NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-05-1043-MaMoB
	CC-05-1361-MaMoB
JEROME ZAMOS,	(consolidated)
Debtor.	Bk. No. SV 03-16044-KT
JEROME ZAMOS,	Adv. No. SV 03-01426-KT
Appellant,	
v.	**M E M O R A N D U M**[1]
PATRICIA K. ZAMOS; NANCY H. ZAMORA, Chapter 7 Trustee,	
Appellees.	

Argued and Submitted on February 23, 2006
at Pasadena, California

Filed - March 30, 2006

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Kathleen Thompson, Bankruptcy Judge, Presiding.

Before: Marlar, Montali and Brandt, Bankruptcy Judges.

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

OVERVIEW

In their prepetition dissolution judgment, debtor Jerome Zamos ("Debtor") and his wife Patricia K. Zamos ("Ms. Zamos") stipulated that if Debtor failed to make all the agreed-upon payments to Ms. Zamos, including spousal support, a property equalization payment, and child support, by April 30, 1992, then spousal support would continue until further court order. However, if he did all he was supposed to, payments would effectively cease after that date. Debtor failed to comply.

Eight years later, in 2000, Ms. Zamos brought an action in state court to enforce the decree, alleging, inter alia, that Debtor had failed to pay the entire equalization payment. The state court ruled in her favor and entered a judgment for both the equalization payment and spousal maintenance from 1992.

When Debtor filed for bankruptcy protection in 2003, Ms. Zamos sought a determination that the equalization payment was a nondischargeable, non-support debt, pursuant to § 523(a)(15) (the exception to discharge for divorce-related debts other than support).[2]

Debtor filed a response and cross-complaint under § 523(a)(5) (an exception to discharge for support). He asserted that the equalization debt was dischargeable, and thus the spousal support

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[2] Unless otherwise indicated, all "chapter," "section," and "Code" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, in effect when this case was filed, and prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23. "Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, which make applicable certain Federal Rules of Civil Procedure ("FRCP").

obligation, which was dependent upon it, was also dischargeable.

On the § 523(a)(5) issue, the bankruptcy court found that the parties had intended, from the inception of their Settlement Agreement, that the satisfaction of all payments would be a condition precedent to Debtor's release from the spousal support obligation. It found no factual issues worthy of trial on that issue and declared the spousal support obligation to be nondischargeable under § 523(a)(5). After a trial on the § 523(a)(15) issue, the bankruptcy court then determined that the equalization debt was dischargeable under that provision.

In this consolidated appeal, Debtor contends that the discharged equalization debt rendered the entire state court judgment "void," pursuant to § 524(a)(1). Alternatively, he contends that the spousal support judgment was dischargeable because it was based on the equalization payment default, not upon Ms. Zamos' financial need.

We AFFIRM.

FACTS

Debtor, an attorney, and Ms. Zamos were married from 1962 to 1982. Their dissolution proceedings culminated in an interlocutory judgment of dissolution ("Interlocutory Judgment"), in 1982, which restated the terms of their marital settlement agreement ("Settlement Agreement"). A stipulated final judgment of dissolution was entered in 1983.

The Interlocutory Judgment provided for payments by Debtor to Ms. Zamos for spousal support, child support, equalization of

property, and attorney's fees. It also contained a unique spousal support provision ("Incentive Provision"). According to the Incentive Provision, Debtor was to pay $750 per month[3] for 10 years, from May 1, 1982 through April 30, 1992. Spousal support was to terminate on April 30, 1992, however, if all payments required to be made were made by the end of the calendar year in which they were due. If all of the payments were not made as scheduled, but were completed by April 30, 1992, then the spousal support would be reduced to $1 per month. However, if all the payments were not made by April 30, 1992, then the spousal support would continue at the "amount currently payable in April 1992." Settlement Agreement (Apr. 17, 1982),¶ 4, p. 6 (emphasis added). The Settlement Agreement described this provision as "an incentive to Husband to ensure that all payments set forth herein are timely paid." Id.

