



**Dated: March 13, 2024**  
**The following is ORDERED:**

*Jennie D. Latta*

Jennie D. Latta  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE

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In re  
TRACY LYNNE GRAY,  
Debtor.

Case No. 23-21411-L  
Chapter 13

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Jon Eric Gray,  
Plaintiff,  
v.  
Tracy Lynne Gray,  
Defendant.

Adv. Proc. No. 23-00081

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**ORDER DENYING DEFENDANT'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

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Before the Court is the Debtor/Defendant's *Motion for Judgment on the Pleadings* (the "Motion") [ECF No. 20] and the *Plaintiff's Amended Response to Motion for Judgment on the Pleadings* (the "Response") [ECF No. 28]. Neither party has requested oral argument on the Motion.

The Plaintiff, Jon Eric Gray, is the Defendant, Tracy Lynn Gray's, former spouse. He commenced this adversary proceeding to determine whether the obligations undertaken by the Defendant in the parties' Marital Dissolution Agreement ("MDA") should be excepted from discharge. See *Amended Complaint to Determine Dischargeability of Debts* [ECF No. 2] (the "Complaint"). The Defendant asserts that the obligations at issue are not domestic support obligations and are subject to discharge in her chapter 13 case upon completion of payments under her plan. See *Answer to Amended Complaint to Determine Dischargeability of Debts* [ECF No. 4] (the "Answer").

In her Motion, the Defendant asserts two theories. First, she challenges the jurisdiction of the Bankruptcy Court to determine the dischargeability of the marital obligations because she has not completed the payments required under her chapter 13 plan. Because she has not completed all payments required under her plan, the Debtor contends that issue of dischargeability is not ripe for adjudication and thus that there is no case or controversy subject to adjudication. Motion, p. 2. Second, the Defendant asserts that even if the Bankruptcy Court has jurisdiction to determine the issue raised by the Complaint, it should nevertheless be dismissed for the same reason. The Defendant asserts that the dischargeability of the obligations cannot be determined until she has completed the payments required under her plan.

### **THE COMPLAINT AND ANSWER**

The Complaint alleges that the parties were divorced in the Chancery Court of Shelby County, Tennessee. Pursuant to their MDA, filed October 5, 2020, the Defendant agreed that she would pay certain marital debts owed to U.S. Bank; T.D. Bank USA (Target); Master Card; Credit One Bank (General Sessions No. 2121874); and Bank of America (General Sessions No. 2078410). The Defendant warranted that she had not incurred any debt in the Plaintiff's name

during their separation and that she would not incur debt in the Plaintiff's name in the future. The Defendant agreed to hold the Plaintiff harmless for all such debts and not to hold him liable in the event she filed a bankruptcy petition. The Defendant further agreed that in the event she did incur a debt in the Plaintiff's name notwithstanding her warranty, she would be liable for all sums due and owing on such debt including all collection costs. Complaint, ¶ 2.

The Defendant filed her voluntary petition for relief under chapter 13 of the Bankruptcy Code<sup>1</sup> on March 21, 2023.

The Plaintiff filed his Complaint on June 29, 2023, alleging that he is being sued in the General Sessions Court of Shelby County, Tennessee, by Capital One Bank USA, Bank of America, and Midland Credit Management (Credit One), and is being garnished by Bank of America. all accounts for which the Debtor is liable under the MDA. Complaint, ¶¶ 3-4. The Defendant neither admits nor denies these allegations. Answer, ¶¶ 4-5.<sup>2</sup>

The Plaintiff asserts that these debts should not be discharged pursuant to the terms of the MDA. Complaint, ¶ 5. The Defendant asserts that these debts are non-support debts that are dischargeable upon the completion of her chapter 13 plan. Answer, ¶ 6.

## THE MOTION

### **Jurisdiction of the Bankruptcy Court**

The Defendant asserts that the bankruptcy court lacks jurisdiction to hear the parties' dispute because it is not ripe for adjudication and thus that no case or controversy exists over which the bankruptcy court can exercise jurisdiction. Motion, p. 3. The Defendant, however, admitted the jurisdiction of the court in her Answer at paragraph 1.

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<sup>1</sup> 11 U.S.C. §§ 101 et seq.

<sup>2</sup> The Answer contains two paragraphs number 1.

Moreover, the Complaint does not specify whether the Plaintiff relies upon section 523(a)(5) or 523(a)(15) of the Bankruptcy Code in support of his claim that the debts that he is being pursued for should be excepted from discharge. The Defendant has her own theory about the proper outcome of this question, but whether a marital debt is one for support or not is a question of fact that determines the extent of the discharge available under chapter 13. See, e.g., *In re Tatge*, 212 B.R. 604, 608 (B.A.P. 8th Cir. 1997) (“The determination of whether an award arising out of marital dissolution proceedings was intended to serve as an award for alimony, maintenance or support, or whether it was intended to serve as a property settlement is a question of fact to be decided by the bankruptcy court.”); see also 11 U.S.C. § 1328(a), which permits partial discharge of marital debts not intended for support.

