

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT

FILED RECORDED ON:  
2-12-03  
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IN RE: )  
)  
LISA DELGATTO-MISSAGHI, )  
)  
DEBTOR. )  
-----  
KAMY MISSAGHI, )  
)  
PLAINTIFF, )  
)  
vs. )  
)  
LISA DELGATTO-MISSAGHI, )  
)  
DEFENDANT. )  
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CASE NO. 01-34774 (ASD)  
CHAPTER 7

ADV. PRO. NO. 01-3147

FEB 12 2003

**MEMORANDUM AND ORDER SCHEDULING FURTHER PROCEEDINGS ON TRIAL OF COMPLAINT AND PLAINTIFF'S ORAL MOTION FOR OTHER RELIEF**

On October 1, 2001, Lisa Delgato-Missaghi (hereafter, the "Debtor") commenced in this Court a voluntary Chapter 7 bankruptcy case through the filing of a petition pursuant to Title 11, United States Code, Section 301. On December 10, 2001, Kamy Missaghi (hereafter, the "Plaintiff") initiated the instant adversary proceeding against the Debtor through the filing of a Complaint to Determine Dischargeability of Debts (hereafter, the "Complaint"). On June 26, 2002, the Debtor filed her *pro se* Appearance, Doc. I. D. No. 14, and an Answer to the Complaint (hereafter, the "Answer") , Doc. I. D. No. 13, denying "all the allegations of the plaintiff, Kamy Missaghi's complaint".

The adversary proceeding came on for trial before this Court on February 10, 2003, at 10:00 A.M. (hereafter, the "Trial"), at which time the Plaintiff appeared and the Debtor failed to appear. At the Trial, the Plaintiff, *inter alia*, noted the Defendant's failure to

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appear, and requested entry of a judgment.<sup>1</sup> In addition, the Plaintiff offered copies of twelve (12) pre-marked exhibits, including certain pages of a “Separation Agreement”, Exhibit 11, which were admitted into evidence as full exhibits. The Court took the matter under advisement indicating, *inter alia*, it would enter a Judgment, to the extent appropriate, limited to the relief actually sought in the Complaint.

At the outset, the Court notes that in light of the Debtor’s *pro se* Appearance, and particularly her Answer, her failure to appear at the Trial, standing alone, will not justify entry of a default under Fed. R. Civ. P. 55(a), applicable to this proceeding pursuant to Fed. R. Bankr. P. 7055(a) (providing for entry of a default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . .”). This Court aligns itself with the view of the majority of courts which have addressed this issue, namely, that once a party has answered a complaint, or has otherwise defended, that party’s subsequent conduct of failing to appear at trial is not a failure to “otherwise defend” justifying the entry of a default under Rule 55(a). See 10 Moore’s Federal Practice, ¶ 55.10[2][b] (3<sup>rd</sup> ed. 1999).

The Court now turns to the relief sought in the Complaint – which is not a model of clarity. The Complaint references “divorce proceedings in Missaghi v. Missaghi FA 96 0133087”, Complaint at ¶ 4, and cites to “11 U.S.C. section 523(a)(5)”, Id. at ¶ a, and, therefore raises, *inter alia*, the issue of the dischargeability - under the standards of Bankruptcy Code Section 523(a)(5) - of an alleged debt created by a state court divorce proceeding. Section 523(a)(5) provides as follows:

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<sup>1</sup>At the Trial the Court insisted that the Plaintiff focus on the relief requested within the four corners of the Complaint. The Plaintiff, however, stated he was appearing for other reasons. See footnote 7, *infra*.

(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt--

(5) 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 . . . but not to the extent that--

\* \* \* \*

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is *actually in the nature of alimony, maintenance, or support*;

11 U.S.C § 523(a)(5) (2002) (emphasis added).

The Complaint, however, alleges no debt *for alimony . . . maintenance . . . , or support*. Moreover, there is no basis in the record of this proceeding, including the exhibits offered by the Plaintiff, and admitted at Trial, see, e.g., Exhibit 11 (excerpts from Separation Agreement dated October 2, 1997)<sup>2</sup>, for a determination of nondischargeability pursuant to the provisions of Bankruptcy Code Section 523(a)(5). Consequently, on the present record the Plaintiff has not met his burden of proof<sup>3</sup> as to a cause of action under Section 523(a)(5).

