

MAR 30 2006

NOT FOR PUBLICATION

HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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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.	)	<b><u>MEMORANDUM</u></b> <sup>1</sup>	
	)		
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.

<sup>1</sup> 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.

1 **OVERVIEW**

2  
3 In their prepetition dissolution judgment, debtor Jerome  
4 Zamos ("Debtor") and his wife Patricia K. Zamos ("Ms. Zamos")  
5 stipulated that if Debtor failed to make all the agreed-upon  
6 payments to Ms. Zamos, including spousal support, a property  
7 equalization payment, and child support, by April 30, 1992, then  
8 spousal support would continue until further court order.  
9 However, if he did all he was supposed to, payments would  
10 effectively cease after that date. Debtor failed to comply.

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

16 When Debtor filed for bankruptcy protection in 2003, Ms.  
17 Zamos sought a determination that the equalization payment was a  
18 nondischargeable, non-support debt, pursuant to § 523(a)(15) (the  
19 exception to discharge for divorce-related debts other than  
20 support).<sup>2</sup>

21 Debtor filed a response and cross-complaint under § 523(a)(5)  
22 (an exception to discharge for support). He asserted that the  
23 equalization debt was dischargeable, and thus the spousal support  
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25 <sup>2</sup> Unless otherwise indicated, all "chapter," "section," and  
26 "Code" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
27 1330, in effect when this case was filed, and prior to the  
28 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").

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

2       On the § 523(a)(5) issue, the bankruptcy court found that the  
3 parties had intended, from the inception of their Settlement  
4 Agreement, that the satisfaction of all payments would be a  
5 condition precedent to Debtor's release from the spousal support  
6 obligation. It found no factual issues worthy of trial on that  
7 issue and declared the spousal support obligation to be  
8 nondischargeable under § 523(a)(5). After a trial on the  
9 § 523(a)(15) issue, the bankruptcy court then determined that the  
10 equalization debt was dischargeable under that provision.

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

17       We AFFIRM.

18

19

**FACTS**

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21       Debtor, an attorney, and Ms. Zamos were married from 1962 to  
22 1982. Their dissolution proceedings culminated in an  
23 interlocutory judgment of dissolution ("Interlocutory Judgment"),  
24 in 1982, which restated the terms of their marital settlement  
25 agreement ("Settlement Agreement"). A stipulated final judgment  
26 of dissolution was entered in 1983.

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

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

16 The equalization payment portion of the Interlocutory  
17 Judgment and Settlement Agreement required Debtor to pay Ms. Zamos  
18 \$40,000 for her community property interest in Debtor's law  
19 practice. Debtor executed a promissory note for that purpose and  
20 was to make lump-sum payments in 1983 and 1984--an agreement which  
21 he did not fulfill.

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

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27 <sup>3</sup> In 1989, the state court reduced the spousal support to  
28 \$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.

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

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

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

15 Ms. Zamos filed a timely complaint to determine the  
16 equalization portion of the 2000 Judgment nondischargeable under  
17 § 523(a)(15). Debtor denied her claim of nondischargeability, and  
18 filed a cross-complaint alleging that the spousal support portion  
19 was dischargeable, under § 523(a)(5), because it was not "actually  
20 in the nature of alimony, maintenance, or support." See 11 U.S.C.  
21 § 523(a)(5)(B). Debtor then filed a motion for summary judgment  
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25 <sup>4</sup> Only the \$66,500 judgment is at issue in this appeal. The  
26 2000 Judgment also awarded Ms. Zamos \$3,919 for child support  
27 arrearages, (which accrued after April, 1992 and, therefore, are  
28 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.

1 on the § 523(a)(5) spousal support issue.<sup>5</sup> However, the  
2 bankruptcy court held the § 523(a)(15) issue over for trial.

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

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

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

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26 <sup>5</sup> The panel has previously countenanced the summary judgment  
27 procedure in the determination of whether a debt is a  
28 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).



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

9 We review de novo the bankruptcy court's interpretation of  
10 the Code and the Settlement Agreement. See Seixas, 239 B.R. at  
11 401; see also County of Santa Cruz v. Cervantes (In re Cervantes),  
12 219 F.3d 955, 959 (9th Cir. 2000) (Code interpretation), and  
13 Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1064 (9th Cir.  
14 2002) (contract interpretation under California law).

## 15 16 DISCUSSION

### 17 18 A. Whether § 524(a) Voided the 2000 Judgment for Spousal 19 Support Due to the Discharged Equalization Payment

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

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1 Debtor relies on § 524,<sup>6</sup> which provides, in pertinent part:

2 (a) A discharge in a case under this title—

3 (1) voids any judgment at any time obtained, to the  
4 extent that such judgment is a determination of  
5 the extent of the personal liability of the  
6 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; . . .

7 11 U.S.C. § 523(a) (1).

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

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

23 Second, Ms. Zamos argues that § 524 is specific with respect  
24 to the debtor’s liability for a particular discharged debt, and  
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26 <sup>6</sup> Debtor has not raised a prohibited private right of action  
27 under § 524(a) (1), but merely seeks declaratory relief. See  
28 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).

1 the spousal support obligation was a distinct debt from the  
2 discharged equalization payment. In other words, the terms of  
3 § 524(a) would not allow the voiding of an entire judgment  
4 containing more than one liability, but only voids such portion of  
5 the judgment respecting the specific, discharged debt.

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

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

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

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

1 or maintenance (§ 523(a)(5)) and other kinds of dissolution-  
2 related debts (§ 523(a)(15)). A bankruptcy court has the  
3 statutory and equitable authority to discharge separate  
4 liabilities, or even to grant partial discharge of individual  
5 liabilities. See Graves v. Myrvang (In re Myrvang), 232 F.3d  
6 1116, 1124 (9th Cir. 2000) (holding that "a bankruptcy court has  
7 the discretion to order a partial discharge of a separate debt  
8 arising out of the terms of a divorce decree.").

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

16 Interestingly, Debtor's case authority, Gurrola, supports Ms.  
17 Zamos' position that these are independent debts. In Gurrola, the  
18 BAP held that § 524(a)(1) voids a judgment at any time obtained  
19 specifically as to "the discharged debt," Gurrola, 328 B.R. at  
20 171, and that such judgment would be void "with respect to the  
21 personal liability of the debtor for a specific discharged debt  
22 . . . ." Id. at 176 (emphasis added). Moreover, the BAP, in  
23 Gurrola, held that § 524(a)(1) does not determine which debts have  
24 been discharged. Id. at 164 ("As a matter of 'plain English,' the  
25 language of § 524(a)(1), although circular with respect to the  
26 irrelevant issue of which debts are discharged . . . is both  
27 unambiguous and absolute as to questions of effect, time, and  
28 waiver.").

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

10 Finally, the 2000 Judgment for spousal support must stand as  
11 a matter of comity. As discussed below, the parties and the state  
12 court agreed that a continuing spousal support award would  
13 compensate Ms. Zamos for any default by Debtor under the  
14 Interlocutory Judgment and Settlement Agreement. That same court  
15 had jurisdiction to designate a potential future debt as spousal  
16 support. See Siragusa v. Siragusa (In re Siragusa), 27 F.3d 406,  
17 408 (9th Cir. 1994) (holding that state courts are the appropriate  
18 forum in which to decide divorce and alimony matters and adding  
19 that they have concurrent jurisdiction with bankruptcy courts to  
20 decide the § 523(a)(5) issues). A state court always has  
21 jurisdiction to modify support awards to ensure fairness. See id.  
22 at 407; cf. In re Marriage of Clements, 134 Cal. App. 3d 737, 746,  
23 184 Cal. Rptr. 756, 761 (1982) (after the bankrupt wife discharged  
24 her liability on the community debt, a California court  
25 compensated the husband by reducing the amount of his  
26 nondischargeable spousal support payments).

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

1 obligation to the wife. The wife then returned to state court  
2 seeking a modification of her alimony payments, which had been  
3 scheduled to terminate. The state court granted her motion and  
4 ordered alimony payments of \$7,500 month to continue until her  
5 remarriage or the death of either party. Siragusa, 27 F.3d at  
6 407.

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

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

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

25 Id.

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

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

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

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

18

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

21 Generally, in bankruptcy proceedings, payments for spousal  
22 support are nondischargeable, whereas property settlement payments  
23 intended to effect the equitable division of community property  
24 are dischargeable. See Siragusa, 27 F.3d at 407; see also  
25 §§ 523(a) (5) and (a) (15).

26 Spousal support payments are nondischargeable pursuant to  
27 § 523(a) (5), which provides, in pertinent part:

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

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individual debtor from any debt—

(5) to a spouse, former spouse . . . for alimony to, maintenance for, or support of such spouse . . . but not to the extent that—

. . . .

(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)).

1           The Ninth Circuit applies a two-part test, looking to the  
2 "intent" of the award and to the actual "substance" of the  
3 obligation. Shaver, 736 F.2d at 1316. While it is not bound by  
4 state law, a bankruptcy court may consult it for guidance. Chang,  
5 163 F.3d at 1140; Gibson, 103 B.R. at 220. "Where the award was  
6 rendered in a contested proceeding, another relevant fact is the  
7 intent of the state court." Gionis v. Wayne (In re Gionis), 170  
8 B.R. 675, 682 (9th Cir. BAP 1994) (citing Shaver, 736 F.2d at  
9 1316), aff'd, 92 F.3d 1192 (9th Cir. 1996).

10           In determining whether a debtor's obligation is in the nature  
11 of support, the intent of the parties and circumstances at the  
12 time the settlement agreement is executed is dispositive, and not  
13 the current circumstances of the parties. Friedkin v. Sternberg  
14 (In re Sternberg), 85 F.3d 1400, 1405 (9th Cir. 1996), overruled  
15 on other grounds, Murray v. Bammer (In re Bammer), 131 F.3d 788,  
16 792 (9th Cir. 1997); Combs, 101 B.R. at 615.

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

22           Petitioner shall pay to Respondent as and for spousal  
23 support the sum of \$750 per month for a period of ten (10)  
24 years payable on the first of each and every month  
25 commencing May 1, 1982, and continuing through April 30,  
26 1992, at which time spousal support shall terminate,  
27 provided that all payments required to be made by  
28 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. . . .

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

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

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

15 We disagree. This argument is inconsistent with the parties'  
16 clear and undisputed intentions at the time that they entered into  
17 the Settlement Agreement. "Under California law, a written  
18 contract must be read as a whole, and every part must be  
19 interpreted with reference to the whole," with the goal of giving  
20 effect to the mutual intent of the parties as it existed at the  
21 time of contracting. Ruhlen v. Montgomery (In re Montgomery), 310  
22 B.R. 169, 178-79 (Bankr. C.D. Cal. 2004) (citing Beal Bank v.  
23 Crystal Props., Ltd., L.P. (In re Crystal Props., Ltd., L.P.), 268  
24 F.3d 743, 747 (9th Cir. 2001)); Cal. Civ. Code §§ 1636, 1641. "If  
25 contractual language is clear and explicit, it governs." Bennett,  
26 298 F.3d at 1064 (discussing California law).

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

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

11 A "condition precedent" is defined as "an event, not certain  
12 to occur, which must occur, unless its non-occurrence is excused,  
13 before performance under a contract becomes due." 1 Witkin,  
14 Summary of Cal. Law Contracts, § 724, p. 656 (9th ed. 1987)  
15 (citing RESTATEMENT (SECOND) CONTRACTS §§ 224, 225). Or, "[a]  
16 condition precedent is one which is to be performed before some  
17 right dependent thereon accrues, or some act dependent thereon is  
18 performed." Cal. Civ. Code § 1436. "As a general rule, contract  
19 language is construed as a condition concurrent, and not as a  
20 condition precedent, unless there is clear, express language in  
21 the contract that plainly requires interpretation of the provision  
22 as a condition precedent. . . . Such words as 'if,' 'provided,'  
23 and 'on condition that' are words of express condition precedent."  
24 H. Miller and M. Starr, 1 Cal. Real Est. § 1:158 (Thompson/West 3d  
25 ed. 2005) (citing Diepenbrock v. Luiz, 159 Cal. 716, 718, 115 P.  
26 743 (1911)).

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

1 bankruptcy court's contract interpretation was correct, and was  
2 corroborated by the Interlocutory Judgment.<sup>7</sup>

3 In his argument that the bankruptcy court reached the wrong  
4 conclusion, Debtor relies on Duffy v. Taback (In re Duffy), 331  
5 B.R. 137 (Bankr. S.D.N.Y. 2005). In that case, the parties agreed  
6 to settle a contested divorce proceeding by entry of an order for  
7 \$240,000 payable over ten years to the wife as "spousal  
8 maintenance." The bankruptcy court analyzed the nature of the  
9 award and determined that it was actually an equitable  
10 distribution of marital property. Id. at 142.

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

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

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25  
26 <sup>7</sup> Because we resolve only a legal issue, we do not need to  
27 examine the factors usually applied by courts in determining  
28 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).

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

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

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

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

27

28

CONCLUSION

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