UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 22, 2015 at 10:00 a.m.

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1. 14-30833-A-11 SHASTA ENTERPRISES — STATUS CONFERENCE
10-31-14 [1]

Tentative Ruling: None.

2. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO
DBJ-3 — USE CASH COLLATERAL AND TO MAKE ADEQUATE PROTECTION PAYMENTS
11-25-14 [43]

Tentative Ruling: The motion will be granted.

The chapter 11 trustee is seeking authorization to use the cash collateral of Redding Bank of Commerce and Joe Curto and Lavone Curto, as co-trustees of the Curto Family Trust, during July and August 2015, on substantially the same terms the estate has been using cash previously, since December 2014. The trustee requires the use of cash to continue the debtor's ownership and leasing of its real properties, given that rents are its only regular and material source of income. The cash collateral will be used to pay, among other things, "payroll expenses, yard maintenance and tools, office supplies, janitorial services and supplies, various outside services, taxes and license fees, insurance, utilities, other relevant and necessary expenses of the estate, and under appropriate circumstances, funding of tenant improvements for new leases that may be entered into during the Cash Collateral Period." Docket 314 at 3. The trustee has been also making $20,000 adequate protection payments to the secured creditors, divided pro-rata.

3. 14-30833-A-11 SHASTA ENTERPRISES — MOTION FOR
DL-1 — RELIEF FROM AUTOMATIC STAY
REDDING BANK OF COMMERCE VS. — 12-8-14 [67]

Tentative Ruling: The hearing on the motion will be continued for a final hearing.

The movant, Redding Bank of Commerce, seeks relief from stay as to 355 Hemsted Drive Redding, California.

Given that the court appointed a chapter 11 trustee in this case only on December 23, 2014, the court will continue the hearing on the motion to provide the trustee with time to evaluate and respond to the motion. Dockets 142 & 143.

4. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO
FWP-11 — APPROVE INCENTIVE AGREEMENT
5-27-15 [294]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the chapter 11 trustee, this motion is deemed brought pursuant to Local

Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The chapter 11 trustee seeks approval of an agreement between the estate and David Cretaro, the nephew of the debtor's 99% general partner, Antonio Rodriguez, Jr., providing an incentive to Mr. Cretaro to continue assisting the trustee with:

- daily property management of the estate's 17 real properties, including dealing with current tenants, securing new tenants, dealing with the related tenant improvements, dealing with subcontractors, and dealing with repairs and maintenance;

- supporting the trustee in matters relating to the case administration and the real estate owned by the estate; and

- assisting with the liquidation of the real properties held in the estate's portfolio, including supporting the trustee during the due diligence period with prospective buyers.

Although Mr. Cretaro had been retained pre-petition by the debtor to provide property management services in exchange for an approximately $2,500 monthly payment, the services Mr. Cretaro has been providing the estate have gone far beyond property management. As outlined above, the services have included substantial support of the trustee in the administration of the estate.

That is why the trustee and Mr. Cretaro have entered into the instant agreement, subject to court approval, granting Mr. Cretaro incentive to continue providing such services, given his familiarity with the properties and the trustee's inability to find anyone on the necessary short notice to liquidate the properties. The proposed compensation arrangement is for Mr. Cretaro to receive the lesser of $10,000 or 5% of any actual net recovery by the estate from the sale of the following properties: 355 Hemsted (scheduled value of $1.847 million), 391, 381, 393 Hemsted (scheduled value of $1.458 million), 250 Hemsted (scheduled value of $8 million), 400 Redcliff (scheduled value of $1.4 million), 331, 333, 345 Hemsted (scheduled value of $703,386), 310 Hemsted (scheduled value of $4.434 million), and 415 Knollcrest (scheduled value of $1.8 million). Docket 1, Schedule A.

11 U.S.C. § 363(b) allows the trustee to use property of the estate, other than in the ordinary course of business.

11 U.S.C. § 503(b)(1)(A) prescribes that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1)(A) the actual, necessary costs and expenses of preserving the estate."

But, under 11 U.S.C. § 503(c)(1)-(3), "*Notwithstanding subsection (b), there shall neither be allowed, nor paid--*

"(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that--

"(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

"(B) the services provided by the person are essential to the survival of the business; and

"(C) either--

"(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

"(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

"(2) a severance payment to an insider of the debtor, unless--

(A) the payment is part of a program that is generally applicable to all full-time employees; and

"(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

"(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition."

"The term 'insider' includes-- . . . (C) if the debtor is a partnership-- . . . (ii) relative of a general partner in, general partner of, or person in control of the debtor."

11 U.S.C. § 101(31)(C)(ii).

Mr. Cretaro is not an officer, manager, or consultant of the debtor, hired after the petition filing. He was hired prior to the petition filing by the debtor to provide property management services. He has continued to provide property management services post-petition, except that his services have broadened. As such, the proposed compensation to Mr. Cretaro does not fall within the category of section 503(c)(3).

Section 503(c)(2) does not apply either, as Mr. Cretaro is not being offered a severance payment. The agreement proposes to provide with him with ongoing compensation for Mr. Cretaro's continued employment with the debtor's estate.

Lastly, under sections 503(c)(1) and 101(31)(C)(ii), and as admitted by the motion, Mr. Cretaro is an insider. He is the nephew of the debtor's general partner, Antonio Rodriguez, Jr.

Section 503(c)(1) is explicit that the court "shall" not allow a transfer to an insider of the debtor to induce him to remain with the debtor's business, absent a finding by the court that "*(A) the transfer . . . is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation [and] (B) the services provided by the person are essential to the survival of the business; and (C) either-- (i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or (ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred.*"

The exception to the section 503(c)(1) prohibition does not apply, as there is no evidence in the record that Mr. Cretaro has a bona fide job offer from another business, much less a job offer "at the same or greater rate of compensation."

Nevertheless, the court is not convinced that the prohibition of section 503(c)(1) applies. The proposed compensation to Mr. Cretaro is not a transfer to induce Mr. Cretaro "to remain with the debtor's business," as it is now a business being run by a chapter 11 trustee. As the debtor is no longer in charge of running the business, it is no longer "the debtor's business."

More, as the trustee is liquidating the assets of the estate, Mr. Cretaro is not being induced "to remain" with the business. The business assets are in the process of being liquidated.

The court is persuaded that continuing with Mr. Cretaro's services to the estate, especially those pertaining to his assistance with the administration of the estate and the liquidation of assets, is in the best interests of the estate and the creditors. The trustee is in control of the estate's business and Mr. Cretaro has no connections to the trustee. Also, the proposed compensation to Mr. Cretaro is reasonable, as it will not exceed $10,000 per sale for each of the properties listed above. The properties owned by the estate are substantial commercial properties, largely with values exceeding $1 million. Accordingly, the motion will be granted.

5. 14-30833-A-11 SHASTA ENTERPRISES
FWP-12

MOTION FOR ORDER DIRECTING THE DEBTOR'S GENERAL PARTNER TO FILE A STATEMENT OF ASSETS AND LIABILITIES
6-8-15 [300]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the chapter 11 trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the debtor's partners, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the

motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The chapter 11 trustee is seeking an order directing the debtor's general partners, including Antonio Rodriguez, Jr. and Lorraine Rodriguez, to file with the court no later than July 10, 2015 a statement signed under the penalty of perjury, listing their personal assets and liabilities.

