UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JOSEPH PATEREK — CASE NO. 97-66645

Debtor — Chapter 7

SUZANNE L. PATEREK

Plaintiff

vs. — ADV. PRO. NO. 98-70064A

JOSEPH PATEREK

Defendant

APPEARANCES:

BUCCI & LOCKWOOD
Attorneys for Plaintiff
104 Syracuse Street
Baldwinsville, New York 13027

LINDA M. COOK, ESQ.
Of Counsel

ROBERT J. GALLAMORE, ESQ.
Attorney for Defendant
147 East Bridge Street
Oswego, NY 13126

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Before the Court is an adversary proceeding commenced by Susan L. Paterek ("Plaintiff") against Joseph Paterek ("Debtor"). Plaintiff's complaint, filed February 17, 1998, seeks a determination of nondischargeability of certain debts pursuant to § 523(a)(5) of the Bankruptcy Code (11 U.S.C. §§ 101-1330) ("Code"). Issue was joined by the filing of an Answer by the

Debtor on March 3, 1998. On May 18, 1998, the Plaintiff filed a motion for summary judgment which was partially granted at a hearing before the Court at its regular motion term on July 14, 1998, in Syracuse, New York.

In the Order signed by the Court on August 31, 1998, the Court determined that certain obligations identified in a Separation Agreement executed by the parties on March 19, 1996, as real estate taxes, utilities, homeowners' insurance, child support, child care expenses, maintenance, childrens' medical insurance, medical costs, car payments and automobile insurance were nondischargeable pursuant to Code § 523(a)(5). The question of whether two loan obligations originally owing to Key Bank were in the nature of support and maintenance and, therefore, also nondischargeable was addressed at a trial conducted on September 14, 1998, in Utica, New York. Following the testimony of both parties to the proceeding, the Court provided counsel with an opportunity to file memoranda of law in lieu of closing arguments. The matter was submitted for decision on October 16, 1998.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this adversary proceeding pursuant to 28 U.S.C §§ 1334(b), 157(a), (b)(1) and (b)(2)(I).

FACTS

The Plaintiff and the Debtor were married on August 24, 1985. On March 19, 1996, the

parties entered into a Separation Agreement. *See* Plaintiff's Exhibit 1. Under the terms of the Separation Agreement, the Debtor transferred all rights, title and interest in the marital residence to the Plaintiff, who was awarded primary custody of the two children of the marriage.[1] *See id.* at § 11. Debtor also agreed to pay real estate taxes, utilities, and the homeowners insurance on the residence for a period of two years following the execution of the Agreement or until the parties obtained a divorce[2] or the Plaintiff cohabitated with an unrelated male. *See id.* Additionally, Debtor agreed to pay $650.00 per month in child support. *See id.* § 13. Under the heading of "Maintenance," the Debtor was to pay the Plaintiff $200.00 a month, to be used for health insurance premiums for a period of two years, after which he was to pay $100 per month for five years unless Plaintiff remarried or was cohabitating with an unrelated male.. *See id.* § 15. Under the heading of "Marital Debts," the Debtor agreed to be responsible for and hold the wife harmless on two Key Bank loans,[3] an automobile loan, and five credit card debts. *See id.* § 20. Plaintiff was responsible for the Key Bank mortgage on the residence, as well as three store credit card accounts. Identified as "Equitable Distribution," the Plaintiff was granted an equitable share in the Debtor's pension. Each party retained sole possession and ownership of his/her respective automobile.

At the time the Separation Agreement was executed, the Debtor testified that his annual

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[1] At the time the Separation Agreement was executed, Plaintiff was expecting the couple's second child. She gave birth to a daughter on March 27, 1996.

[2] The phrase "upon the divorce of the parties" was later deleted pursuant to a stipulation ("Stipulation") entered on the record in New York Supreme Court, Onondaga County ("State Court Hearing"), on February 24, 1997. *See* Stipulation at 7.

[3] The Plaintiff testified that one of the Key Bank loans was used for various home improvements and the other for consolidation of credit card debt accumulated in connection with the purchase of clothing and household items for herself and her children.

income was $33,333.00. The Plaintiff was unemployed at that time and ultimately earned $3,664 for the entire year of 1996. *See* Defendant's Exhibit A.

On February 24, 1997, by Stipulation, the Separation Agreement was modified allegedly to bring the Debtor into compliance with the terms of the Separation Agreement. At that time, the Plaintiff was employed and earning $318.55 gross salary on a bi-weekly basis. *See* Stipulation at 4. The Debtor was unemployed but anticipating resuming employment with Prudential Life Insurance Company in the latter part of March 1997 with expected earnings of $26,000 per year plus commissions. *See id.* at 4-5.

At the State Court Hearing, the parties agreed to the entry of a judgment for $6,339.83 constituting arrearages owed to the Plaintiff by the Debtor. Debtor's counsel in describing the terms of the Stipulation, indicated that $3,000 were for "arrearages in maintenance payments and the balance of $3,339.83 is for child support." *See id.* at 5. The Plaintiff's attorney then outlined on the record the allocation of those monies, which included maintenance, home owners' insurance, trash pickup, payments to Niagara Mohawk, child support, children's medical insurance, the Key Bank loans, real estate taxes, car payments, trash and automobile insurance. *See id.* at 6. For tax purposes, Debtor's payments were to be allocated 50% to child support and 50% to maintenance. *See id.* at 11. The Plaintiff agreed not to seek to enforce the terms of the money judgment for nine months. *See id.* at 12.

