Tabb and her grandfather. The obligation in the divorce decree for Ms. Lambert to refinance Mr. Tabb's loan is clearly the incurrence of a new debt in the course of a divorce that was not in existence before the divorce.[2] The obligation to refinance the loan is thus excepted from discharge pursuant to 11 U.S.C. § 523(a)(15). The court will enter a separate judgment of nondischargeability in accordance with this order.

Dated: August 27, 2019

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

[2] While Ms. Lambert testified that she is unable to refinance the loan given her current financial situation, her ability to refinance the loan is not a factor for this court in deciding whether the loan is nondischargeable under § 523(a)(15). She must seek her remedy in the state court that entered the divorce decree, not in this court.