Fed. R. Bankr. P. 1007(g) provides that "*The general partners of a debtor partnership shall prepare and file the list required under subdivision (a), the schedules of the assets and liabilities, schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.*"

The authority of the court to order general partners of the debtor to file a statement of their personal assets and liabilities is due in part to 11 U.S.C. § 723(a), which prescribes that "*If there is a deficiency of property of the estate to pay in full all claims which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner to the extent that under applicable nonbankruptcy law such general partner is personally liable for such deficiency.*"

The trustee in this case needs the personal asset and liability information from the debtor's general partners in order to prepare a disclosure statement and formulate a plan of reorganization for the debtor. The trustee's preliminary analysis of the estate's assets and liabilities reveals that the allowed unsecured claims against the estate (likely to exceed $5 million) cannot be paid in full solely from the liquidation of the estate's assets. And, 11 U.S.C. § 1129(a)(7) permits a plan to be confirmed only when "*[w]ith respect to each impaired class of claims or interests– (A) each holder of a claim or interest of such class– (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.*"

In other words, as part of any plan confirmation in this case, the trustee will have to evaluate and disclose, in a disclosure statement, how much unsecured creditors would receive in a chapter 7 liquidation case.

Under California law, general partners are liable for all debt of the general partnership entity. Mariani v. Price Waterhouse, 70 Cal. App. 4th 685, 706 (1999); Home Federal Savings & Loan Assn. v. Ramos, 229 Cal. App. 3d 1609, 1614 (1991).

The chapter 11 trustee then needs the personal asset and liability information of the debtor's general partners in order to prepare a disclosure statement and propose a plan of reorganization in this case. Accordingly, the court will order Antonio Rodriguez, Jr. and Lorraine Rodriguez to file with the court and serve on the trustee, no later than July 10, 2015, a statement of all their assets and liabilities, executed under the penalty of perjury. Such statement

shall include all information required by the latest version of bankruptcy schedules A, B, D, E, F, G and H. The motion will be granted.

6. 15-21575-A-11 DJP-1 CENTRAL VALLEY
BR ENTERPRISES, A CALIFORNIA PARTNERSHIP COMMUNITY BANK VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY 6-8-15 [90]

Tentative Ruling: The motion will be denied.

The movant, Central Valley Community Bank, seeks relief from the automatic stay as to 20480 Lake California Drive in Cottonwood, California.

The movant has produced evidence that the property has a value of $2.2 million and it is encumbered by a single mortgage in favor of the movant totaling approximately $1,882,206. Docket 94 at 2; Docket 90 at 3. Pursuant to Schedule A, the property has a value of $3,817,290. Docket 22.

Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). This leaves approximately $317,794 of equity in the property.

Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value.

The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation.

In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

The movant has an equity cushion of approximately $317,794. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains plan confirmation. Accordingly, the motion will be denied without prejudice.

7. 15-21575-A-11 HLC-6
BR ENTERPRISES, A CALIFORNIA PARTNERSHIP
MOTION TO EMPLOY AND APPROVE COMPENSATION FOR APPRAISER 4-24-15 [58]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor in possession seeks to employ Western Agricultural Services as the estate's real estate appraiser. WAS will appraise the estate's 3,100 acre cattle ranch, which includes numerous structures, residences (2), irrigated land, grazing land, and an approximately 48-acre planned subdivision that is in different entitlement stages.

The proposed compensation for WAS is an hourly rate of $135 but not exceeding $14,500, $5,500 for appraisal of the Cottonwood Creek Ranch and $9,000 for appraisal of the Sunset Hills Properties. The debtor paid $14,500 to WAS one day before the petition date.

The debtor also asks the court to ratify payment of the fee. WAS has provided over 107 hours of services already and does not anticipate any refund to the debtor.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee."

This includes the trustee's right to employ professional persons under section 327(a) and authority to compensate such persons under section 330. Section 327(a) states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]."

Section 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis."

Section 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The court concludes that the terms of employment and compensation are reasonable. WAS is a disinterested person within the meaning of section 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

Although WAS was paid pre-petition for its appraiser services, its fee had not been earned as of the petition date. WAS was paid a flat fee of $14,500 for its yet-unprovided services on February 26, 2015, one day before the instant bankruptcy case was filed on February 27. As of the petition date WAS had not earned its compensation. The court deems WAS' pre-paid compensation to be akin to an unearned retainer.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate, upon the completion of the services outlined above. The compensation will be approved.