The equalization payment portion of the Interlocutory Judgment and Settlement Agreement required Debtor to pay Ms. Zamos $40,000 for her community property interest in Debtor's law practice. Debtor executed a promissory note for that purpose and was to make lump-sum payments in 1983 and 1984--an agreement which he did not fulfill.

In 2000, Ms. Zamos contended, before the state court, that Debtor had not met all of his obligations under the Interlocutory Judgment. Following a hearing and presentation of evidence, the state court entered judgment on June 27, 2000 (the "2000

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[3] In 1989, the state court reduced the spousal support to $500 per month and in December, 2000, it was reduced to zero upon Debtor's claim that he had cancer and could no longer work as an attorney. See Decl. of Ms. Zamos (Sept. 1, 2004), p. 3, ¶ 7.

Judgment"). It found that Debtor owed Ms. Zamos a balance on the equalization payment of $60,829. Since Debtor had not timely fulfilled that obligation, the state court ordered that spousal support had not terminated in 1992, but remained in effect, and that the arrearage, as of March 31, 2000, was $66,500.[4] Debtor's appeal of the 2000 Judgment was dismissed, and the 2000 Judgment is final.

In May, 2001, Ms. Zamos obtained a qualified domestic relations order ("QDRO") to collect the unpaid 2000 Judgment from any distributions payable from Debtor's defined benefit pension plan. The QDRO was affirmed on appeal.

In July, 2003, Debtor filed a voluntary chapter 7 petition in which he listed the 2000 Judgment as a disputed, unsecured, non-priority $190,000 claim held by Ms. Zamos.

Ms. Zamos filed a timely complaint to determine the equalization portion of the 2000 Judgment nondischargeable under § 523(a)(15). Debtor denied her claim of nondischargeability, and filed a cross-complaint alleging that the spousal support portion was dischargeable, under § 523(a)(5), because it was not "actually in the nature of alimony, maintenance, or support." See 11 U.S.C. § 523(a)(5)(B). Debtor then filed a motion for summary judgment

[4] Only the $66,500 judgment is at issue in this appeal. The 2000 Judgment also awarded Ms. Zamos $3,919 for child support arrearages, (which accrued after April, 1992 and, therefore, are not pertinent to this appeal), and $12,184 for attorney's fees, which the bankruptcy court partially discharged pursuant to § 523(a)(15), and partially determined to be nondischargeable pursuant to § 523(a)(5), after trial. Debtor has not challenged the court's ruling in regards to the attorney's fees.

on the § 523(a)(5) spousal support issue.[5] However, the bankruptcy court held the § 523(a)(15) issue over for trial.

At the summary judgment hearing, the bankruptcy court rejected Debtor's contention that the spousal support award was not support merely because of its connection to his default in the payment of a non-support obligation. Interpreting the Incentive Provision, the bankruptcy court concluded that it "was basically a condition precedent to [Debtor's] being relieved of the obligation to make support payments." Tr. of Proceedings (Sept. 25, 2004), p. 33:13-15.0. The bankruptcy court denied Debtor's motion and entered an interlocutory order declaring the continuing spousal support obligation to be nondischargeable. Debtor timely appealed.

The matter then proceeded to trial on the § 523(a)(15) issue. The bankruptcy court analyzed the facts and circumstances and found that Debtor deserved a discharge from the equalization payment. After the bankruptcy court entered its final judgment on the complaint, Debtor timely appealed.

Debtor now contends that, because he was discharged of the equalization payment, his obligation for spousal support also terminated. Only the § 523(a)(5) summary judgment issue is at issue, as Ms. Zamos did not cross-appeal from the § 523(a)(15) ruling discharging the equalization payment.

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[5] The panel has previously countenanced the summary judgment procedure in the determination of whether a debt is a dischargeable property settlement or a nondischargeable liability for support. See Leppaluoto v. Combs (In re Combs), 101 B.R. 609, 615 (9th Cir. BAP 1989); Porter v. Gwinn (Matter of Gwinn), 20 B.R. 233, 234 (9th Cir. BAP 1982).

ISSUES

1. Whether the equalization and spousal support obligations under the 2000 Judgment were so "interdependent" that the discharge of the equalization debt rendered the entire 2000 Judgment void, pursuant to § 524(a)(1).

2. Whether a spousal support judgment that is based on a payment default of a dischargeable debt can be "actually in the nature of alimony, maintenance, or support," as required for nondischargeability under 523(a)(5)(B).

STANDARD OF REVIEW

The issues in this appeal were decided on summary judgment and were not litigated at trial. We review a grant of summary judgment de novo. Balint v. Carson City, Nev., 180 F.3d 1047, 1050 (9th Cir. 1999). "Summary judgment is appropriate if the record shows that 'there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Focus Media, Inc. v. Nat'l Broadcasting Co. (In re Focus Media, Inc.), 378 F.3d 916, 922 (9th Cir. 2004) (citation omitted and quoting FRCP 56(c)). FRCP 56 is made applicable in bankruptcy proceedings by Rule 7056.

The bankruptcy court's determination that a debt is for alimony, maintenance, or support is a factual question which is reviewed for clear error. Seixas v. Booth (In re Seixas), 239 B.R. 398, 401 (9th Cir. BAP 1999) (citing Jodoin v. Samayoa (In re

Jodoin), 209 B.R. 132, 135 (9th Cir. BAP 1997)). In addition, a factual finding that is induced by an erroneous view of the law may be set aside as clearly erroneous. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 402 (1990). However, where, as here, the factual evidence is undisputed, and the issue is one of law, summary judgment may be appropriate. Foothill Capital Corp. v. Clare's Food Mkt., Inc. (In re Coupon Clearing Serv., Inc.), 113 F.3d 1091, 1098 (9th Cir. 1997).

We review de novo the bankruptcy court's interpretation of the Code and the Settlement Agreement. See Seixas, 239 B.R. at 401; see also County of Santa Cruz v. Cervantes (In re Cervantes), 219 F.3d 955, 959 (9th Cir. 2000) (Code interpretation), and Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1064 (9th Cir. 2002) (contract interpretation under California law).

DISCUSSION

A. Whether § 524(a) Voided the 2000 Judgment for Spousal Support Due to the Discharged Equalization Payment

Debtor contends that the bankruptcy court erred when it adjudged, as dischargeable, the balance due on the equalization payment but did not simultaneously discharge the spousal support obligation. The reason for the error, he maintains, is that the spousal support obligation arose out of and was dependent upon the equalization payment default and, therefore, the entire 2000 Judgment pertaining to those two obligations was voided by the discharge.

Debtor relies on § 524,[6] which provides, in pertinent part:

> (a) A discharge in a case under this title—
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> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the extent of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived; . . .

11 U.S.C. § 523(a)(1).

Debtor also relies on Lone Star Sec. & Video, Inc. v. Gurrola (In re Gurrola), 328 B.R. 158, 171 (9th Cir. BAP 2005), in which the BAP held that once a discharge is entered, "any judgment that [the creditor] at any time obtained on the discharged debt would automatically be rendered "void" by § 524(a)(1)."

Ms. Zamos argues, first, that § 524 plainly does not apply because the equalization payment debt was discharged under § 523 and not § 727. We disagree with this theory because § 523 is not a discharge provision, but rather an exception to discharge provision. See § 523(c) (generally, a debtor will be discharged from a debt within the scope of § 523(a) "unless . . . the court determines such debt to be excepted from discharge" under that same provision). Moreover, once a debt is found to be dischargeable in a § 523 action, such debt is actually discharged under § 727 (in a chapter 7 case).

Second, Ms. Zamos argues that § 524 is specific with respect to the debtor's liability for a particular discharged debt, and

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[6] Debtor has not raised a prohibited private right of action under § 524(a)(1), but merely seeks declaratory relief. See Bankr. Receivables Mgmt. v. Lopez (In re Lopez), 274 B.R. 854, 863-64 (9th Cir. BAP 2002), aff'd, 345 F.3d 701 (9th Cir. 2003), and cert. denied, 541 U.S. 987 (2004).

the spousal support obligation was a distinct debt from the discharged equalization payment. In other words, the terms of § 524(a) would not allow the voiding of an entire judgment containing more than one liability, but only voids such portion of the judgment respecting the specific, discharged debt.

We agree with Ms. Zamos on this second point. In the 2000 Judgment, the state court found that there was no credible proof that Debtor had paid off the equalization payment under the Interlocutory Judgment, and determined that he still owed a balance of $60,829. As a necessary corollary, in separate findings under Ms. Zamos' claim for unpaid spousal support, the state court found that "[s]pousal support did not terminate on April 30, 1992 and pursuant to the terms of judgment continued thereafter and remains in effect currently." It then awarded the arrearage amount, as of March 31, 2000, of $66,500. See 2000 Judgment (June 27, 2000), p. 4.

Later, the QDRO was entered to enforce the 2000 Judgment in its entirety. These state court orders were final, res judicata, and entitled to full faith and credit, except as they might be superseded by federal law. See 28 U.S.C. § 1738.

Therefore, at the bankruptcy petition date, the equalization payment and spousal support liabilities were distinct debts created under one judgment. See § 101(12) (defining "debt" as a "liability on a claim") and § 101(5) (defining "claim" as a "right to payment"). There is nothing unique about a judgment which resolves multiple claims. See Rule 7054/FRCP 54(b).

Furthermore, the Code provides separate exceptions from the discharge for debts which are in the nature of alimony, support,

or maintenance (§ 523(a)(5)) and other kinds of dissolution-related debts (§ 523(a)(15)). A bankruptcy court has the statutory and equitable authority to discharge separate liabilities, or even to grant partial discharge of individual liabilities. See Graves v. Myrvang (In re Myrvang), 232 F.3d 1116, 1124 (9th Cir. 2000) (holding that "a bankruptcy court has the discretion to order a partial discharge of a separate debt arising out of the terms of a divorce decree.").

In this case, the bankruptcy court addressed the spousal support obligation under § 523(a)(5) in the summary judgment proceeding. It recognized the independent standing of the support judgment when it stated: "I think A15 [§ 523(a)(15)] has nothing to do with this determination about A5 [§ 523(a)(5)]." Tr. of Proceedings (Sept. 25, 2004), p. 7:4-5. The bankruptcy court's analysis was correct.

Interestingly, Debtor's case authority, Gurrola, supports Ms. Zamos' position that these are independent debts. In Gurrola, the BAP held that § 524(a)(1) voids a judgment at any time obtained specifically as to "the discharged debt," Gurrola, 328 B.R. at 171, and that such judgment would be void "with respect to the personal liability of the debtor for a specific discharged debt . . . ." Id. at 176 (emphasis added). Moreover, the BAP, in Gurrola, held that § 524(a)(1) does not determine which debts have been discharged. Id. at 164 ("As a matter of 'plain English,' the language of § 524(a)(1), although circular with respect to the irrelevant issue of which debts are discharged . . . is both unambiguous and absolute as to questions of effect, time, and waiver.").

Debtor's argument that § 524(a) voided the state court judgment in its entirety also ignores the words of that statute, "voids any judgment . . . to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged . . . ." 11 U.S.C. § 524(a)(1) (emphasis added). Notwithstanding that Gurrola dealt with a single judgment rather than multiple claims arising from one judgment, that case nonetheless emphasized the specificity of § 524(a) in regards to only the discharged liability.

Finally, the 2000 Judgment for spousal support must stand as a matter of comity. As discussed below, the parties and the state court agreed that a continuing spousal support award would compensate Ms. Zamos for any default by Debtor under the Interlocutory Judgment and Settlement Agreement. That same court had jurisdiction to designate a potential future debt as spousal support. See Siragusa v. Siragusa (In re Siragusa), 27 F.3d 406, 408 (9th Cir. 1994) (holding that state courts are the appropriate forum in which to decide divorce and alimony matters and adding that they have concurrent jurisdiction with bankruptcy courts to decide the § 523(a)(5) issues). A state court always has jurisdiction to modify support awards to ensure fairness. See id. at 407; cf. In re Marriage of Clements, 134 Cal. App. 3d 737, 746, 184 Cal. Rptr. 756, 761 (1982) (after the bankrupt wife discharged her liability on the community debt, a California court compensated the husband by reducing the amount of his nondischargeable spousal support payments).

Siragusa is instructive. There, the debtor-husband filed bankruptcy and discharged a $1.2 million property settlement

obligation to the wife. The wife then returned to state court seeking a modification of her alimony payments, which had been scheduled to terminate. The state court granted her motion and ordered alimony payments of $7,500 month to continue until her remarriage or the death of either party. Siragusa, 27 F.3d at 407.

The debtor then filed a complaint in bankruptcy court asserting, as here, that the alimony modification constituted a "repackaging" of the discharged property settlement amounts and thus violated the § 524(a) discharge injunction. Id. The bankruptcy court deferred to the state court's judgment based on comity, and the district court affirmed. Id. at 408.

The Ninth Circuit affirmed on the same basis, noting that a state court has concurrent jurisdiction to determine whether a debt stemming from a divorce is in the nature of alimony or is instead a property settlement. Id. In dicta, it stated that the modification was proper because the discharge of the property settlement debt was a "changed circumstance." Id. It further stated:

> Nothing in the record suggests that the divorce court was attempting to reinstate the property settlement debt; the amount awarded in alimony is not a substitute for the amount of the discharged property settlement. The alimony modification merely takes into account the fact that Ms. Siragusa would no longer receive the property settlement payments upon which the original alimony was premised. The discharge altered both Ms. Siragusa's need and Dr. Siragusa's ability to pay.

Id.

This is closely analogous to what happened in the instant case. Here, the state court had proper jurisdiction to enter an award for spousal support and to order that such obligation would

continue unless Debtor completed all of his required payments. Thus, it was agreed, in advance of bankruptcy, that a default in a potentially dischargeable liability would create an increase in, or a continuation of, a potentially nondischargeable one.

The 2000 Judgment enforced the Interlocutory Judgment and created distinctly different liabilities. As noted above, Debtor now seeks the same windfall as did the debtor in Siragusa. Not only has he been relieved of his dischargeable obligations, but he also seeks to discharge his nondischargeable support obligation. As Siragusa shows, Debtor cannot have it both ways.

In summary, it does not follow that, because the equalization payment portion of the 2000 Judgment was discharged, the spousal support component was automatically discharged, as well. The equalization payment portion of the judgment was "void" because it had been discharged; however, the spousal support portion of the judgment was not discharged and is still a valid and clearly nondischargeable debt under § 523(a)(5).

B. Whether the 2000 Judgment for Spousal Support was Nondischargeable - § 523(a)(5)(B)

Generally, in bankruptcy proceedings, payments for spousal support are nondischargeable, whereas property settlement payments intended to effect the equitable division of community property are dischargeable. See Siragusa, 27 F.3d at 407; see also §§ 523(a)(5) and (a)(15).

Spousal support payments are nondischargeable pursuant to § 523(a)(5), which provides, in pertinent part:

(a) A discharge under section 727 . . . does not discharge an

> individual debtor from any debt—
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> (5) to a spouse, former spouse . . . for alimony to, maintenance for, or support of such spouse . . . but not to the extent that—
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> . . . .
>
> (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).

"Like all other exceptions to discharge, analysis under section 523(a)(5) begins with the principle that discharge is favored under the Bankruptcy Code . . . ." Gard v. Gibson (In re Gibson), 103 B.R. 218, 220 (9th Cir. BAP 1989). The analysis is tempered with the equally important policy favoring the enforcement of familial obligations. Beaupied v. Chang (In re Chang), 163 F.3d 1138, 1140 (9th Cir. 1998). Thus, the terms "alimony" and "spousal support" are given a broad construction in order to promote the Congressional policy that favors enforcement of obligations for spousal support. 4 Collier on Bankruptcy ¶ 523.11[2], at 523-78 (15th ed. rev. 2005).

"Whether an obligation arising out of a divorce is nondischargeable support under § 523(a)(5) is a question of federal law, and the labels used by the state court are not binding." Seixas, 239 B.R. at 402. Rather, a bankruptcy court must look beyond the language of any agreement, judgment or decree to the intent of the parties and to the substance of the obligation. Id. (citing Shaver v. Shaver, 736 F.2d 1314, 1316 (9th Cir. 1984)).

The Ninth Circuit applies a two-part test, looking to the "intent" of the award and to the actual "substance" of the obligation. Shaver, 736 F.2d at 1316. While it is not bound by state law, a bankruptcy court may consult it for guidance. Chang, 163 F.3d at 1140; Gibson, 103 B.R. at 220. "Where the award was rendered in a contested proceeding, another relevant fact is the intent of the state court." Gionis v. Wayne (In re Gionis), 170 B.R. 675, 682 (9th Cir. BAP 1994) (citing Shaver, 736 F.2d at 1316), aff'd, 92 F.3d 1192 (9th Cir. 1996).

In determining whether a debtor's obligation is in the nature of support, the intent of the parties and circumstances at the time the settlement agreement is executed is dispositive, and not the current circumstances of the parties. Friedkin v. Sternberg (In re Sternberg), 85 F.3d 1400, 1405 (9th Cir. 1996), overruled on other grounds, Murray v. Bammer (In re Bammer), 131 F.3d 788, 792 (9th Cir. 1997); Combs, 101 B.R. at 615.

The evidence submitted by Debtor on summary judgment basically consisted of the Separation Agreement and Interlocutory Judgment, and the 2000 Judgment and hearing transcript. Both the Interlocutory Judgment and Settlement Agreement provided, in pertinent part:

> Petitioner shall pay to Respondent as and for spousal support the sum of $750 per month for a period of ten (10) years payable on the first of each and every month commencing May 1, 1982, and continuing through April 30, 1992, at which time spousal support shall terminate, provided that all payments required to be made by Petitioner to Respondent pursuant to their Marital Settlement Agreement and under this Interlocutory Judgment, wherever set forth, were made . . . . In the event that any such payments . . . are outstanding and unpaid on April 30, 1992, then spousal support . . . shall continue to be payable in the amount currently payable in April 1992 until further order of Court. . . .

Interlocutory Judgment, at 3, ¶ 3 (emphasis added).

Debtor does not dispute that the Interlocutory Judgment and Settlement Agreement evidenced his intention to provide Ms. Zamos with spousal support. Nor does he dispute that the Incentive Provision provided for the continuation of such spousal support in the event of a default in obligations under other portions of the judgment.

Rather, Debtor maintains that, under federal law, a support award which "springs from" a default in payment of a discharged debt cannot be in the nature of spousal support. In other words, he contends that the 2000 Judgment merely substituted an obligation denominated as "spousal support" for a discharged debt--the equalization payment, which, in turn, was a division of property and unrelated to Ms. Zamos' financial need.

We disagree. This argument is inconsistent with the parties' clear and undisputed intentions at the time that they entered into the Settlement Agreement. "Under California law, a written contract must be read as a whole, and every part must be interpreted with reference to the whole," with the goal of giving effect to the mutual intent of the parties as it existed at the time of contracting. Ruhlen v. Montgomery (In re Montgomery), 310 B.R. 169, 178-79 (Bankr. C.D. Cal. 2004) (citing Beal Bank v. Crystal Props., Ltd., L.P. (In re Crystal Props., Ltd., L.P.), 268 F.3d 743, 747 (9th Cir. 2001)); Cal. Civ. Code §§ 1636, 1641. "If contractual language is clear and explicit, it governs." Bennett, 298 F.3d at 1064 (discussing California law).

The Interlocutory Judgment and Settlement Agreement unambiguously created a present and future obligation for spousal

support, notwithstanding that the Incentive Provision was coincidentally an inducement for payment of the equalization debt. The clear intent of the parties was to provide a certain income stream for Ms. Zamos, which could terminate after ten years only if it were replaced by the $40,000 equalization payment. In order to ensure this outcome, the parties placed the Incentive Provision into their Settlement Agreement as a "condition precedent." It provided that the spousal support obligation would terminate only if all of the payments had been made in a timely manner. Such inducement provisions are not novel in the area of contracts.

A "condition precedent" is defined as "an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due." 1 Witkin, Summary of Cal. Law Contracts, § 724, p. 656 (9th ed. 1987) (citing RESTATEMENT (SECOND) CONTRACTS §§ 224, 225). Or, "[a] condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." Cal. Civ. Code § 1436. "As a general rule, contract language is construed as a condition concurrent, and not as a condition precedent, unless there is clear, express language in the contract that plainly requires interpretation of the provision as a condition precedent. . . . Such words as 'if,' 'provided,' and 'on condition that' are words of express condition precedent." H. Miller and M. Starr, 1 Cal. Real Est. § 1:158 (Thompson/West 3d ed. 2005) (citing Diepenbrock v. Luiz, 159 Cal. 716, 718, 115 P. 743 (1911)).

The Settlement Agreement used the words "provided that all payments required to be made . . . were made." Therefore, the

bankruptcy court's contract interpretation was correct, and was corroborated by the Interlocutory Judgment.[7]

In his argument that the bankruptcy court reached the wrong conclusion, Debtor relies on Duffy v. Taback (In re Duffy), 331 B.R. 137 (Bankr. S.D.N.Y. 2005). In that case, the parties agreed to settle a contested divorce proceeding by entry of an order for $240,000 payable over ten years to the wife as "spousal maintenance." The bankruptcy court analyzed the nature of the award and determined that it was actually an equitable distribution of marital property. Id. at 142.

The facts in Duffy are distinguishable from this case. In Duffy, the parties stipulated to a trial on one issue only, "equitable distribution," and no claim for spousal support was made in the proceedings. Id. In contrast, in our case, spousal support was one of several obligations upon which the parties expressly agreed.

Also, in Duffy, the state court judgment made only one large award, designating it as spousal maintenance; the judgment did not include any other form of property division. The bankruptcy court found that the payments were merely treated as alimony for tax purposes but were in the nature of a property distribution. Id. at 144. Here, the Interlocutory Judgment as well as the 2000 Judgment contained awards of spousal maintenance, child support, and a non-support equalization payment. There clearly was a

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[7] Because we resolve only a legal issue, we do not need to examine the factors usually applied by courts in determining whether an obligation is intended for support, which focus on the recipient spouse's need for support. See Shaver, 736 F.2d at 1316; Combs, 101 B.R. at 616 (listing factors).

delineation among the types of debt and the reasons for separate liabilities.

Debtor also complains that there was no review of Ms. Zamos' financial need for spousal support after 1992. We have previously stated that circumstances occurring after the initial contract are not relevant to the § 523(a)(5) inquiry into the parties' intentions. Seixas, 239 B.R. at 403; Jodoin, 209 B.R. at 135 (referring to § 523(a)(5)'s "rear view mirror' analysis'") (citation omitted).

Debtor's remedy lies in obtaining a modification of his spousal support judgment in state court if he believes such amount to be inappropriate. See Siragusa, 27 F.3d at 408 (stating that "divorce and alimony are exclusively matters of state law"); Sternberg, 85 F.3d at 1407 ("Whether the monthly payments are modifiable under state law is not a dispositive factor in determining whether the parties intended to create a spousal support obligation for purposes of 11 U.S.C. § 523(a)(5)."); Comer v. Comer (In re Comer), 27 B.R. 1018, 1020-21 (9th Cir. BAP 1983) (bankruptcy courts are not free to alter the amounts owed in final divorce court judgments), aff'd, 723 F.2d 737 (9th Cir. 1984).

We conclude that the Settlement Agreement and Interlocutory Judgment created both a present judgment for spousal support and a condition precedent for the release of that obligation at a date certain. Debtor failed to fulfill the condition precedent, and therefore the spousal support obligation continued on, until it was properly liquidated by the state court's 2000 Judgment.

CONCLUSION

On a motion for summary judgment, the bankruptcy court did not err in determining that there were no genuine issues of material fact and that the 2000 Judgment for spousal support in the amount of $66,500 was actually in the nature of alimony, maintenance, or support and was therefore nondischargeable pursuant to § 523(a)(5). We **AFFIRM.**