

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

MARK A. CARDA,

DEBTOR

ALBERTA KAY CARDA,

Plaintiff

vs.

MARK ANTHONY CARDA,

Defendant

CASE NO. BK81-1421

A81-798

MEMORANDUM

This objection to discharge of a debt was submitted to the Court on pleadings by agreement of counsel on April 13, 1982. The facts before me indicate that on April 22, 1977, a decree was entered in the District Court of Dodge County, Nebraska, dissolving the marriage between the parties to this action. Pursuant to that decree the respondent, the debtor in this bankruptcy proceeding, was ordered to pay his former wife \$6,000 in lieu of alimony. The parties agreed that there remains due and owing the plaintiff in this action the sum of \$1,942.92. It is the contention of Mrs. Carda that the debt of her husband is nondischargeable in bankruptcy pursuant to §523(a)(5) which exempts from discharge a debt owed to a former spouse for alimony, maintenance or support in connection with a separation agreement, divorce decree or property settlement agreement. There is no allegation in the evidence before me that the debt in question has been assigned by Mrs. Carda to any other entity voluntarily, by operation of law, or otherwise. Therefore it remains for this Court to determine under §523(a)(5)(B) that such liability is actually in the nature of alimony, maintenance or support.

The terms of the property settlement agreement which are incorporated into the divorce decree provide for a payment by Mr. Carda to his former wife of \$6,000 at the rate of \$100 per month commencing May 15, 1977, until the amount is paid in full. These terms were written into the settlement agreement because ". . . said parties have determined the value of various items received by each of said parties and have determined that there is a substantial difference in the value of the property received by the petitioner and respondent." Sale of certain items of Mr. Carda's awarded property could result, pursuant to the terms of the agreement, in Mrs. Carda's receiving one-half of

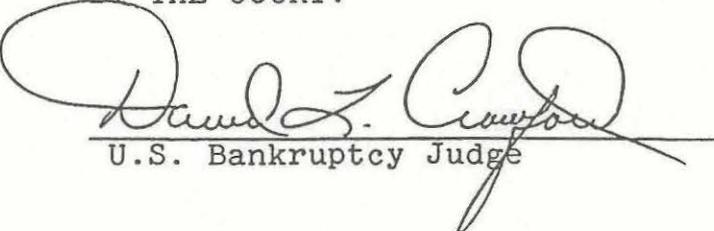
the proceeds of the sale in advance against the \$6,000 debt. There is a provision in the agreement for a further such advance upon Mr. Carda's sale of certain real property. No amount of this debt represents attorneys fees or costs ordered by the divorce decree.

As the statute indicates, the language "in lieu of alimony" is not necessarily determinative of the dischargeability of the debt in bankruptcy. The liability must actually be in the nature of alimony, maintenance or support in order to be excepted from discharge. As previously stated in Stranathan v. Stowell, 8 B.C.D. 472, 15 B.R. 223 (D. Neb. 1981), the focus of the Court's determination must be ". . . on whether the obligations imposed arose from a legal duty of support and were imposed in discharge of that duty' as opposed to a line of cases which limited the inquiry to 'whether the debt possesses the traditional characteristics of state law support obligations. . . ." Stranathan at 226. See also In re Warner, 5 B.R. 434, 6 B.C.D. 788 (Bkrtcy. D. Utah 1980).

I find nothing in the pleadings before me to indicate that the obligation in this instance in any way arose from a legal duty of support nor were they imposed in discharge of that duty. Rather, I find as fact that both the intent and net effect of the agreement is a division of marital property only. I conclude, therefore, that the debt owed by Mark Anthony Carda to Alberta Kay Carda is not in the nature of alimony or support. Therefore it cannot meet the criteria imposed by §523(a)(5) of the Code and accordingly the debt is dischargeable in bankruptcy.

DATED: May 24, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

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