8. 15-21575-A-11 HLC-9 — BR ENTERPRISES, A CALIFORNIA PARTNERSHIP — MOTION TO APPROVE COMPENSATION OF BROKER 5-22-15 [85]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially

alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor in possession, on behalf of Properties by Merit, Inc., real estate broker for the estate, seeks approval to pay Merit's commission compensation, and participating broker commission, as pertaining to an ordinary course of business sale by the debtor of one lot of land (lot 74) in the Sunset Hills Subdivision in Cottonwood, California. This is a second interim motion for compensation.

Escrow for the sale of the lot was scheduled to close prior to the hearing on this motion, on June 1. The requested compensation consists of $6,950 in fees and $0.00 in expenses. The commission will be shared with a participating broker. The court approved Merit's employment as the estate's real estate broker on April 2, 2015. Docket 48. The requested compensation is based on a 5% commission arrangement.

The debtor is also seeking to continue to pay interim commission compensation to Merit, on future ordinary course of business sales of lots in the Sunset Hills Subdivision in Cottonwood, California, without further order of the court.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services include assisting the estate with the marketing and sale of the lot, as well as continued future marketing and sale of additional lots in the Sunset Hills Subdivision.

As to lot 74, the court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

As to future ordinary course sales of lots, the court concludes that the compensation of Merit is for actual and necessary services rendered in the administration of this estate, upon the completion of the services contemplated by the debtor.

The compensation will be approved on interim basis only. The court must still approve all of Merit's interim compensation on final basis. All interim compensation will be authorized, assuming the associated sales are in the ordinary course of the debtor's business, pertain to lots located only in the Sunset Hills Subdivision, and Merit's interim compensation does not exceed the contemplated commission in the debtor's employment motion. See Docket 39.

9.	14-27083-A-11 DBH-9	RCK CONSERVATION CO-OP, LLC	MOTION TO APPROVE LEASES 6-5-15 [178]

Final Ruling: This motion will be dismissed as moot as the case was dismissed on or about June 9, 2015.

10. 14-21091-A-7 CHRISTOPHER DUGHI — STATUS CONFERENCE
14-2316 — 11-15-14 [1]
DUGHI V. DUGHI

Tentative Ruling: None.

11. 14-21091-A-7 CHRISTOPHER DUGHI — MOTION FOR
14-2316 MJH-3 — SUMMARY JUDGMENT
DUGHI V. DUGHI — 4-21-15 [11]

Tentative Ruling: The motion will be denied.

The plaintiff Christopher Dughi, the debtor in the underlying bankruptcy case, seeks summary judgment on his claim pursuant to 11 U.S.C. § 523(a)(15) to determine the dischargeability of a debt owed to the defendant, Laura Dughi.

On July 2, 2010, a judgment was entered in state court dissolving the parties' marriage. The judgment divided the parties' outstanding debts pursuant to a marriage settlement agreement attached to the judgment. The agreement provided that the plaintiff and the defendant were to share equally in payment of community credit card debt. This provision: "The parties shall share equally the following credit card debt as of the date of separation to include the following accounts: USAA, Lane Bryant, Target, Gap, American Express, Macy's, Sears, Kohl's, Home Depot, Mervyn's." Docket 15, Ex. 1.

In September 2013, the defendant paid all of the debt owed to these creditors after negotiating forgiveness for some of the debt. The defendant also paid income tax on the forgiven debt.

On January 8, 2014, the defendant sought reimbursement from the plaintiff for one-half of the amount she actually paid to satisfy the debt.

On February 5, 2014, the plaintiff filed for chapter 7 bankruptcy. On May 27, 2014, the plaintiff received a discharge, and his case was closed on May 30.

On August 13, 2014, the defendant moved in San Joaquin County Superior Court for an order compelling the plaintiff to reimburse her one-half of the amount she paid to retire the parties' joint debt. On September 16, 2014, the San Joaquin County Superior Court ordered the plaintiff to pay the defendant $6,784.75.

On October 3, 2014, the plaintiff filed a motion in this court seeking to re-open the bankruptcy case. On October 8, the bankruptcy case was re-opened. The plaintiff filed a motion seeking sanctions against the defendant for violation of the automatic stay. However, because the bankruptcy case was over when the defendant filed her motion in state court, there was no violation of the automatic stay. The motion for sanctions was denied on November 17.

On November 15, 2014, the plaintiff filed this adversary proceeding asserting that the plaintiff's debt owed to the defendant was discharged and that her actions to collect the debt violated 11 U.S.C. § 524(a).

Summary judgment is appropriate when there exists "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no genuine issues of material fact exist. See

Anderson at 255. A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323.

In this case, the plaintiff's burden of persuasion under Rule 56(c) is to demonstrate that no genuine issue of material fact exists that the debt owed to the defendant does not fall within the scope of section 523(a)(15).

11 U.S.C. § 523(a)(15) provides: "A discharge under section 727, 1141, 1228(a), or 1328(b) of this title *does not discharge* an *individual debtor* from *any debt* … to a spouse, *former spouse*, or child of the debtor and not of the kind described in paragraph (5) that is *incurred by the debtor* in the course of a divorce or separation or *in connection with a separation agreement*, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit."

A debt falls within the scope of section 523(a)(15) if the subject debt 1) is not a support obligation of the kind described in section 523(a)(5), and 2) was incurred by the debtor in connection with a divorce or separation agreement, divorce decree, marital dissolution judgment, or order. Francis v. Wallace (In re Francis), 505 B.R. 914, 919 (B.A.P. 9th Cir. 2014).

Here, it is undisputed in the record that the debt owed to the defendant is not a support obligation of the kind described in section 523(a)(5).

The dispute here centers on whether there is a debt owed to the nondebtor spouse that arises from the marital settlement agreement. Clearly, the obligations of the plaintiff and the defendant to the credit card creditors predated their divorce. They do not arise from the marital settlement agreement and the plaintiff's liability to those creditors has no connection to the divorce.

But, by including a reference to the credit card creditors in the marital settlement agreement, the parties were doing more than restating their debts. They were significantly altering their relationship with one another. While the marital settlement agreement included no express indemnity or hold harmless agreement requiring one spouse to reimburse the other if one paid more than half of the debts, each spouse was the intended beneficiary of the provision that each share equally these debts.

Would a California court conclude that the defendant had a right to payment from the plaintiff by virtue of this provision? Would it conclude that the plaintiff had incurred an obligation to the defendant in the marital settlement agreement?

That is exactly what the state court concluded when it ordered the plaintiff to reimburse the defendant one-half of the debts she paid. If such an obligation had not been created by the marital settlement agreement, the state court would not have ordered the plaintiff to pay $6,784.75 to the defendant.

The state court's order is consistent with California Family Code section 290, which provides that "[a] judgment or order made or entered pursuant to [the California Family Code] may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary." This statute gives the state court broad discretion in fashioning orders enforcing family law judgments. Cal-W. Reconveyance Corp. v. Reed, 152 Cal.App. 4th 1308, 1318 (2007). This includes the "power to order a spouse to pay money or deliver property into the hands of a third party." In re Marriage of Fithian, 74

Cal.App.3d 397, 402 (1977).

Because state law gave the defendant the right to enforce this term of the marital settlement agreement, that right is a claim in the bankruptcy case and that claim, because it arises out of a marital settlement agreement, is made nondischargeable by section 523(a)(15). Accord In re Francis, 505 B.R. 914 (9th Cir. BAP 2014); Wodark v. Wodark (In re Wodark), 425 B.R. 834 (10th Cir. BAP 2010).

The plaintiff implicitly incurred a debt to the defendant in connection with the marital settlement agreement when he agreed to pay half of the credit card debt. Even though the debts to the credit card creditors were discharged, the debt to the former spouse survives the discharge by virtue of section 523(a)(15).

The motion will be denied.