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OF THE NINTH CIRCUIT

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**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

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In re:)	BAP No.	EW-09-1150-HMoPa
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NICHOLAS P. HEILMAN)	Bk. No.	05-08319-PCW
)		
Debtor.)	Adv. No.	08-80093-PCW
)		
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PAM HEILMAN,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
NICHOLAS P. HEILMAN,)		
)		
Appellee.)		
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Submitted Without Oral Argument
on November 24, 2009

Filed - April 26, 2010

Appeal from the United States Bankruptcy Court
for the Eastern District of Washington

Honorable Patricia C. Williams, Bankruptcy Judge, Presiding.

Before: HOLLOWELL, MONTALI and PAPPAS, Bankruptcy Judges.

1 HOLLOWELL, Bankruptcy Judge:

2
3 The parties to this appeal are former spouses. Approximately
4 six months prior to their divorce, Nicholas Heilman (the Debtor)
5 filed, individually, for chapter 7¹ bankruptcy relief and received
6 a discharge. Pam Heilman (Heilman) later sought a declaratory
7 judgment against the Debtor to declare that the Debtor was
8 obligated, by the terms of their dissolution decree, to hold
9 Heilman harmless on a prepetition community debt owed to Heilman's
10 parents. The bankruptcy court held that the loan to Heilman's
11 parents had been discharged and therefore, Heilman could not be
12 held harmless for a nonexistent obligation. For the reasons given
13 below, we AFFIRM.

14 **I. FACTS**

15 The Debtor and Heilman were married in April 2002. During
16 their marriage, from March through December 2004, Heilman's
17 parents, Richard and Laurel Beyer (the Beyers), loaned Heilman
18 approximately \$42,000 for the primary purpose of supporting
19 Heilman's daughter (the Beyer Loan).

20 On October 3, 2005, the Debtor filed an individual chapter 7
21 bankruptcy petition. A review of the bankruptcy case docket and
22

23 ¹ Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to
25 the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
26 enacted and promulgated prior to the effective date of The
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 119
Stat. 23, because the case from which this appeal arises was filed
before its effective date (generally October 17, 2005).

1 underlying bankruptcy schedules reveals that the Debtor did not
2 list the Beyer Loan on his schedules or include the Beyers on the
3 creditor mailing matrix.² The Debtor's case was a no-asset case
4 and he received a discharge on January 11, 2006.

5 Approximately seven months later, on June 9, 2006, Heilman
6 filed a Petition for Dissolution of Marriage in Washington State
7 Superior Court for Lincoln County. The marriage was dissolved by
8 an agreed Decree of Dissolution on September 19, 2006 (the
9 Dissolution Decree). The Dissolution Decree allocated certain
10 debts to the Debtor. It identified the Beyer Loan as one of four
11 "Community Liabilities to be Paid by the Husband." The Dissolution
12 Decree did not allocate any community liabilities to Heilman. The
13 separate liabilities for each spouse were described only as those
14 obligations that were incurred prior to the marriage or after
15 Heilman and the Debtor separated. The Dissolution Decree also
16 contained a provision that each spouse would hold the other
17 harmless from any collection action relating to the separate or
18 community liabilities that were allocated to the parties in the
19 Dissolution Decree (the Hold Harmless Provision).

20 On August 15, 2008, Heilman filed an adversary proceeding
21 against the Debtor seeking a declaratory judgment that the Hold
22 Harmless Provision obligated the Debtor to indemnify her for any
23 demands made on her to pay the Beyer Loan.

24
25 ² We may take judicial notice of the underlying bankruptcy
26 records with respect to an appeal. O'Rourke v. Seaboard Sur. Co.
(In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).

1 Heilman filed a motion for summary judgment on February 3,
2 2009. On March 17, 2009, the Debtor filed a Memorandum of
3 Authorities in Support of Answer to Complaint for Declaratory
4 Judgment Regarding Discharge of Debt. The bankruptcy court heard
5 the matter on March 24, 2009, and denied the motion for summary
6 judgment on March 25, 2009. The parties subsequently agreed to
7 have the bankruptcy court decide the matter on pleadings and a
8 trial was vacated. On April 23, 2009, the bankruptcy court entered
9 an Order Dismissing the Adversary Proceeding and issued its
10 decision finding that the community obligations referenced in the
11 Dissolution Decree had been discharged and the Hold Harmless
12 Provision could not revive a discharged debt. Heilman v. Heilman
13 (In re Heilman), 2009 WL 1139468 (Bankr. E.D. Wash. 2009). Heilman
14 timely appealed.³

15 II. JURISDICTION

16 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
17 § 157(b)(1). We have jurisdiction under 28 U.S.C. § 158.