The Complaint also references Missaghi v. Lisa Delgatto, et al., CV-98-0148981S, (a pending state court proceeding for “wilful and malicious injury”), Complaint at ¶ 5, and cites to “11 U.S.C. section 523(a)(6)”, Id. at ¶ 8 & a, and, therefore raises, *inter alia*, the issue of the dischargeability of a debt for wilful and malicious injury under the standards

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<sup>2</sup>Exhibit 11 consists of pages 1,7, 8, and 11 of a “Separation Agreement” dated October 2, 1997, bearing the purported signatures of the Plaintiff, the Debtor, and their respective state court attorneys.

<sup>3</sup>The party opposing the bankruptcy discharge of a particular debt bears the burden of proving by a preponderance of the evidence that the requirements of Section 523(a)(5) have been met. *See Grogan v. Garner*, 498 U.S. 279 (1991); *In re Thirtyacre*, 36 F.3d 697 (7th Cir. 1994).

of Bankruptcy Code Section 523(a)(6).<sup>4</sup>

Section 523(a)(6) excepts from a debtor's discharge<sup>5</sup> any debt for "willful and malicious injury by the debtor to another entity or to the property of another entity." While neither "willful" nor "malicious" conduct is defined by the Bankruptcy Code, the United States Supreme Court has clarified that Section 523(a)(6) renders non-dischargeable only debts arising from "acts done with *actual intent to cause injury*", not merely "acts, done intentionally, that cause injury". Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974 (1998) (emphasis added). There is no basis in the record of this proceeding, including the exhibits offered by the Plaintiff, and admitted at Trial, to support a finding that the Plaintiff suffered an injury inflicted by the Debtor acting with *actual intent to cause injury*. Consequently, on the present record the Plaintiff has not met his burden of proof as to Section 523(a)(6).

The Complaint also seeks relief in the form of a determination that certain "assets and funds are not to be included in the bankruptcy estate and . . . should be held aside for the exclusive claims of the Plaintiff", Complaint at ¶ 7. As a basis for the Court's authority to act in connection with this request, the Plaintiff cites to "11 USC".<sup>6</sup> Complaint at ¶ 7. Title 11, United States Code, provides no authority permitting a bankruptcy court to order non-bankruptcy estate property to be held for the exclusive claims of any entity.

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<sup>4</sup>On the record as a whole it may be that the Plaintiff also seeks Section 523(a)(6) relief in connection with the Debtor's alleged conduct in *Missaghi v. Missaghi*, FA- 96-0133087S, the state court divorce proceeding. The Complaint, read liberally, alleges, *inter alia*, Debtor conduct – apparently in the divorce proceeding – with "wilful and malicious intent [to injure the Plaintiff]". Complaint at ¶ 8. There is no evidence in the present record of this type of Debtor conduct.

<sup>5</sup>The Debtor received her Discharge on June 25, 2002, Doc. I. D. No. 44.

<sup>6</sup>The Pre-Trial Order, Doc. I. D. No. 25, and the Adversary Proceeding Cover Sheet filed with the Complaint, Doc. I.D. No. 1, reference only Sections 523(a)(5) & (6), and 523, of Title 11, respectively.

For these reasons, based upon the existing record, the Plaintiff is not entitled to any relief on the Complaint. However, upon a review of the record, it appears to the Court that at the conclusion of the Trial proceedings of February 10, 2003, it took the matter under advisement without affording the Plaintiff a full and fair opportunity to present testimony, if desired, or additional documentary evidence, if any. In addition, the Court may have discouraged the Plaintiff from presenting testimony or additional documentary evidence by an "assumption" that the Plaintiff was seeking only a default based upon the Debtor's failure to appear at the Trial.