Rule 8(a) of the Federal Rules of Civil Procedure 8(a)(2), made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7008, requires only that a pleading provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” While the Complaint could have been clearer in setting forth the Plaintiff’s theories, it is clear enough that the Plaintiff believes that as a result of the parties MDA, he should be protected from liability for debts the Defendant agreed to pay. In fact, the Defendant acknowledges that she agreed to hold him harmless from any debts that she is responsible for paying under the MDA. Answer, ¶ 3. The Complaint puts her on notice that the Plaintiff is being pursued for such debts. It also puts her on notice that the Plaintiff believes that the Defendant should not escape liability for these debts through her bankruptcy case.

Note that the Complaint raises no question concerning the dischargeability of the claims owed to the various lenders pursuing the Plaintiff. These debts are not owed to a spouse, former spouse or child of a debtor, and thus do not fall within the definitions of domestic support

obligation or other marital debts not intended for support, which are excepted from discharge by sections 101(14A), 523(a)(5), 523(a)(15), and 1328(a).

Note too that the issue raised by the Complaint is the *dischargeability* of the debts owed to the Plaintiff, not the *discharge* of those debts. It is true that the ultimate discharge of marital debts not intended for support cannot be determined in a chapter 13 case until the plan is complete. That does not preclude the bankruptcy court from determining whether a particular debt is *of a kind* completely excepted from discharge or only partially excepted from discharge in chapter 13.

The determination of the dischargeability of a debt in a chapter 13 case is a core bankruptcy proceeding because the right to discharge and exceptions to discharge arise under section 1328(a) of the Bankruptcy Code. See 28 U.S.C. § 157(b)(2)(I). Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Bankruptcy jurisdiction is present with respect to the Complaint.

Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11 have been referred to the bankruptcy judges of this district by the district court for the Western District of Tennessee. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The bankruptcy court therefore has authority to hear and determine this adversary proceeding subject only to appellate review. 28 U.S.C. § 157(b)(1). In addition, venue of this adversary proceeding is proper in the Western District of Tennessee because it is related to a bankruptcy case pending in this district. 28 U.S.C. § 1409(a).

### **The Motion to Dismiss**

The Defendant also asserts that the Complaint should be dismissed for failure to state a claim for which relief can be granted. See Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012(b). A

motion for judgment on the pleadings may be filed after the pleadings are closed and is analyzed using the same standards employed for a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6). See *Tucker v. Middleburg-Legacy Place*, 539 F.3d 545, 549 (6th Cir. 2008); Fed. R. Bankr. P. 7012(c). “[T]he standard for evaluating the sufficiency of a complaint is ‘not whether the plaintiff will ultimately prevail but whether the [plaintiff] is entitled to offer evidence to support the claims’” in the complaint. *Anchorbank, FSB v. Hofer*, 649 B.R. 610, 614 (7th Cir. 2011) (citation omitted). Just as when reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, the trial court must view the complaint in the light most favorable to the plaintiff, take as true all well-pleaded factual allegations, and refuse to accept legal conclusions or unwarranted factual inferences. Rule 12(c) motions are appropriately granted “when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law.” *Tucker*, 539 F.3d at 549 (quoting *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 582 (6th Cir. 2007)).

The Defendant argues that “[b]ecause Plaintiff does not, indeed cannot, allege that the Debtor has not made all payments required under her proposed plan, he has failed to make out a prima facie case for non-dischargeability under Bankruptcy Code section 523(a)(15).” Motion, p. 3. The Plaintiff counters that “there cannot be any more relevant ‘claim for which relief can be granted’ in a bankruptcy case than the determination of the dischargeability of a debt.” Amended Response, ECF No. 28, p. 1.

The Plaintiff is correct. The issue raised by the Complaint is the dischargeability of the debts owed to the Plaintiff by the Defendant arising out of the MDA. The Complaint alleges that the Defendant agreed to hold him harmless in the event that he was found liable for certain debts the Defendant agreed to pay. The Complaint also alleges that the Plaintiff has been held responsible

to pay certain debts that he claims are covered by the Defendant's agreement. If he is correct, the claims may be either fully or partially excepted from discharge.

In order to be successful, the Plaintiff ultimately will have to show that the debts for which he is being pursued were in fact among those covered by the MDA; he will also have to show that he has been found liable for those debts and in what amounts; finally, he will have to show that the amount owed to him by the Defendant is either fully excepted from discharge under section 523(a)(5) or partially subject to discharge pursuant to section 523(a)(15). He need not prove his case at the pleading stage, however.

Just as with the question of jurisdiction, the Defendant focuses upon the *discharge* of the claims rather than the *dischargeability* of the claims. It is the dischargeability of these claims that is at issue. If the facts of the Complaint are accepted as true, the Plaintiff has adequately stated that his claims against the Defendant are fully or partially excepted from discharge under the Bankruptcy Code.

### **CONCLUSION**

For the foregoing reasons, the Motion for Judgment on the Pleadings is DENIED.

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