

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
JENNIFER MATTESON,)	CASE NO. BK95-81827
)	
DEBTOR)	CH. 13

MEMORANDUM

Hearing was held on August 9, 1996, on the Objection to Claim of Michael Segobia..
Appearances: Albert Burnes for the debtor and Joseph Vance for Michael Segobia. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

Background

On January 24, 1994, the Douglas County District Court entered a decree dissolving the marriage of Michael Segobia and Jennifer Matteson, the debtor in this case. (Ex. 2 p.2). The decree awarded a residence in Ralston, Nebraska to Segobia and the debtor was required to relinquish her exclusive use and possession of it to Segobia by June 1, 1994. After the debtor gave up possession, Segobia discovered “extensive and substantial” damage to the residence. In addition, various items of personal property that were located at the residence and had been awarded to Segobia in the decree were not returned to him by the debtor. Segobia filed suit against the debtor, and on September 6, 1995, the Douglas County District Court awarded him \$11,082.95 for damages to the residence and \$5,138.00 for the value of the personal property, for a total award of \$16,220.95.

The debtor filed her voluntary petition in bankruptcy on November 7, 1995, and listed the debt to Segobia as a nonpriority unsecured claim. (Filing #1; Filing #7 p.12). However, Segobia, in his proof of claim, asserted that the debt had priority status¹, and the trustee recorded it for allowance as a priority claim. (Filing #36). The debtor filed an objection to the such priority status being given the claim on June 24, 1996, and Segobia has resisted the debtor’s objection. (Filing #48; Filing #53).

Decision

¹ It is maintained in the proof of claim and in an affidavit of Segobia’s attorney that the claim is a priority claim pursuant to 11 U.S.C. § 507(A)G. There is no such section in the Bankruptcy Code, but it is apparent that Segobia means the claim is entitled to priority status pursuant to 11 U.S.C. § 507(a)(7).

Segobia's claim is not entitled to priority status pursuant to 11 U.S.C. § 507(a)(7), as the basis for the claim is a civil judgment against the debtor for damages to real and personal property, not a debt arising from alimony maintenance, or support pursuant to a divorce decree or property settlement.

Discussion

Segobia first states in his resistance to the debtor's objection that the debtor filed its objection to the Trustee's motion to allow claims out of time. However, Segobia has confused a resistance deadline with a deadline for objecting to a claim. In the notice sent to Segobia regarding the proposed treatment of his claim dated April 19, 1996, the trustee wrote "[i]f *you* disagree with the Trustee's proposed treatment of *your* claim, *you* may request the Trustee to specify the reason(s) for the manner in which *your* claim was recorded. If *you* fail to file with the Clerk by May 19, 1996 a request for a hearing, the Trustee will assume the proposed allowance is correct . . ." (Emphasis supplied) (Filing # 36). This required Segobia to object to the proposed treatment of his claim within thirty days of the notice; it did not require the debtor to object within any period of time. Therefore, the debtor was not required to file an objection to the proposed treatment of Segobia's claim by May 19, 1996 as maintained by Segobia.

Segobia next asserts that his claim is entitled to priority status pursuant to § 507(a)(7) of the Bankruptcy Code. That section provides in part:

(a) The following expenses and claims have priority in the following order:

. . .

(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a government unit, or property settlement agreement . . .

11 U.S.C. § 507(a)(7).

The divorce decree entered by the Douglas County District Court is not in evidence, so there is insufficient evidence to make any findings with regard thereto. However, it is apparent that the sole basis for Segobia's claim is the civil judgment entered by the district court on his two causes of action arising from damage to his real and personal property inflicted by the debtor. While the divorce decree awarded him the residence in question, it did not award him the amounts of money that are claimed as due and owing. Therefore his claim is not in the

nature of alimony, maintenance or support contained in a property settlement or divorce decree entitled to priority status pursuant to § 507(a)(7) of the Code.

The debtor's objection to the priority status given to Segobia by the Trustee is sustained.

Separate journal entry to be filed.

DATED: August 22, 1996

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies mailed by the Court to:

Joseph Vance, 4833 1/2 S. 24th Street, Omaha, NE 68107
Kathleen Laughlin, Trustee
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
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JENNIFER MATTESON,)	CASE NO. BK95-81827
)	A
DEBTOR(S))	
)	CH. 13
)	Filing No. 48, 53
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	
)	DATE: August 22, 1996
Defendant(s))	HEARING DATE: August 9, 1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to Claim of Michael Segobia by Debtor; Resistance by Claimant.

APPEARANCES

Albert Burnes, Attorney for debtor
Joseph Vance, Attorney for Michael Segobia

IT IS ORDERED:

Debtor's objection to priority status of claim is sustained. See memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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Joseph Vance, 4833 1/2 S. 24th Street, Omaha, NE 68107
Kathleen Laughlin, Trustee
United States Trustee

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