Accordingly, for the purpose of permitting the Plaintiff opportunity to supplement the record by offering further evidence, testimonial or documentary, in support of his claims for relief in the Complaint, and in satisfaction of his burden of proof under Sections 523(a)(5) and (6), see footnote 3, supra:

**IT IS HEREBY ORDERED** that a supplemental hearing on the Complaint will be held at the United States Bankruptcy Court for the District of Connecticut, Connecticut Financial Center (18<sup>th</sup> Floor), 157 Church Street, New Haven, Connecticut on Monday, March 10, 2003, at 10:00 A.M. (hereafter, the "Supplemental Hearing"); and,

**IT IS FURTHER ORDERED and NOTICE TO THE DEBTOR/DEFENDANT AND THE PLAINTIFF IS HEREBY GIVEN** that at the Supplemental Hearing, in light of the Chapter 7 Trustee's Report of No Distribution, Doc. I. D. No. 46, filed November 12, 2002 (Case No. 01-34774 (ASD)), reporting, *inter alia*, no assets for distribution in this bankruptcy estate, the Court will also consider the Plaintiff's oral Trial motion and request for authority to proceed in accordance with applicable state law in the Superior Court for

the State of Connecticut, Judicial District of Waterbury in Missaghi v. Missaghi, FA-96-0133087S to seek an award of certain personal property;<sup>7</sup> and,

**IT IS FURTHER ORDERED** that the Clerk shall forthwith serve a copy of this Memorandum and Order on the Plaintiff and the Defendant.

BY THE COURT

DATED: February 12, 2003

  
Albert S. Dabrowski 2/12/03  
United States Bankruptcy Judge

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<sup>7</sup>On May 2, 2002, the Court sustained the Chapter 7 Trustee's *Objection*, see Doc. I.D. Nos. 23 & 41, to the Plaintiff's *Second Amended Motion for Relief from Stay*, Doc. I.D. No. 17, seeking relief from the automatic stay of Section 362(a) to permit the state court in *Missaghi v. Missaghi*, FA- 96-0133087S, "to divide personal property in the marital estate". The personal property at issue appears to include such items as "Dart Sets", "Children books", items of furniture, etc., see Exhibit 9.

The Debtor received her Bankruptcy Discharge on June 25, 2002, Doc. I. D. No. 44. Upon the entry of a discharge order, the automatic stay of § 362(a) is dissolved, and is replaced by the permanent injunction of § 524(a) which provides, in pertinent part:

A discharge in a case under this title —

- (1) *voids any judgment* at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor *with respect to any debt discharged...*;
- (2) *operates as an injunction against* the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset *any such debt* as a personal liability of the debtor....

11 U.S. C. 524(a)(1998)(emphasis added).

At the Trial the Plaintiff stated "[t]he reason I am here today is to ask the Court to put aside all the personal properties that was ordered by the family court to be taken care of after the divorce. \* \* \* [By the Debtor's filing of her bankruptcy petition] I am not able to claim any of this stuff, personal stuff, [that] was supposed to be divided." Record of 2/10/03 at 10:06:00 – 10:06:55.

### OPINION SERVICE LIST

Case No.: 01-34774  
Doc. ID. :  
Adv. No.: 01-3147  
Name : Kamy Missaghi v.  
Lisa Delgatto-Missaghi

1. Parties (attorneys):  
Kamy Missaghi, *Pro se*  
Lisa Delgatto-Missaghi, *Pro se*

2. Publishers:

3. Judges:

Chief Judge Alan H. W. Shiff  
Judge Robert L. Krechevsky  
Judge Lorraine Murphy Weil

4. Other:

Patricia Beary, Assistant United States Trustee  
United States District Courts Library  
Laura Gold Becker, Esq.  
Sheila Denton, Esq.  
Richard Belford, Esq.

Signature of sender Veret-Msri Mathews  
Date sent 01/10/03

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

In Re: Kamy Missaghi v. Lisa Delgatto-Missaghi

Case No: 1 - 34774

Adversary No: 01 - 03147

**CERTIFICATE OF MAILING**

**The undersigned Clerk in the Office of the United States Bankruptcy Court hereby certifies that a copy of the document attached hereto was mailed this date to:**

Kamy Missaghi 160 Inwood Drive  
Naugatuck, CT 06770, Plaintiff's Attorney

Lisa Delgatto-Missaghi 310 Willow Springs  
New Milford, CT 06776, Defendant's Attorney

Office of the United States Trustee  
Copy of Order placed in court mailbox

**Dated: 02/12/03**

**By: fsl**