18 III. ISSUE

19 Does the Dissolution Decree obligate the Debtor to pay the
20 Beyer Loan or to hold Heilman harmless for the Beyer Loan?⁴

21
22 ³ Prior to the scheduled oral argument on appeal, the Debtor
23 passed away, and the matter was submitted on the briefs. The
24 Debtor's death does not affect our decision. The parties rights,
including the right of the Debtor to obtain a fresh start post-
bankruptcy, were fixed as of the date of bankruptcy.

25 ⁴ To the extent Heilman also argues that the Debtor was
26 obligated to directly pay the Beyer Loan as a community obligation
(continued...)

1 **IV. STANDARDS OF REVIEW**

2 We review a bankruptcy court's legal conclusions, including
3 its interpretation of the bankruptcy code and state law, de novo.
4 Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 545 (9th Cir.
5 BAP 2009). We may affirm the bankruptcy court on any basis
6 supported by the record. Steckman v. Hart Brewing, Inc., 143 F.3d
7 1293, 1295 (9th Cir. 1998).

8 **V. DISCUSSION**

9 Heilman contends that the Dissolution Decree ordered the
10 Debtor to pay the Beyer Loan as well as to hold her harmless should
11 the Beyers seek collection from her on the loan. She asserts the
12 Hold Harmless Provision of the Dissolution Decree created a
13 postpetition claim to her that was not discharged in the Debtor's
14 bankruptcy case.⁵

15 After analyzing the nature of the Beyer Loan and the effect
16 the bankruptcy discharge had on the parties' liability for the
17 Beyer Loan, we conclude the Dissolution Decree did not create a
18 postpetition claim, but rather attempted to revive a discharged

19 _____
20 ⁴(...continued)

21 as set forth by the Dissolution Decree, we include this issue in the
22 appeal, although the briefing seems to mainly reference whether the
23 Hold Harmless Provision is enforceable as to the Beyer Loan.

24 ⁵ A chapter 7 discharge is effective only as to "debts that
25 arose before the date of the order for relief" 11 U.S.C.
26 § 727(b). In a voluntary case, the order for relief occurs at the
moment of filing. 11 U.S.C. § 301. Therefore, debts arising after
the bankruptcy case has commenced are not discharged. See, e.g.,
Teichman v. Teichman (In re Teichman), 774 F.2d 1395, 1398 (9th Cir.
1985).

1 debt.

2

3 **A. The Beyer Loan Was A Prepetition Community Debt Subject To The**
4 **Debtor's Discharge**

5 The Debtor and Heilman resided in Washington when the Debtor's
6 bankruptcy petition was filed; therefore, whether the Beyer Loan is
7 a community debt is determined by Washington law. Fed. Deposit
8 Ins. Corp. v. Soderling (In re Soderling), 998 F.2d 730, 733 (9th
9 Cir. 1993).⁶ Under Washington law, a debt incurred by either
10 spouse during marriage is presumptively a community debt. Seattle
11 First Nat'l Bank v. Marusic (In re Marusic), 139 B.R. 727, 731
12 (Bankr. W.D. Wash. 1992); Burman v. Homan (In re Homan), 112 B.R.
13 356, 360 (9th Cir. BAP 1989).

14 One rather constant theme is the solicitude with which
15 the Washington court has viewed the community property
16 position, manifested in various rules and presumptions:
17 acquisitions by a spouse are presumptively community
18 property; separate property commingled with community
19 property becomes community property by operation of law;
20 obligations incurred by a spouse are presumptively
21 community in character; separate property agreements
22 between spouses must be established by a higher standard
23 of proof than that required to establish community
24 property agreements, and so forth.

25 Harry M. Cross, The Community Property Law in Washington, 61 Wash.
26 L. Rev. 13, 19 (1986).

27 Furthermore, debts incurred by either spouse are considered to

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30 ⁶ Under § 541(a)(2) community property in existence as of the
31 petition date becomes estate property; therefore, it is appropriate
32 to refer to the law of the state where the debtor and his or her
33 spouse lived at the time the petition was filed in determining
34 whether the Beyer Loan was a community debt or Heilman's separate
35 debt. In re Soderling, 998 F.2d at 733.

1 be community debts if, at the time of the transaction, there was a
2 potential material benefit to the community. Grayson v. Platis, 95
3 Wash. App. 824, 836, 978 P.2d 1105 (Wash. Ct. App. 1999); In re
4 Marusic, 139 B.R. at 731. The Beyers loaned money to Heilman
5 during the marriage to help care for their grandchild. The Beyer
6 Loan provided a material benefit to the community because it
7 alleviated the community's financial burden of providing support
8 for that child. Neither party has argued otherwise. Thus, in the
9 absence of any evidence to the contrary, the Beyer Loan was a
10 community debt.

11 The community's liability on expenses "of the family and the
12 education of the children, including step-children," including
13 those items required for sustenance, support and ordinary
14 requirements of a family, is joint and several. RCW 26.16.205
15 ("[Family expenses] are chargeable upon the property of both
16 [husband and wife], or either of them, and they may be sued jointly
17 or separately."); Sunkidd Venture, Inc. v. Snyder-Entel, 87 Wash.
18 App. 211, 216, 941 P.2d 16 (Wash. Ct. App. 1997).

19 Divorce courts are "charged with making a just and equitable
20 disposition of the parties' property and liabilities after
21 considering all relevant factors." In re Marriage of Thomas, 63
22 Wash. App. 658, 660, 821 P.2d 1227 (Wash. Ct. App. 1991); RCW
23 26.09.050(1) & 26.09.080. Absent the Debtor's bankruptcy, the
24 divorce court could have properly assigned the community's
25 liability for the Beyer Loan to the Debtor and protected Heilman
26 from payment on the Beyer Loan through the Hold Harmless Provision.

1 However, the entry of the Debtor's discharge bars such a result.

2 In bankruptcy, community claims are defined as claims that
3 "arose before the commencement of the case concerning the debtor
4 for which property of the kind specified in [§ 541(a)(2)] is
5 liable." 11 U.S.C. § 101(7). Property specified in § 541(a)(2)
6 includes all interests of the debtor and debtor's spouse in
7 community property liable for an allowable claim against the debtor
8 and the debtor's spouse. 11 U.S.C. § 541(a)(2). Because the
9 Debtor and Heilman's marital community was liable for the Beyer
10 Loan, the Beyers held a community claim against the Debtor, which
11 was subject to his bankruptcy discharge.

12 Additionally, because the obligation was joint and several, at
13 the time the Debtor and Heilman incurred the debt, Heilman was
14 entitled to a contribution claim from the Debtor. Sunkidd Venture,
15 87 Wash. App. at 217. Thus, on the petition date, Heilman held a
16 contingent claim against the Debtor for contribution on the Beyer
17 Loan.⁷ 11 U.S.C. § 101(5).

18
19 ⁷ A claim is defined as a:
20 right to payment, whether or not such right is reduced to
21 judgment, liquidated, unliquidated, fixed, contingent,
22 matured, unmatured, disputed, undisputed, legal,
23 equitable, secured, or unsecured; or [a] right to an
equitable remedy for breach of performance if such breach
gives rise to a right to payment

24 11 U.S.C. § 101(5). The breadth of the definition ensures that "all
25 legal obligations of the debtor, no matter how remote or contingent,
26 will be able to be dealt with in the bankruptcy case." In re
Emelity, 251 B.R. 151, 154 (Bankr. S.D. Cal. 2000) citing In re
Hassanally, 208 B.R. 46, 50 (9th Cir. BAP 1997).

1 1. The Discharge Extinguished The Debtor's Personal
2 Liability on Prepetition Claims

3 Section 727(b) provides that (except for non-dischargeable
4 debts listed in § 523(a))⁸ a discharge under § 727(a) discharges a
5 debtor from all debts that arose before bankruptcy (regardless of
6 whether, in the instance of a no-asset chapter 7 case, the debt was
7 listed in a debtor's schedules). 11 U.S.C. § 727(b); Beezley v.
8 Cal. Land Title Co. (In re Beezley), 994 F.2d 1433, 1434 (9th Cir.
9 1993). The bankruptcy discharge releases the debtor from liability
10 on debts and enjoins any creditor's effort to collect a discharged
11 debt as a personal liability of the debtor. 11 U.S.C. § 727(b) and
12 § 524(a) (1), (a) (2); see also Lone Star Sec. & Video, Inc. v.
13 Gurrola (In re Gurrola), 328 B.R. 158, 163-64 (9th Cir. BAP 2005).
14 As a result, the Debtor's liability for community debts, including
15 the Beyer Loan, and his contingent liability to Heilman for
16 contribution for payments she may have to make on the Beyer Loan,
17

18 ⁸ Section 523(a) (15) is not applicable to this case because for
19 a debt to be nondischargeable under § 523(a) (15) it must be incurred
20 "in the course of a divorce or separation." Here, on the petition
21 date, there was no divorce or separation in progress. Accordingly,
22 this case presents a result based exclusively on timing. If the
23 Debtor's divorce had preceded his bankruptcy, the Hold Harmless
24 Provision of the Dissolution Decree would be enforceable, at least
25 until discharge, unless § 523(a) (15) applied and rendered it
26 nondischargeable.

24 We share the dissent's concern about such a result, but cannot
25 agree with the dissent's reasoning that the Hold Harmless Provision
26 was a new postpetition obligation given the broad definition of a
claim in § 101(5) and given the language of the Dissolution Decree
itself which does not reference Heilman's separate liability on the
Beyer Loan in the Hold Harmless Provision.

1 were extinguished when he received his discharge. 11 U.S.C.
2 § 524(a)(1), (a)(2).

3
4 2. The Discharge Enjoined Collection Efforts Against The Community

5 Additionally, under § 524(a)(3), the discharge protected
6 postpetition community property from collection efforts by any
7 creditor holding a prepetition community claim because a discharge
8 permanently enjoins enforcement of prepetition community claims
9 against all future-acquired community property:

10 [A] nondebtor spouse in a community property state
11 typically benefits from the discharge of the debtor
12 spouse. According to Section 524(a)(3), after-acquired
13 community property is protected by injunctions against
14 collection efforts by those creditors who held allowable
15 community claims at the time of filing. This is so even
16 if the creditor claim is against only the nonbankruptcy
17 spouse; the after-acquired community property is immune.

18 Roos v. Kimmel (In re Kimmel), 378 B.R. 630, 636 (9th Cir. BAP
19 2007) quoting In re Homan, 112 B.R. at 360.

20 However, the discharge injunction of § 524(a)(3) only applies
21 as long as there is community property. In re Kimmel, 378 B.R. at
22 636. Dissolution of the marriage terminates the community, at
23 which point after-acquired community property loses its protection.
24 Id. citing, 4 COLLIER ON BANKRUPTCY, ¶ 524.02[3][c] (Alan N. Resnick &
25 Henry J. Sommer, eds., 15th ed. rev. 2007).

26
27 3. The Debtor's Discharge Did Not Discharge Heilman From Her Separate Liability On Community Claims

28 After the Debtor's bankruptcy discharge, Heilman continued to
29 remain separately liable for community debts, including the Beyer

1 Loan. Her separate property (and any community property ultimately
2 distributed to her when the community finally dissolved) was,
3 therefore, subject to collection by a creditor holding a community
4 claim. Von Burg v. Egstad (In re Von Burg), 16 B.R. 747, 749
5 (Bankr. E.D. Cal. 1982); Gonzales v. Costanza (In re Costanza), 151
6 B.R. 588, 589 (Bankr. D.N.M. 1993). Heilman's separate liability
7 on the Beyer Loan was not allocated to the Debtor by the
8 Dissolution Decree or subject to its Hold Harmless Provision.

9
10 **B. The Dissolution Decree's Hold Harmless Provision Did Not
Create A New Postpetition Obligation**

11 The bankruptcy court found that by listing the Beyer Loan as a
12 liability to be paid by the Debtor, the Dissolution Decree
13 impermissibly attempted to revive the Debtor's personal liability
14 for a discharged debt. We agree.

15 The combined effect of § 727(b) and § 524(a)(3) was to
16 discharge both the Debtor and the community from liability for
17 prepetition debt. The discharge also extinguished the Debtor's
18 liability to Heilman for contribution claims she might have as a
19 result of her surviving sole liability for prepetition community
20 debt. The dissent strongly disagrees with this result, citing a
21 number of decisions holding that debts established in postpetition
22 divorce decrees are new debts not discharged in a debtor's
23 bankruptcy case.⁹

24
25 ⁹ There are also a number of decisions which hold that
26 postpetition judgments entered in divorce actions commenced pre-
bankruptcy, but concluded post-bankruptcy, do not create new
(continued...)

1 None of the cases cited by the dissent, however, are from
2 community property jurisdictions where members of the community are
3 jointly and severally liable for community debt. Although one of
4 the cases does address joint and several liability, it relied on
5 state law to determine that the non-debtor spouse's contribution
6 right arose post-bankruptcy. Miller v. Miller (In re Miller), 246
7 B.R. 559, 563 (Bankr. E.D. Tenn. 2000). It is well-settled in the
8 Ninth Circuit that federal law determines when a claim arises under
9 the Bankruptcy Code. SNTL Corp. v. Centre Ins. Co. (In re SNTL
10 Corp.), 571 F.3d 826, 839 (9th Cir. 2009). For purposes of
11 discharge, a claim arises "at the time of the events giving rise to
12 the claim, not at the time plaintiff is first able to file suit on
13 the claim." O'Loghlin v. County of Orange, 229 F.3d 871, 874 (9th
14 Cir. 2000). "[A] claim arises when a claimant can fairly or
15 reasonably contemplate the claim's existence even if a cause of
16 action has not yet accrued under nonbankruptcy law." In re SNTL
17 Corp., 571 F.3d at 839. Under that test, Heilman could have fairly
18 contemplated that she had a reimbursement claim when the Beyers
19 made the loan (and certainly by the date the Debtor filed his
20 petition).

21 While the Hold Harmless Provision of the Dissolution Decree is
22 broader than the Debtor's contribution liability, it nevertheless
23

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25 ⁹(...continued)
26 nondischargeable debt. See, e.g., DiGeronimo v. Weissberg (In re
DiGeronimo), 354 B.R. 625, 637 n.12 (Bankr. E.D.N.Y. 2006)
(collecting cases).

1 encompasses Heilman's contribution claim.¹⁰ Therefore, the Hold
2 Harmless Provision is based "in whole or in part . . . on a debt
3 that is dischargeable" and can only be revived if the reaffirmation
4 requirements are met. 11 U.S.C. § 524(c); see also, Edwards v.
5 Edwards (In re Edwards), 91 B.R. 95, 96 (Bankr. C.D. Cal. 1988)
6 ("In a marriage dissolution proceeding, one spouse cannot be
7 required to pay obligations which have been discharged in
8 bankruptcy.").

9 The Code sets forth requirements that an agreement must meet
10 in order to revive a discharged debt. 11 U.S.C. § 524(c). "Post-
11 bankruptcy attempts to enforce pre-bankruptcy obligations in
12 nonbankruptcy courts using nonbankruptcy law" is dealt with under
13 § 524(c). Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1066
14 (9th Cir. 2002). An agreement to reaffirm a debt must strictly
15 comply with the statutory requirements. Republic Bank of Cal.,
16 N.A. v. Getzoff (In re Getzoff), 180 B.R. 572, 574 (9th Cir. BAP
17 1995).

18 Section 524(c) provides that agreements to reaffirm a
19 dischargeable debt, when the consideration is no more than the
20 promise to repay the debt, must be made before the granting of a
21 bankruptcy discharge. 11 U.S.C. § 524(c). Furthermore, the
22 agreement must be approved by the bankruptcy court, which
23 determines that the debtor (1) knowingly and voluntarily entered

24
25 ¹⁰ Because we agree with the bankruptcy court that there was no
26 surviving prepetition community debt from which the Debtor had to
hold Heilman harmless, the difference in the scope of the Hold
Harmless Provision and Heilman's contribution rights is irrelevant.

1 into the agreement, (2) understood all of its legal consequences,
2 and (3) that the agreement did not impose an undue hardship on the
3 debtor. Id. The Dissolution Decree does not conform to any of
4 these requirements. Instead, the Dissolution Decree circumvents
5 the bankruptcy laws by reviving a discharged debt. See In re
6 Edwards, 91 B.R. at 96. Therefore, the Debtor's obligation to pay
7 the Beyer Loan or hold Heilman harmless on the Beyer Loan is void
8 and unenforceable. In re Gurrola, 328 B.R. at 171 (Section 524
9 voids any judgment at the time it is obtained to the extent it is a
10 determination of the personal liability of a debtor with respect to
11 any debt discharged.); In re Bennett, 298 F.3d at 1067 ("Absent a
12 valid reaffirmation agreement under [§] 524(c), [an] agreement to
13 repay a discharged debt is unenforceable under [§] 524(a).").

14 Accordingly, we affirm the bankruptcy court's dismissal of the
15 adversary proceeding.¹¹

16 _____
17 ¹¹ Heilman also contends the bankruptcy court's ruling that
18 Debtor's bankruptcy discharge relieved the Debtor from paying the
19 Beyer Loan improperly preempts state law. The Supremacy Clause and
20 the doctrine of preemption invalidates state statutes to the extent
21 they are inconsistent with or contrary to the purposes or objectives
22 of federal law. Perez v. Campbell, 402 U.S. 637, 652 (1971) ("[A]ny
23 state legislation which frustrates the full effectiveness of federal
24 law is rendered invalid by the Supremacy Clause."). The purpose of
25 bankruptcy law is to provide a debtor with a fresh start. Local
26 Loan Co. v. Hunt, 292 U.S. 234, 244 (1934); Marrama v. Citizens Bank
of Mass., 549 U.S. 365, 367 (2007). There is no conflict between
federal bankruptcy law and the state law that empowers Washington
state courts to divide assets and liabilities in a dissolution
proceeding. RCW 26.09.080. In this case, the issue is not whether
"§ 524 preempts state law with respect to a family court's ability
to equitably divide assets and liabilities in a dissolution

(continued...)

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VI. CONCLUSION

For the foregoing reasons, we affirm the bankruptcy court's dismissal of Heilman's adversary proceeding seeking to enforce the terms of the Dissolution Decree with respect to the Beyer Loan.

PAPPAS, Bankruptcy Judge, dissenting in part:

Regrettably, I believe the majority incorrectly applies 11 U.S.C. § 727(b) in this appeal, and that its decision inappropriately impairs the ability of state courts to equitably resolve debt issues in a marital dissolution proceeding. I therefore respectfully dissent from that portion of the decision which holds that the Debtor's obligation to hold Heilman harmless for any payments she is required to make to the Beyers was a prebankruptcy, discharged debt.¹²

In a Washington dissolution proceeding, the state court is commanded by statute to assign responsibility for the parties' liabilities in a manner "as shall appear just and equitable after considering all relevant factors" RCW 26.09.080. In particular, the court is directed to consider the economic

¹¹(...continued)
proceeding." The issue is the effect the discharge had on the responsibilities of the community members to pay a pre-petition debt.

¹² I join in the Panel's decision that, despite the Debtor's post-bankruptcy agreement with Heilman, and the terms of the state court dissolution decree, any personal obligation of the Debtor to pay the debt owed to the Beyers was discharged and unenforceable.

1 circumstances of each spouse at the time of the dissolution in
2 designing an equitable resolution of the parties finances. See RCW
3 26.09.080(4).

4 These statutes would seem to require the state court to
5 consider that one party to a dissolution action has received a
6 discharge in bankruptcy when the court crafts its equitable
7 dissolution of the parties' property and debts. Consistent with
8 the agreement of the parties, I think we must presume that the
9 Washington court in this case decided, in the exercise of its
10 equitable discretion in dissolving the parties' marriage, that if
11 Heilman were required to pay the community debt owed by the parties
12 to the Beyers, the Debtor must hold her harmless.¹³ I think we must
13 also assume, to be true to the state law, that the dissolution
14 court imposed the equitable, hold-harmless obligation upon the
15 Debtor based upon the economic circumstances of the parties
16 existing at the time of the dissolution in September 2006, some
17 nine months after the Debtor received his bankruptcy discharge.

18 Despite the statutory requirement that an equitable
19

20 ¹³ The parties and the majority take no issue with
21 characterizing the loan from the Beyers to Heilman to care for the
22 needs of her child as a community debt. This conclusion appears to
23 be consistent with the Washington statutes. See RCW 26.16.205
24 (providing that both spouses can be sued "jointly or severally" to
25 recover any expenses incurred for the family, "including
26 stepchildren"). In Washington, when a divorced person pays a
community obligation, she is entitled to contribution from her
former spouse. Hanson v. Hanson, 350 P.2d 859 (Wash. 1960). Here,
however, there was no evidence that Heilman had paid any amounts to
the Beyers on the loan. Clearly, the Debtor's liability to Heilman
was not based upon her right to contribution.

1 dissolution be crafted based upon the facts as they exist at the
2 time of the dissolution, the majority characterizes the Debtor's
3 newly-imposed obligation under the state court's order as a
4 prebankruptcy claim. Then, though holding that the hold-harmless
5 obligation is a pre-petition claim, the majority inexplicably
6 concludes that it is not excepted from discharge in the Debtor's
7 bankruptcy case under § 523(a)(15) since it was not incurred in the
8 course of a divorce, apparently because the dissolution decree was
9 not entered by the state court until after the Debtor's bankruptcy
10 case was filed.¹⁴ These conclusions simply can not be correct.

11 In general, except for debts described in § 523(a), a chapter
12 7 discharge impacts "all debts that arose before the date of the
13 order for relief" 11 U.S.C. § 727(b). Simply put, under
14 Washington law, the state court could not impose a hold-harmless
15 obligation upon the Debtor until it entered the dissolution decree.
16 As a result, the Debtor's duty to indemnify Heilman for payments
17 made to the Beyers was clearly a post-bankruptcy debt not covered
18 by the discharge in the bankruptcy case filed in October 2005.

19 The majority's attempt to treat the Debtor's obligation as a
20 pre-existing "contingent" claim for contribution held by Heilman is
21

22 ¹⁴ Like the majority, I do not think the hold-harmless
23 agreement entered into by the parties in the dissolution proceeding
24 constitutes an enforceable reaffirmation agreement for purposes of
25 § 524(c). But that conclusion merely begs the question since, if
26 the Debtor's duty to hold Heilman harmless from payments to the
Beyers is a post-petition debt, no reaffirmation agreement was
required to render the obligation enforceable, the Debtor's
discharge notwithstanding.

1 out of step with state law. Heilman held no contribution claim
2 against her spouse for payment of a community obligation – that
3 claim could only arise as a result of the dissolution, and then
4 only based upon a state judge’s assessment of the equities of the
5 parties’ current economic circumstances.¹⁵

6 There are an abundance of decisions from bankruptcy courts
7 across the Nation holding that debts established in post-petition
8 divorce decrees in favor of a nondebtor spouse are not discharged
9 in the debtor’s prior bankruptcy case.¹⁶ As one court recently

10
11 ¹⁵ While not expressly stating so, the majority apparently
12 believes that Heilman’s contingent claim for contribution from the
13 Debtor arose when the parties, married at the time, incurred the
14 debt to the Beyers, and that the claim merely matured when they
15 divorced. But a hold-harmless obligation is only one form of device
16 a state court might employ in equitably dissolving a marriage. For
17 example, instead of ordering that the Debtor indemnify her for any
18 payments she makes to the Beyers, the state court could have simply
19 granted Heilman a money judgment against the Debtor for the amount
20 due on the Beyers loan balance. Had it done so, would the majority
21 have deemed that obligation a prebankruptcy discharged debt? Likely
22 not. But if the majority is willing to deem the money judgment a
23 “new” post-bankruptcy debt, there is an obvious flaw in its logic.
24 The Debtor’s obligation in both instances is a new one, imposed in
25 the dissolution decree, not before.

20 ¹⁶ The majority cites only one case, Edwards v. Edwards (In re
21 Edwards), 91 B.R. 95 (Bankr. C.D. Cal, 1988), for the proposition
22 that the dissolution decree in this case circumvents bankruptcy law
23 by reviving a discharged debt. Of course, unlike the facts
24 presented in this appeal, Edwards involved a divorce decree that
25 required the debtor to directly pay creditors holding discharged
26 debts, not a hold-harmless obligation imposed in favor of the
nondebtor spouse. Moreover, the bankruptcy court also based its
conclusion on decisions of the California courts construing state
statutes, not the Code. Edwards, 91 B.R. at 96, citing In re
Marriage of Cohen, 105 Cal. App. 3d 836 (Cal. Ct. App. 1980); In re

(continued...)

1 summarized these holdings:

2 "Courts have consistently held that a debtor's obligation
3 to a former spouse under a postpetition divorce decree or
4 settlement constitutes a postpetition debt and is not
5 dischargeable under § 727(b)." In re Miller, 246 B.R.
6 559, 562 (Bankr. E.D. Tenn. 2000) (citing Arleaux v.
7 Arleaux, 210 B.R. 148, 150 (8th Cir. BAP 1997);
8 Compagnone v. Compagnone (In re Compagnone), 239 B.R.
9 841, 844-45 (Bankr. D. Mass. 1999); Scholl v. Scholl (In
10 re Scholl), 234 B.R. 636, 645 (Bankr. E.D. Pa. 1999); In
11 re Degner, 227 B.R. 822, 824 (Bankr. S.D. Ind. 1997);
12 Bryer v. Hetrick (In re Bryer), 216 B.R. 755, 760-61
13 (Bankr. E.D. Pa. 1998); Neier v. Neier (In re Neier), 45
14 B.R. 740, 743 (Bankr. N.D. Ohio 1985)). Furthermore,
15 where a divorce decree "obligates the debtor to indemnify
16 the spouse and hold the spouse harmless from debts
17 incurred during the marriage, courts recognize that the
18 obligation to the spouse is separate from the original
19 debt." Id. Consequently, a post-petition divorce
20 obligation to hold a spouse harmless from prepetition
21 debt will not be subject to discharge. Id.

22 Cooper v. Cooper (In re Cooper), 2009 WL 3747210 *3 (Bankr. M.D.
23 Ala. 2009); see also, Buglione v. Berlingeri (In re Berlingeri),
24 246 B.R. 196, 200-201 (Bankr. D.N.J. 2000). The common theme
25 expressed by all of these decisions is that an obligation imposed
26 by a divorce-court in a post-bankruptcy decree is a new debt owed
by the debtor to his soon-to-be former spouse, not an obligation to
pay any prebankruptcy debt.¹⁷ Without good reason, the majority

21 ¹⁶(...continued)

22 Marriage of Clements, 134 Cal. App. 3d 737 (Cal. Ct. App. 1982); and
23 In re Marriage of Williams, 157 Cal. App. 3d 1215 (Cal. Ct. App.
1984). In light of the many decisions to the contrary discussed
24 below, the majority should find little comfort in Edwards.

25 ¹⁷ The majority attempts to distinguish the outcome in these
26 many cases because they did not originate in community property
states, or because they are based in part upon local divorce laws.
But as noted above, the question we decide in this appeal is not a

(continued...)

1 departs from that simple theme today.

2 I also believe that the majority's conclusion runs afoul of
3 the general case law concerning when a claim arises for purposes of
4 discharge. As the majority acknowledges, in the Ninth Circuit, a
5 claim is deemed to arise only when the claimant can fairly or
6 reasonably contemplate the claim's existence. See, e.g., SNTL
7 Corp. v. Centre Ins. Co. (In re SNTL Corp.), 571 F.3d 826, 839 (9th
8 Cir. 2009). Here, the dissolution action was not even commenced
9 until several months after the Debtor filed the bankruptcy case and
10 received a discharge. Contrary to the majority's conclusion, there
11 is nothing in our terse record to show that Heilman should have
12 fairly or reasonably contemplated at the time of the Debtor's
13 bankruptcy that a state court would, in an as-of-yet unfiled
14 dissolution action, employ a hold-harmless obligation in her favor
15 in dissolving her marital affairs with the Debtor. The majority
16 does not identify what circumstances should have alerted Heilman
17 that her marriage to the Debtor would one day end, and that she
18 would, as a result of the dissolution decree, be granted a claim
19 against her spouse? Absent such facts, we should hold that the
20 Debtor's hold-harmless obligation to Heilman was not discharged in
21 his bankruptcy.

22 In addition to misapplying § 727(b), I fear that the
23 majority's holding will also unnecessarily interfere with the

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25 ¹⁷(...continued)
26 community property issue - it involves when the spouse's claim
arises, pre- or post-bankruptcy, an analysis that necessarily
implicates the state law basis of the claim.

1 ability of state courts to equitably dissolve marriages. By
2 restricting the dissolution court's ability to impose a hold-
3 harmless obligation in favor of Heilman against the Debtor, the
4 majority effectively instructs the court that, in spite of
5 controlling state law, it can not impose new financial obligations
6 in favor of one spouse against a former bankruptcy debtor in its
7 effort to equitably adjust their marital affairs.

8 The resolution of divorce issues is the exclusive province of
9 the state courts, not the federal bankruptcy courts.¹⁸ We should be
10 extremely reluctant to create barriers to the otherwise just, fair
11

12 ¹⁸ Indeed, in recently instructing federal courts to refrain
13 from encroaching upon the state courts' prerogative to resolve
14 domestic relations issues, the Supreme Court states:

15 Long ago we observed that "[t]he whole subject of the domestic
16 relations of husband and wife, parent and child, belongs to the
17 laws of the States and not to the laws of the United States."
18 In re Burrus, 136 U.S. 586, 593-594, 10 S.Ct. 850, 34 L.Ed. 500
19 (1890). See also Mansell v. Mansell, 490 U.S. 581, 587, 109
20 S.Ct. 2023, 104 L.Ed.2d 675 (1989) ("[D]omestic relations are
21 preeminently matters of state law"); Moore v. Sims, 442 U.S.
22 415, 435, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979) ("Family
23 relations are a traditional area of state concern"). So strong
24 is our deference to state law in this area that we have
25 recognized a "domestic relations exception" that "divests the
federal courts of power to issue divorce, alimony, and child
custody decrees." Ankenbrandt v. Richards, 504 U.S. 689, 703,
112 S.Ct. 2206, 119 L.Ed.2d 468 (1992). We have also
acknowledged that it might be appropriate for the federal
courts to decline to hear a case involving "elements of the
domestic relationship," id., at 705, 112 S.Ct. 2206, even when
divorce, alimony, or child custody is not strictly at issue.

26 Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 12-13 (2004)
(emphasis added).

1 resolutions of dissolution actions in state courts. Unfortunately,
2 that is exactly what the majority's holding does.¹⁹

3 Finally, if it is indeed a prebankruptcy debt, I can not
4 fathom how the hold-harmless obligation created in the state court
5 dissolution decree does not represent a debt to a spouse "that is
6 incurred by the debtor . . . in connection with a . . . divorce
7 decree or other order of a court . . ." for purposes of excepting
8 that debt from discharge under § 523(a)(15). In enacting
9 §§ 523(a)(5) and (15), Congress dictated that virtually all
10 obligations and debts created in state court divorce proceedings be
11 excepted from discharge in a former spouse's bankruptcy case. But
12 while the majority declares the hold-harmless obligation to be a
13 pre-petition debt, it concludes that because the dissolution decree
14 was not entered by the state court until after the Debtor filed for
15 bankruptcy, the hold-harmless obligation is not covered by the
16 exception from discharge. Section 523(a)(15) contains no such
17 condition, nor does the majority cite case law or other authority
18 for restricting the application of the discharge exception in this
19 fashion. Moreover, the inconsistency in the majority's logic is

21 ¹⁹ The majority relies upon the Supremacy Clause as a basis for
22 its holding in this case, arguing its interpretation is necessary to
23 promote the Bankruptcy Code's policy giving the Debtor a financial
24 "fresh start." Of course, I disagree with that conclusion if, in
25 the process, we subordinate the equally-strong federal policy of
26 avoiding interference with the adjudication of marital issues in
state court. Moreover, the majority's enthusiasm for promoting the
discharge in this case seems misplaced since the Debtor has died.
If anyone benefits from a fresh start, it will be the Debtor's
heirs.

1 indefensible: either the debt owed by the Debtor to Heilman is a
2 prebankruptcy claim to which the exception applies, or it is an
3 undischarged post-bankruptcy debt.²⁰

4 In sum, I would conclude that the hold-harmless obligation
5 imposed upon the Debtor by the state court is a post-bankruptcy
6 debt and was not discharged in the Debtor's bankruptcy case. Even
7 assuming it was a prebankruptcy debt, I would hold that it was
8 excepted from discharge. Instead, the majority renders a most
9 unfair decision that, in my opinion, conflicts with the Code and
10 cases interpreting it, impairs the ability of state courts to
11 equitably resolve married parties' financial affairs upon divorce,
12 and misapplies the exception to discharge for debts created in
13 divorce decrees. I do not agree.

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23 ²⁰ In light of the majority's view of the interplay between
24 § 727(b) and § 523(a)(15), attorneys counseling divorce clients
25 should consider advising clients to seek a bankruptcy discharge
26 prior to pursuing a marital dissolution, since a discharge may
insulate the debtor from liability for a variety of potential claims
by the debtor's spouse that would clearly be nondischargeable if the
decree is entered prior to discharge.