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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 In re:) Case No. 15-21119-B-7
4 JEREMY PAUL DUTERTE,) Adversary No. 15-2083
5) DC No. FF-2
6 Debtor(s).)

7 RICH, FUIDGE, MORRIS AND LANE,)
8 INC.,)

9 Plaintiff(s),)

10 v.)

11 JEREMY PAUL DUTERTE,)

12 Defendant(s).)
13

14
15 **ORDER DISMISSING ADVERSARY PROCEEDING FOR LACK OF STANDING AND**
16 **DENYING MOTION FOR SUMMARY JUDGMENT AS MOOT**

17 **Introduction**

18 This matter was initially before the court on a motion for
19 summary judgment filed by defendant Jeremy Paul Duterte.
20 Plaintiff Rich, Fuidge, Morris and Lane, Inc., opposed
21 defendant's motion. Defendant replied to plaintiff's opposition.

22 The court held an hearing on defendant's motion for summary
23 judgment on November 3, 2015. That hearing was continued to
24 December 1, 2015, to allow additional briefing on the plaintiff's
25 standing under 11 U.S.C. § 523(a)(15). Section 523(a)(15)
26 excepts from discharge non-support divorce debt owed to a spouse,
27 former spouse, or dependant of the debtor incurred by the debtor
28 in the course of a divorce, separation, in a separation

1 agreement, or in a divorce decree.¹ Having now considered the
2 parties' additional points and authorities, the court concludes
3 that plaintiff lacks standing under § 523(a)(15). Therefore, for
4 the reasons explained below, this adversary proceeding will be
5 dismissed with prejudice and defendant's motion for summary
6 judgment will be denied as moot. This disposition also renders
7 the continued hearing on December 1, 2015, unnecessary.

8 9 **Jurisdiction and Venue**

10 Federal subject-matter jurisdiction is founded on 28 U.S.C.
11 § 1334. This matter is a core proceeding that a bankruptcy judge
12 may hear and determine. 28 U.S.C. §§ 157(b)(2)(A), (I), and (O).
13 To the extent it may ever be determined to be a matter that a
14 bankruptcy judge may not hear and determine without consent, the
15 parties nevertheless consent to such determination by a
16 bankruptcy judge. 28 U.S.C. § 157(c)(2). Venue is proper under
17 28 U.S.C. § 1409.

18 19 **Background**

20 Plaintiff is a law firm located in Yuba County, California.
21 Defendant is the debtor in the underlying chapter 7 case.

22
23 ¹Section 523(a)(15) makes non-dischargeable a debt owed -
24 to a spouse, former spouse, or child of the debtor and
25 not of the kind described in paragraph (5) that is
26 incurred by the debtor in the course of a divorce or
27 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.

28 11 U.S.C. § 523(a)(15).

1 Plaintiff represented defendant in a pre-petition divorce
2 proceeding in Sutter County Superior Court, No. CVFL13-0608.
3 Defendant incurred attorney's fees in that proceeding which are
4 owed to plaintiff. Defendant's ex-wife was required in the
5 divorce proceeding to pay the defendant's attorney's fees owed to
6 plaintiff.

7 Defendant and his ex-wife entered into a marriage settlement
8 agreement in their divorce proceeding. The Sutter County
9 Superior Court approved that marital settlement agreement and
10 entered it as a judgment. That judgment allocated 100% of a 2013
11 joint tax return due the defendant and his ex-wife to defendant
12 for retroactive child and spousal support, required defendant to
13 use a portion of that tax return to satisfy defendant's ex-wife's
14 debt to plaintiff for defendant's attorney's fees in the divorce
15 case, and required defendant to turn over the joint tax return to
16 plaintiff. Stated another way, the marital settlement agreement
17 entered as a judgment of the Sutter County Superior Court
18 required defendant to pay his ex-wife's debt to plaintiff with
19 proceeds from the 2013 joint tax return due defendant and his ex-
20 wife.

21 Defendant received the 2013 joint tax return. Defendant did
22 not turn over the joint tax return to plaintiff and, thus, failed
23 to pay his ex-wife's debt to plaintiff as the state court ordered
24 him to do. Instead, because defendant's ex-wife was the
25 "breadwinner" during the marriage and defendant was unable to
26 make ends meet after the divorce, defendant used the 2013 tax
27 return for living expenses. Defendant's bankruptcy and this
28 adversary proceeding followed.

1 Discussion

2 The complaint alleges three claims for relief: (1) a quiet
3 title claim related to the turn over of the 2013 joint tax return
4 in the First Claim for Relief; (2) a declaratory relief claim
5 also related to the turn over of the 2013 joint tax return in the
6 Second Claim for Relief; and (3) a claim for non-dischargeability
7 under § 523(a)(15) based on the defendant's failure to turn over
8 the 2013 joint tax return in payment of the debt that his ex-wife
9 owed plaintiff in the Third Claim for Relief.² Inasmuch as the
10 first two claims for relief seek to impose personal liability on
11 the defendant and are derivative of the Third Claim for Relief,
12 they survive only if the defendant's obligation under the Third
13 Claim for Relief is excepted from discharge under § 523(a)(15).³

14 Before reaching the merits of defendant's summary judgment
15 motion, and before this adversary proceeding may proceed, the

16
17 ²The complaint is not exactly a model of clarity. In fact,
18 it is somewhat misleading, inconsistent, and an example of
19 careless drafting. For example, ¶ 25 states: "The asset in
20 question was ordered transferred to the PLAINTIFF in discharge of
21 DEBTOR'S spouses [sic] attorney fees and costs owed to
22 PLAINTIFF." As written, that creates the impression that it is
23 the ex-spouse's attorney's fees and costs that are owed to the
24 plaintiff when it is the defendant's attorney's fees and costs
25 that the ex-spouse was obligated to pay which are owed to
26 plaintiff. That understanding only comes after re-reading the
27 complaint several times, reading ¶ 3 of the prayer, and reading
28 other documents in the docket, i.e., plaintiff's pre-trial
statement and opposition to the defendant's summary judgment
motion.

29 ³The supplemental points and authorities that plaintiff
30 filed on November 13, 2015, states that "11 U.S.C. §523(a)(15)
31 DOES NOT APPLY." [Dkt. 40: 4-10]. Inasmuch as the only basis for
32 non-dischargeability alleged in the complaint is § 523(a)(15),
33 plaintiff's statement that § 523(a)(15) does not apply in this
34 adversary proceeding is, at best, disingenuous and borders on the
35 frivolous.

1 court must first determine if plaintiff has standing under
2 § 523(a)(15). The court has the power and duty to examine a
3 party's standing. Bernhardt v. Cnty. of Los Angeles, 279 F.3d
4 862, 868 (9th Cir. 2002). In fact, federal courts have an
5 independent obligation to examine their own jurisdiction, and
6 standing "is perhaps the most important of [the jurisdictional]
7 doctrines." FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231
8 (1990) (quotation omitted); D'Lil v. Best W. Encina Lodge &
9 Suites, 538 F.3d 1031, 1035 (9th Cir. 2008). The court must
10 dismiss an action if it determines at any time that it lacks
11 subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3);
12 Fiedler v. Clark, 714 F.2d 77, 78 (9th Cir. 1983).

13 To be non-dischargeable under § 523(a)(15), an obligation
14 must, in the first instance, be payable to or recoverable by a
15 spouse, former spouse, or child of the debtor. McFadden v.
16 Putnam (In re Putnam), 2011 WL 10653863 at *2 (Bankr. E.D. Cal.
17 2011). There is no requirement that the obligation be payable
18 directly to a debtor's spouse, former spouse, or dependant. Id.
19 (citing In re Montgomery, 310 B.R. 169 (Bankr. C.D. Cal. 2004)).
20 Thus, a debtor's obligation to satisfy an ex-spouse's non-support
21 debt, or to otherwise hold an ex-spouse harmless from such a
22 debt, imposed or agreed to under a divorce decree or in a marital
23 settlement agreement, or ordered by a state court in a divorce or
24 dissolution proceeding, falls under the broad application of
25 § 523(a)(15). Francis v. Wallace (In re Francis), 505 B.R. 914,
26 919-20 (9th Cir. BAP 2014).

27 In this case, defendant's ex-wife owed plaintiff a debt in
28 the form of the attorney's fees that defendant incurred in the

1 dissolution proceeding involving his ex-wife. The state court
2 ordered the defendant to pay that debt with the 2013 joint tax
3 return which plaintiff was also ordered to provide plaintiff.
4 Although defendant's ex-wife would undoubtedly have standing to
5 enforce defendant's court-ordered obligation to hold her harmless
6 from the attorney's fees debt she owes plaintiff, as a third-
7 party creditor plaintiff does not. In other words, standing to
8 bring an action to have a debt excepted from discharge under
9 § 523(a)(15) is limited to the parties specifically enumerated in
10 the statute, *i.e.*, a debtor's spouse, ex-spouse, or child.

11 Woodruff, O'Hair & Posner, Inc. v. Smith (In re Smith), 205 B.R.
12 612, 617 (Bankr. E.D. Cal. 1997); McFadden, 2011 WL 10653863 at *
13 3 (quoting Montgomery, 310 B.R. at 178 n.7); see also Ashton v.
14 Dollaga (In re Dollaga), 260 B.R. 493, 497 (9th Cir. BAP 2001).

15 As a California law firm, plaintiff is not, and cannot be
16 considered, to be any of the statutory parties with standing
17 under § 523(a)(15).

18 Therefore, based on the foregoing,

19 IT IS ORDERED that this adversary proceeding is DISMISSED
20 with prejudice for lack of jurisdiction based on the plaintiff's
21 lack of standing under § 523(a)(15).

22 IT IS FURTHER ORDERED that defendant's motion for summary
23 judgment is DENIED as moot.

24 Dated: November 30, 2015.

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26 UNITED STATES BANKRUPTCY JUDGE

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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Kimberly Anne Steffenson
1129 D Street
PO Box A
Marysville CA 95901

Brian H. Turner
1401 El Camino Ave #370
Sacramento CA 95815