UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
JEFF J. CEPEL,	)	CASE NO. BK86-2673
	)	
DEBTOR	)	A87-100
	)	
JEFF JOHN CEPEL,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
PATRICIA FAYE PETTYGROVE,	)	
	)	
Defendant	)	

MEMORANDUM OPINION

This matter came on for hearing on July 1, 1987, upon the above adversary complaint. Appearing on behalf of the debtor/plaintiff was John Hahn of Lincoln, Nebraska. Appearing on behalf of the defendant was John Brogan of York, Nebraska.

Issue

Whether a promissory note assumed by the debtor as part of a property settlement in a marriage dissolution can be considered a support obligation and thus excepted from a Chapter 7 discharge?

Statement of Facts

Patricia Pettygrove and Jeff Cepel were married June 11, 1983. In May, 1984, Patricia Pettygrove and Jeff Cepel purchased a residence, obligating themselves on a promissory note payable to Heritage Realtors in the amount of $2,068.13. On December 7, 1984, they separated. A dissolution of marriage decree was entered April 29, 1985. The property settlement accompanying the divorce decree provided that Jeff Cepel would live in the residence and assume responsibility for the Heritage Realtors' promissory note, holding Patricia Pettygrove harmless in terms of that indebtedness. Subsequent to the divorce, Jeff Cepel defaulted on the note and on November 19, 1985, Heritage Realtors received a judgment against both Patricia Pettygrove and Jeff Cepel for $2,068.13 plus costs and interest. On September 19, 1986, Jeff Cepel filed for relief under Chapter 7.

Analysis

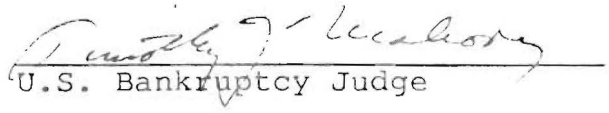
After reviewing the legal arguments, decree, property settlement agreement, and affidavits provided by Jeff Cepel and Patricia Pettygrove, this Court holds that the debt of Jeff Cepel to Heritage Realtors should be discharged.

Section 523(a)(5) which excepts from discharge debts incurred for alimony, maintenance and support is not applicable. While this Court recognizes that debtor's assumption of the debt was in some measure due to debtor's stronger financial condition at that time, insufficient evidence exists to prove that debtor's assumption of the debt and agreement to hold Patricia Pettygrove harmless from that debt was a support obligation. Rather the evidence indicates that the debt assumption was part of the overall property division, personal and real, in anticipation of the marriage dissolution.

Therefore, the Court orders that the debt be discharged.

DATED: October 14, 1987.

BY THE COURT:



U.S. Bankruptcy Judge

Copies to:

John C. Hahn, Attorney, Box 6096, Lincoln, NE 68506

John R. Brogan, Attorney, P.O. Box 567, York, NE 68467