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Re: CONSTANCE A. COZZA
CASE NO. 03-61699
ADV. PRO. NO. 03-80294

LETTER DECISION AND ORDER

On October 28, 2003, this Court considered the motion of Ronald Colangelo (“Plaintiff”) brought by Order to Show Cause, seeking an Order of Protection to strike and vacate the Interrogatories and Notice to Produce served upon him by Constance A. Cozza (“Debtor/Defendant”), dated September 9, 2003. At the hearing, the Court indicated that it would review the Interrogatories and Notice to Produce and apprise the parties of its decision.

As indicated by the Court at the hearing, it has previously ruled that initially it is the Plaintiff’s burden pursuant to Code § 523(a)(15) to establish that the debt sought to be discharged was incurred in connection with a divorce decree and is not in the nature of alimony, support or maintenance. *See In re Williams*, 271 B.R. 449, 453 (Bankr. N.D.N.Y. 2001). The burden then shifts to the Debtor/Defendant to prove that she does not have the ability to pay the debt in question

or that the benefit to her outweighs the detrimental consequences to the Plaintiff. *See id.*

Proof of the Debtor/Defendant's ability to pay requires the Court to examine the amount of disposable income available to her to pay the debt after deducting reasonable and necessary expenses. *Id.* (citation omitted). If the Debtor/Defendant does not succeed in meeting her burden of proof pursuant to Code § 523(a)(15)(A), she is still able to discharge the debt in question if she is able to establish that the benefit to her of discharging the debt outweighs the detrimental consequences to the Plaintiff pursuant to Code § 523(a)(15)(B).

In order to meet the Debtor/Defendant's burden pursuant to Code § 523(a)(15)(B), the courts have considered evidence of the following: (1) the amount of debt and payment terms; (2) all parties' and spouses' current income; (3) all parties' and spouses' current expenses; (3) all parties' and spouses' current assets; (4) all parties' and spouses' current liabilities; (4) parties' and spouses' health, job training, education, age and job skills; (5) dependents and their ages and special needs; (6) changes in financial condition since the divorce; (7) amount of debt to be discharged; (8) if objecting creditor is eligible for relief under the Code, and (9) whether the parties have acted in good faith in filing bankruptcy and in litigation of Code § 523(a)(15). *See In re White*, 265 B.R. 547, 556 (Bankr. N.D. Tex. 2001) (citations omitted); *In re Osborne*, 262 B.R. 435, 444 n. 6 (Bankr. E.D. Tenn. 2001) (citation omitted).

Accordingly, this Court has examined the Debtor/Defendant's request for Production of Documents and the Interrogatories with these factors and the respective burdens of proof in mind. Its rulings are memorialized as Exhibits A and B attached hereto and incorporated herein by reference.

IT IS SO ORDERED.

Dated at Utica, New York

this 28th day of November 2003

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge