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United States Bankruptcy Court, C.D. California,  
Santa Ana Division.

In re Maryann **CUSIMANO**, Debtor.

No. 8:10-BK-23646-ES. | Heard  
April 5, 2012. | Signed Nov. 12, 2013.

#### Attorneys and Law Firms

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### MEMORANDUM AND ORDER GRANTING MOTION FOR ORDER CONFIRMING THAT DISCHARGE IS NOT VIOLATED BY CONTINUED FAMILY LAW PROCEEDINGS REGARDING NON-SUPPORT OBLIGATIONS

ERITHE SMITH, United States Bankruptcy Judge.

\*1 The court conducted a hearing on Patricia **Bennett's** “Motion For Order Confirming That Discharge Is Not Violated By Continued Family Law Proceedings Re: Non-Support Obligations” [Docket No. 22] (the “Motion”) on April 5, 2012 at 10:30 a.m., in Courtroom 5A, before the Honorable Erithe A. Smith, United States Bankruptcy Judge. Appearances were made as noted on the court’s record.

After considering the evidence and hearing argument, and for the reasons set forth below, the court finds and concludes that the Motion is granted.

#### I. BACKGROUND AND PROCEDURAL HISTORY

On June 6, 2009, Maryann **Cusimano** (“Debtor”) and Patricia **Bennett** (“Movant”) filed Declarations of Domestic Partnership with the California Secretary of State, becoming Registered Domestic Partners under California law. *Boone Decl.*, ¶ 3 [Docket No. 22]; *Cusimano Decl.*, ¶ 4 [Docket No. 27]. In or around July 2010, Movant filed for dissolution of the Registered Domestic Partnership. *Boone Decl.*, ¶ 5 [Docket No. 22].

On September 27, 2010, Debtor filed a Chapter 7 bankruptcy case, case no. 08:10-bk-23646-ES. Debtor received a discharge on January 18, 2011 and her case was closed thereafter on February 4, 2011. At the time Debtor’s bankruptcy case was closed, the Superior Court of California, County of Orange, Lamoreaux Justice Center, case no. 10D008795 (the “Family Law Court”) was in the process of liquidating the amount owed by Debtor to Movant for non-support obligations. *Boone Decl.*, ¶ 12 [Docket No. 22]. On December 22, 2011, Movant filed a Motion to Reopen Debtor’s Chapter 7 bankruptcy case, which was granted pursuant to an order entered on January 18, 2012. On January 18, 2012, Movant commenced an adversary proceeding, case no. 08:12-ap-01028, against Debtor for revocation of discharge pursuant to § 727(d)(1) and (d)(2) (the “Adversary”). Subsequently, on April 4, 2012, Movant filed this Motion requesting an order from the court confirming that Movant is not violating the discharge injunction by continuing the Family Law Court proceeding.<sup>1</sup>

#### II. DISCUSSION

##### A. Dischargeability of Non-Support Obligation Pursuant to § 523(a)(15) II

U.S.C. § 523(a)(15) provides that a non-support obligation is nondischargeable:

“to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit.”

In determining the applicability of § 523(a)(15) to this case, the court must determine whether Debtor and Movant were “spouses.”

##### B. Definition of Spouse

Section 3 of the Federal Defense of Marriage Act (“DOMA”) provides:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union

between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife. 1 U.S.C. § 7.

\*2 On June 26, 2013, the Supreme Court held that the definition of spouse, as defined by DOMA, is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment. *Windsor*, 133 S.Ct. at 2695. More specifically, the Court explained that “the principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage” and that “the federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the States, by its marriage laws, sought to protect in personhood and dignity.” *Id.* at 2696.

Prior to the *Windsor* decision, this court would have applied the definition of “spouse” as defined in Section 3 of DOMA. However, as Section 3 of DOMA is now invalid, there is no longer a federal definition of “spouse.” The court must now look to state law for the controlling definition of “spouse”.

California Family Code § 297.5(b) states in relevant part:

(b) Former registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(e) To the extent that provisions of California law adopt, refer to, or rely upon, provisions of federal law in a way that otherwise would cause registered domestic partners to be treated differently than spouses, registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law.

(f) Registered domestic partners shall have the same rights regarding nondiscrimination as those provided to spouses ...

(j) Where necessary to implement the rights of registered domestic partners under this act, gender specific terms referring to spouses shall be construed to include domestic partners ...” Cal. Fam.Code § 297.5.

The Ninth Circuit Bankruptcy Appellate Panel has noted that “[t]he legislature clearly intended that registered domestic partners have the same rights and responsibilities under California law as spouses, married persons, a wife or a husband, excepting only to the extent explicitly excluded by the Act.” *In re Rabin*, 359 B.R. 242, 247 (9th Cir.BAP2007). The BAP’s observation is consistent with the stated goals of the California legislature that the Domestic Partner Act create “substantial legal equality between domestic partners and spouses” and that the Act “be construed liberally in order to secure to eligible couples who register as domestic partners the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to each other, to their children, to third parties and to the state, as the laws of California extend to and impose upon spouses.” *Koebke v. Bernardo Heights Country Club*, 36 Cal.4th 824, 845–846, 31 Cal.Rptr.3d 565, 115 P.3d 1212 (2005).

#### **C. Debtor and Movant are “Spouses” Under Applicable California Law**

\*3 Debtor and Movant filed Declarations of Domestic Partnership on June 6, 2009 (the “Declarations”). Upon the filing of the Declarations, a domestic partnership between Debtor and Movant was established. Cal Fam.Code § 297(b). As a registered domestic partner, California Family Code section 297.5(f) provides Movant the same rights as those provided to spouses. Cal. Fam.Code § 297.5(f). Accordingly, the application of “spouse” as used in § 523(a)(15) must apply to Movant as a registered domestic partner pursuant to California Family Code § 297.5.

#### **D. Pursuing the Family Court Litigation Will Not Violate the Discharge Order**

As Movant is provided the same rights as spouses under California law, § 523(a)(15) equally applies to her.

Debtor’s discharge order states that “debts that the bankruptcy court specifically decided or will decide in this bankruptcy case are not discharged.” Discharge Order, case no. 10–13646 [Docket No. 12]. Under § 523(a)(15), a discharge under section 727 does not discharge an individual from any debt

to a former spouse. [11 U.S.C. § 523\(a\)\(15\)](#). As discussed above, Movant is entitled to the protections afforded under [11 U.S.C. § 523\(a\)\(15\)](#) as she is deemed to have the same rights as a “spouse” under California law. Thus, by pursuing her claims against Debtor in Family Court, Movant does not violate Debtor's discharge order because [§ 523\(a\)\(15\)](#) may be

applicable to any resulting judgment entered by the Family Law Court .<sup>2</sup>

### III. CONCLUSION

Based upon all the foregoing, the Motion is granted.

#### Footnotes

**1** On April 5, 2012, after entertaining oral argument, the court continued the hearing to May 4, 2012 to allow Movant to file supplemental briefing on whether she has standing to challenge the constitutionality of the federal Defense of Marriage Act (“DOMA”) in light of the 9th Circuit's decision in *Smelt v. Orange County*, 447 F.3d 673 (9th Cir.2006). Movant and Debtor each filed supplement briefs regarding the standing issue, as well as a stipulation to modify the briefing schedule and continue the May 4, 2012 hearing. Pursuant to an order approving the stipulation entered on May 3, 2012, the May 4, 2012 hearing was continued to May 23, 2012.

Following oral argument on May 23, 2012, the court took the matter under submission, and set a final briefing schedule. Movant and Debtor timely filed closing briefs on May 30, 2012. On August 17, 2012, Movant filed a Notice of Constitutional Challenge of the definition of “marriage” set forth in DOMA pursuant to [Federal Rule of Civil Procedure 5.1](#) (the “Notice of Challenge”). The United States of America filed an acknowledgement of the Notice of Challenge on October 16, 2012 in which it declined to intervene under the premise that the constitutionality of DOMA was not ripe for review. Movant filed a response to the Notice of Challenge on October 24, 2012.

At a status conference in the Adversary on November 15, 2012, the court requested that Debtor and Movant each file position briefs addressing whether the Adversary and the Motion should be stayed or proceed in light of the Supreme Court of the United States grant of certiorari in *United States of America, Petitioner, v. Edith Schlain Windsor, Respondent*, Petition No. 12–307, that challenges the constitutionality of DOMA. The court continued the status conference to December 20, 2012. Position briefs were timely filed by Debtor and Movant in the main bankruptcy case on December 13, 2012.

After reviewing the position briefs and hearing oral argument at the December 20, 2013 status conference, the court continued the status conference to July 18, 2013 as a holding date pending a decision in *Windsor* by the Supreme Court.

On July 18, 2013, the court continued the status conference a final time to October 10, 2013 to allow Debtor and Movant to file final briefing addressing the impact of the recent decision in *U.S. v. Windsor*, —U.S. —, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013) on the Motion and the Adversary Case. Final briefs were timely filed by Debtor and Movant and the court took the Motion under submission on October 10, 2013.

**2** The court finds unpersuasive Debtor's argument that a) if the definition of spouse applies equally to registered domestic partners and married persons, the protections the legislature intended to provide for persons over age 62 of the opposite sex are eviscerated; and b) Movant should be estopped from seeking rights under [§ 523\(a\)\(15\)](#) because the registered domestic partnership was incurred by fraud. For the purposes of this Motion, the court determines that Debtor and Movant are “spouses.”