


**Dated: May 08, 2018**  
**The following is ORDERED:**



  
**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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In re  
ROBERT DALE CRUM,  
Debtor.

Case No. 17-26763-L  
Chapter 13

Dru Crum,  
Plaintiff,  
vs.  
Robert Dale Crum,  
Defendant.

Adv. Proc. No. 17-00252

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**ORDER DENYING MOTION TO DISMISS**

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BEFORE THE COURT is the Debtor/Defendant's Motion to Dismiss this adversary proceeding with prejudice (Dkt. No. 6), filed on March 28, 2018. The Plaintiff, Dru Crum, filed a timely Response to the Motion on April 30, 2018 (Dkt. No. 9). Neither party has requested oral argument on the Motion.

The Amended Complaint (the “Complaint”) (Dkt. No. 3), filed on November 14, 2017, seeks a determination that certain of the Debtor’s obligations arising from the divorce of the Debtor and Plaintiff are not dischargeable or, in the alternative, that the Debtor should be denied a discharge. The Motion to Dismiss the Complaint asserts: (1) there has been no apparent attempt to prosecute the Complaint; and (2) that after conferring with counsel for the Plaintiff, “Debtor’s counsel believes that the Plaintiff agrees that pursuing this complaint would be fruitless.” Mtn. To Dismiss, Dkt. No. 6, ¶ 3. The Plaintiff’s Response to the Motion to Dismiss incorporates by reference her previously filed Complaint and states that it is her position that the debt due and owing is for spousal support and is not dischargeable in bankruptcy.

### **JURISDICTION AND AUTHORITY**

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of an objection to discharge or the dischargeability of a particular debt is a core proceeding arising under the Bankruptcy Code. *See* 11 U.S.C. § 157(b)(2)(I) and (J). Accordingly, this court has authority to hear and determine this adversary proceeding subject to appellate review under section 158 of title 11. 28 U.S.C. § 157(b)(1).

## THE COMPLAINT

The Complaint alleges that in its January 2, 2013, order granting the parties' divorce, the Chancery Court of Chester County, Tennessee, ordered an equitable allocation of debt as follows:

- a. Each party shall pay one-half (1/2) of the Leader's Credit Union equity loan (\$11,391.72 each).
- b. Each party shall pay one-half (1/2) of the Ed Financial loan (\$35,951.24 each).
- c. Each party shall pay one-half (1/2) of the Sallie Mae loan (\$4,569.71 each).<sup>1</sup>

The Complaint additionally alleges that the Chancery Court order states that:

[W]ith respect to each [party's] responsibility for payment of certain debts and liabilities and their obligations to hold the other harmless for the payment thereof, the parties understand that their obligation is a non-dischargeable debt under the bankruptcy code, this obligation being a part of the financial support settlement of both parties.

Amended Complaint, Dkt. No. 3, ¶ 16. According to the Complaint, the Debtor has only paid \$100 toward the equity loan debt while the Plaintiff has paid the equity loan and the smaller student loan as well as interest on the large student loan since 2013. The Plaintiff contends that the Debtor's obligations arising from the division of debt by the Chancery Court are non-dischargeable pursuant to Bankruptcy Code sections 523(a)(5) and (a)(15). She seeks a non-dischargeable judgment in the amount of \$39,330.990 plus pre- and post-judgment interest, fees, costs, and expenses.

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<sup>1</sup> Although referenced as an attachment to the Complaint, the Chancery Court order is not attached.

## MOTION TO DISMISS

In the Motion to Dismiss, the Debtor first contends that the Complaint should be dismissed because as of the date the Motion was filed, March 28, 2018, there had been no apparent attempt to prosecute the Complaint. This has been remedied by the Plaintiff's filed Response to the Motion and is not grounds for dismissing the Complaint.

The Motion next contends that the Complaint should be dismissed because pursuing the Complaint would be fruitless. No explanation is provided for why the Debtor believes pursuit of the Complaint would be fruitless nor is any authority cited for this assertion. The court, therefore, will treat the Motion as one to dismiss for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable in adversary proceedings in bankruptcy by Federal Rule of Bankruptcy Procedure 7012(b).

Federal Rule of Civil Procedure 8(a), made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7008(a), directs that a pleading provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Pursuant to Bankruptcy Rule 7012(b)(6), a complaint may be dismissed if it fails to state a claim upon which relief can be granted. In reviewing a motion to dismiss a complaint for failure to state a claim upon which relief can be granted the trial court must "(1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true." *Tackett v. M&G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009). The court takes as true well-pled facts, and it will not accept legal conclusions or unwarranted factual inferences. *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 405-06 (6th Cir. 1998); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678-79, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009) ("[O]nly a complaint that states a plausible claim for relief

survives a motion to dismiss.”). A motion to dismiss pursuant to Rule 12(b)(6) “should only be granted when the court, upon review of the complaint, is convinced that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Garzoni v. K-Mart Corp. (In re Garzoni)*, 35 Fed. Appx. 182 (6th Cir. 2002).

A debt for a domestic support obligation is not dischargeable in a case under any chapter of the Bankruptcy Code, including chapter 13. *See* 11 U.S.C. §§ 1328(a)(2); 523(a)(5). A debt owed to a spouse, former spouse, or child of the debtor incurred by the debtor in the course of a divorce or separation that is not a domestic support obligation, e.g., a property settlement, is at least partially dischargeable in a case under chapter 13. *See* 11 U.S.C. §§ 1328(a)(2); 523(a)(15). A debtor’s assumption of debt with the resulting obligation to make payments directly to a third party and to hold a former spouse harmless from those debts may be a nondischargeable support obligation. *Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103 (6th Cir. 1993). Moreover, assumption of an obligation to pay for a child’s post-secondary education may be a nondischargeable support obligation, even where applicable state law imposes no such obligation after the child reaches the age of majority. *See Chamberlain v. Chamberlain (In re Chamberlain)*, 2018 WL 985737 (10th Cir. 2018); *Richardson v. Edwards*, 127 F.3d 97 (D.C. Cir. 1997); *Harrell v. Sharp (In re Harrell)*, 754 F.2d 902 (11th Cir. 1985); *Boyle v. Donovan (In re Boyle)*, 724 F.2d 681 (8th Cir. 1984); *Binder v. Prager (In re Prager)*, 181 B.R. 917 (Bankr. W.D. Tenn. 1995); *Beck v. Beck (In re Beck)*, 1994 WL 687446 (Bankr. W.D. Tenn. 1994); *Parnham v. Parnham*, 2001 WL 120734 (Tenn. Ct. App. 2001). Determination of whether such an obligation is dischargeable is a question of federal bankruptcy law. *Calhoun* at 1107.

## CONCLUSION

As discussed above, the Complaint sets out the well-pled facts that the Chancery Court order granting the parties' divorce ordered an equitable allocation of debt obligating each party to pay one-half the outstanding liability on an equity credit loan and two student loans incurred by the parties to pay for the college expenses of their children and provided that the obligations were a part of the financial support settlement of both parties. It further pleads that the Debtor remains obligated on those debts. When these facts are taken as true, the Complaint adequately states a claim for determination that the Debtor's obligations under the Chancery Court order of divorce are nondischargeable, domestic support obligations.

Based on the foregoing, it is **ORDERED** that the Motion to Dismiss is **DENIED**.

cc: Debtor/Defendant  
Attorney for Debtor/Defendant  
Plaintiff  
Attorney for Plaintiff  
Chapter 13 Trustee