On May 15, 1997, a Decree and Judgment of Divorce, dissolving the marriage and incorporating the terms of both the Separation Agreement and the Stipulation, was issued by the Hon. Thomas J. Murphy, Justice, New York State Supreme Court. *See* Plaintiff's Exhibit 1.

On November 5, 1997, approximately eight and a half months after the Stipulation was

placed on the record at the State Court Hearing, the Debtor filed a voluntary petition pursuant to chapter 7 of the Code.

DISCUSSION

Having previously granted partial summary judgment in favor of the Plaintiff, the only issue before this Court is whether the obligation to pay the two Key Bank loans as assumed by the Debtor pursuant to the Separation Agreement is nondischargeable under Code § 523(a)(5). In this regard, the Court recognizes that exceptions to discharge are to be narrowly construed in favor of the Debtor. *See Frey v. Frey (In re Frey)*, 212 B.R. 728, 732 (Bankr. N.D.N.Y. 1996) (citations omitted). In this regard, it is the Plaintiff's burden to convince the court by a preponderance of the evidence that the particular debt in question should not be discharged. *See id.* (citing *Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)).

The determination of whether a particular obligation was intended to be in the nature of alimony, maintenance or support is a question of federal bankruptcy law. *See Brody v. Brody (In re Brody)*, 3 F.3d 35, 38 (2d Cir. 1993). The fact that a debt may not legally qualify as support under State law does not prevent an examination by the Bankruptcy Court concerning whether it was, by its nature, intended to provide support to the nondebtor. *See Gianakas v. Gianakas (In re Gianakas)*, 917 F.2d 759, 762 (3d Cir. 1990).

The Court's analysis must begin with an examination of the language found in the Separation Agreement and Stipulation. In addition, the Court must consider (1) the surrounding

circumstances which existed at the time the document(s) was executed; (2) the financial circumstances of the parties at the time, and (3) the function served by the obligation at the time the parties entered into the agreement. *See id.* at 762-63.

The Debtor argues that since there are sections in the Separation Agreement specifically identified as "Maintenance" and "Child Support," the fact that the Key Bank loans were not included therein, lends credence to his argument that his assumption of the two loans was not intended to be in the nature of support or maintenance. This fact alone is not determinative, however. *See In re Rich*, 40 B.R. 92, 95 (Bankr. D. Mass. 1984). Furthermore, the argument is not a particularly persuasive one given the fact that there is also a separate section in the Separation Agreement which is labeled, "Equitable Distribution," and the Key Bank loans are also not mentioned within that provision either.

There is also the statement at the State Court Hearing made by the Debtor's attorney that the Stipulation was intended to address "arrearages in maintenance payments [$3,000] . . . and the balance of $3,339.83 is for child support." *See* Stipulation at 5. The Debtor's attorney did not take exception to Plaintiff's attorney's identification of both Key Bank loans as being included in those arrearages." *See id.* at 6. The Debtor's attorney would have the Court view his description of the Debtor's obligation as being for "maintenance arrearages" as an "offhand referral" which should not overcome the language of the Separation Agreement. *See* Debtor's Memorandum of Law, filed June 19, 1998. However, as discussed above, the language of the Separation Agreement does not expressly identify the Debtor's assumption of the Key Bank loans as either maintenance or equitable distribution.

This being the case, the Court must also examine the financial circumstances of both

parties at the time the Separation Agreement was executed. In March of 1996 the Debtor was earning $33,333.00 annually. Plaintiff was unemployed and expecting the couple's second child. The record indicates that she, in fact, earned $3,664.00 for the entire year of 1996. *See* Defendant's Exhibit A. This is a significant disparity in income and supports Plaintiff's position that the assumption of the Key Bank loans was intended as support and maintenance for her.

In analyzing the function of the Debtor's assumption of the Key Bank loans, the Court is cognizant of the fact that the Debtor was also responsible for the real estate taxes, utilities and homeowners' insurance on the residence to be occupied by the Plaintiff and their two children. Nevertheless, the Plaintiff was still responsible for the Key Bank mortgage, telephone, cable TV and routine maintenance and repair relating to the residence, as well as automobile expenses, at a time when she was unemployed and about to give birth to the couple's second child. It is evident to the Court that she could not have maintained the household for herself and the children without some difficulty without the assumption by the Debtor of the debt owed to Key Bank on the two loans.

Based on the foregoing analysis, the Court concludes that the debt arising out of the two Key bank loans is in the nature of support and maintenance and is nondischargeable.[4]

Based on the foregoing, it is hereby

ORDERED that the obligation assumed by the Debtor in connection with the two Key Bank loans is in the nature of support and maintenance and is, therefore, nondischargeable

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[4] It is not clear to the Court whether the Plaintiff has paid the amounts due to Key Bank or whether the debt is still due and owing to Key Bank. Nevertheless, whether the debt is to be paid to a third party or to the Plaintiff does not change the nature of the debt for purposes of determining nondischargeability pursuant to Code § 523(a)(5). *See In re Dewey*, 223 B.R. 559, 565 (10th Cir. BAP 1998) (citations omitted).

pursuant to Code § 523(a)(5).

Dated at Utica, New York

this 5th day of February 1999

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge