

JAN 16 2014

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No.	CC-13-1099-KuBaPa
6	PATRICIA GUNNESS,	)	Bk. No.	SV 11-18699-VK
7	Debtor.	)	Adv. No.	SV 11-01590-VK
8	_____	)		
9	JEANETTE BENDETTI; DAVID KARTON,	)		
10	Appellants,	)		
11	v.	)	<b>OPINION</b>	
12	PATRICIA GUNNESS,	)		
13	Appellee.	)		
	_____	)		

Argued and Submitted on November 21, 2013  
at Pasadena, California

Filed - January 16, 2014

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

Honorable Victoria S. Kaufman, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
 John R. Yates of Greenberg & Bass LLP argued for  
 appellants Jeanette Bendetti and David Karton;  
 Daniel B. Spitzer argued for appellee Patricia  
 Gunness.

Before: KURTZ, BALLINGER\* and PAPPAS, Bankruptcy Judges.

\_\_\_\_\_  
 \* Hon. Eddward P. Ballinger, Jr., United States Bankruptcy  
 Judge for the District of Arizona, sitting by designation.

1 KURTZ, Bankruptcy Judge:  
2

3 **INTRODUCTION**

4 The debtor filed an adversary proceeding against her  
5 husband's ex-wife and the ex-wife's family law attorney seeking a  
6 determination that the debt she owes to the husband's ex-wife is  
7 dischargeable. The bankruptcy court granted summary judgment in  
8 favor of the debtor, holding that neither 11 U.S.C. § 523(a)(5)<sup>1</sup>  
9 nor § 523(a)(15) apply to the debt. The ex-wife and her attorney  
10 appealed.

11 Because the debt lacks the requisite connection to "a  
12 spouse, former spouse, or child of the debtor" (emphasis added),  
13 we agree with the bankruptcy court that § 523(a)(5) and  
14 § 523(a)(15) are inapplicable. We AFFIRM.

15 **FACTS**

16 The key facts are undisputed. At the time of her bankruptcy  
17 filing, debtor Patricia Gunness and her husband Paul Bendetti  
18 jointly and severally owed roughly \$280,000 in attorney's fees to  
19 Paul's ex-wife Jeanette Bendetti. The attorney's fee awards were  
20 issued pendente lite by the Los Angeles County Superior Court in  
21 a fraudulent transfer lawsuit Jeanette filed in 2008 against both  
22 Paul and Patricia (LASC Case No. ED 008 213). In turn, the  
23 fraudulent transfer lawsuit was part of the dissolution  
24 proceedings between Paul and Jeanette. Even though the  
25

---

26 <sup>1</sup> Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 dissolution proceedings were commenced in 1993, and a dissolution  
2 judgment issued in 1994, the 2008 fraudulent transfer lawsuit was  
3 filed in and connected to the dissolution proceedings because  
4 Jeanette claimed that, unbeknownst to her at the time, Paul had  
5 fraudulently transferred some of their community property assets  
6 to Patricia.

7 Both sides have sparred over the nature of the fee awards,  
8 in the sense of whether they are attributable to the dissolution  
9 proceedings, the fraudulent transfer lawsuit, or both, and  
10 whether the awards were needs based, conduct based, or both.  
11 These disputes are irrelevant to our resolution of this appeal.

12 In July 2011, Patricia commenced her chapter 7 bankruptcy  
13 case, and in October 2011 she commenced an adversary proceeding  
14 against Jeanette and Jeanette's family law counsel David Karton,  
15 to whom some of the fee awards were directly payable. In her  
16 complaint, Patricia sought a determination that neither  
17 § 523(a)(5) nor § 523(a)(15) applied to the fee awards. Among  
18 other things, Patricia asserted in the complaint that the two  
19 statutory provisions did not apply because the fee awards were  
20 not owed to or recoverable by "a spouse, former spouse or child  
21 of the debtor." See § 101(14A)(A)(i); § 523(a)(15).

22 In June 2012, Patricia filed a summary judgment motion based  
23 in part on the same assertions regarding the applicability of  
24 § 523(a)(5) and § 523(a)(15) she made in her complaint. Jeanette  
25 and Karton opposed the motion. They admitted that neither of  
26 them technically was a spouse, former spouse, or child of  
27 Patricia's. But they pointed to a number of cases interpreting  
28 the scope of § 523(a)(5) or § 523(a)(15) that have either

1 downplayed or ignored the identity of the payee/creditor, instead  
2 choosing to focus on the underlying nature of the debt and  
3 whether the debt in substance constituted a support award  
4 (covered by § 523(a)(5)) or a non-support domestic relations  
5 award (covered by § 523(a)(15)). These cases, Jeanette and  
6 Karton reasoned, demonstrated that the fee awards should be  
7 deemed to be owed to or recoverable by a spouse, former spouse,  
8 or child of the debtor in part because of the underlying nature  
9 of the fee awards and in part because the state court joined  
10 Patricia as a party to the dissolution proceedings. According to  
11 Jeanette and Karton, this made Jeanette the equivalent of a  
12 spouse, former spouse or child of the debtor. As they put it:

13 [Patricia] . . . ignores the fact that she is a party  
14 to the divorce proceeding. As such, she is essentially  
15 a spouse because, absent the court ordering her joined  
as a party, only the husband and the wife can be  
parties to a dissolution proceeding.

16 Defendants' Opposition to Motion for Summary Judgment (July 24,  
17 2012) at 9:19-22.<sup>2</sup>

18 The bankruptcy court disagreed with Jeanette's and Karton's  
19 broad interpretation of § 523(a)(5) and § 523(a)(15). The  
20 bankruptcy court acknowledged the decisions holding that these  
21 two provisions do not necessarily require the payee of the debt  
22 to be the spouse, former spouse or child of the debtor. But the  
23 court concluded that these cases were inapposite. In reaching

---

24  
25 <sup>2</sup>See also *id.* at 10:6-8 ("once Patricia was joined as a  
26 party to the dissolution action, she comes within the non-  
27 dischargeability provisions of § 523(a)(15), and, presumably  
28 § 523(a)(5)."); *id.* at 9:23-24 ("the order for joinder may well  
be the most significant factor in support of Defendants'  
contention that the debt owed them from Patricia should not be  
discharged.")

1 this conclusion, the bankruptcy court focused on the fact that  
2 there was no familial relationship between Patricia and Jeanette.  
3 According to the court, the purpose, intent, and plain meaning of  
4 § 523(a)(5) and § 523(a)(15) all required the specified type of  
5 familial relationship as a prerequisite to nondischargeability.  
6 Without the requisite familial relationship, the court reasoned,  
7 the provisions simply did not apply.

8 On February 15, 2013, the bankruptcy court entered both an  
9 order granting summary judgment and a separate judgment in  
10 Patricia's favor disposing of the adversary proceeding. Jeanette  
11 and Karton timely filed their notice of appeal on February 27,  
12 2013.

#### 13 JURISDICTION

14 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
15 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
16 § 158.

#### 17 ISSUE

18 In the process of granting summary judgment, did the  
19 bankruptcy court incorrectly hold that § 523(a)(5) and  
20 § 523(a)(15) did not apply because the subject debt was not  
21 connected to a spouse, former spouse or child of the debtor?

#### 22 STANDARDS OF REVIEW

23 We review summary judgment rulings de novo. Bendon v.  
24 Reynolds (In re Reynolds), 479 B.R. 67, 71 (9th Cir. BAP 2012).  
25 The bankruptcy court's decision that a claim is dischargeable  
26 also is subject to de novo review. See Miller v. United States,  
27 363 F.3d 999, 1004 (9th Cir. 2004). So is the bankruptcy court's  
28 interpretation of the Bankruptcy Code. See Danielson v. Flores

1 (In re Flores), 735 F.3d 855, 856 n.4 (9th Cir. 2013) (en banc).

2 **DISCUSSION**

3 This appeal hinges on a single question of law regarding the  
4 meaning and effect of the phrase "spouse, former spouse or child  
5 of the debtor" as applicable to both § 523(a)(5) and  
6 § 523(a)(15). Given the plain meaning of the language and the  
7 context in which it is used, the phrase appears to limit the  
8 scope of debt nondischargeable under both provisions. Generally  
9 speaking, § 523(a)(5) covers claims in the nature of alimony,  
10 maintenance, or support, while § 523(a)(15) covers other, non-  
11 support obligations arising from domestic relations proceedings.  
12 As to each provision, the phrase "spouse, former spouse or child  
13 of the debtor" on its face appears to specify to whom the debt  
14 must be owed for nondischargeability to apply.<sup>3</sup>

15 Prior to enactment of the Bankruptcy Abuse Prevention and  
16 Consumer Protection Act of 2005, Pub.L. No. 109-8, 119 Stat. 23  
17 ("BAPCPA"), the above-referenced phrase appeared directly in  
18 § 523(a)(5), which at the time read in relevant part as follows:

19 (a) A discharge under section 727, 1141, 1228(a), 1228(b),  
20 or 1328(b) of this title does not discharge an individual

21 <sup>3</sup> Indeed, in addressing this phrase in the context of  
22 discussing nondischargeability under § 523(a)(5), Collier on  
23 Bankruptcy states:

24 Although the courts have not been consistent, the  
25 language of the statute dictates that if the obligation  
26 is not one owed to the spouse, former spouse, or child  
27 of the debtor or such child's parent, legal guardian or  
responsible relative, it is dischargeable under section  
523(a)(5), even though it is in the nature of support.

28 4 Collier on Bankruptcy ¶ 523.11[4] (Alan N. Resnick & Henry J.  
Sommer eds., 16th ed., 2013).

1 debtor from any debt -

2 \* \* \*

3 (5) to a spouse, former spouse, or child of the debtor,  
4 for alimony to, maintenance for, or support of such  
5 spouse or child, in connection with a separation  
6 agreement, divorce decree or other order of a court of  
7 record, determination made in accordance with State or  
8 territorial law by a governmental unit, or property  
9 settlement agreement . . . .

7 (Emphasis added.)

8 BAPCPA restructured § 523(a)(5) by simply declaring  
9 nondischargeable a debt "for a domestic support obligation" and  
10 moving and refining the detail of what constitutes a domestic  
11 support obligation into a new definitional provision, § 101(14A),  
12 which specifies that:

13 The term "domestic support obligation" means a debt  
14 that accrues before, on, or after the date of the order  
15 for relief in a case under this title, including  
16 interest that accrues on that debt as provided under  
17 applicable nonbankruptcy law notwithstanding any other  
18 provision of this title, that is --

17 (A) owed to or recoverable by --

18 (i) a spouse, former spouse, or child of the  
19 debtor or such child's parent, legal guardian, or  
20 responsible relative;<sup>4</sup> or

20 (ii) a governmental unit;

21 (B) in the nature of alimony, maintenance, or support  
22 (including assistance provided by a governmental unit)  
23 of such spouse, former spouse, or child of the debtor  
24 or such child's parent, without regard to whether such  
25 debt is expressly so designated;

24 (C) established or subject to establishment before, on,  
25 or after the date of the order for relief in a case

---

26 <sup>4</sup> BAPCPA added to the end of the phrase "spouse, former  
27 spouse, or child of the debtor" the following supplemental  
28 phrase: "or such child's parent, legal guardian, or responsible  
relative." The supplemental phrase is not at issue in this  
appeal because it is undisputed here that we are not in any way  
dealing with a child of the debtor.

1 under this title, by reason of applicable provisions  
2 of--

3 (i) a separation agreement, divorce decree, or  
4 property settlement agreement;

5 (ii) an order of a court of record; or

6 (iii) a determination made in accordance with  
7 applicable nonbankruptcy law by a governmental  
8 unit; and

9 (D) not assigned to a nongovernmental entity, unless  
10 that obligation is assigned voluntarily by the spouse,  
11 former spouse, child of the debtor, or such child's  
12 parent, legal guardian, or responsible relative for the  
13 purpose of collecting the debt . . . .

14 (Emphasis added.)

15 This restructuring enabled Congress to utilize a uniform and  
16 detailed definition of the term "domestic support obligation" in  
17 several different sections of the bankruptcy code.<sup>5</sup> Regardless,  
18 both before and after BAPCPA, the phrase "spouse, former spouse  
19 or child of the debtor" was and is part and parcel of  
20 § 523(a)(5), either directly in the text of the statute or  
21 indirectly by application of § 101(14A)'s definition of the term  
22 "domestic support obligation."

23 BAPCPA also significantly altered § 523(a)(15). Before  
24 BAPCPA, a debt otherwise covered by § 523(a)(15) nonetheless was  
25 dischargeable if the debtor was financially unable to repay the  
26 debt or the benefit to the debtor associated with discharge  
27 outweighed the detriment therefrom to the spouse, former spouse  
28 or child of the debtor. See Ashton v. Dollaga (In re Dollaga),

---

29 <sup>5</sup> See 2 Collier on Bankruptcy, supra, at ¶ 101.14A for a  
30 listing of Bankruptcy Code sections in which the term "domestic  
31 support obligation" is used; see also Deemer v. Deemer (In re  
32 Deemer), 360 B.R. 278, 280-81 (Bankr. N.D. Iowa 2007) (noting the  
33 numerous areas of bankruptcy law that the definition affects).



1 260 B.R. 493, 495 (9th Cir. BAP 2001). But BAPCPA removed both  
2 the financial capacity criterion and the weighing of debtor's  
3 benefit against the creditor's detriment. After BAPCPA,  
4 § 523(a)(15) renders nondischargeable any debt:

5 (15) to a spouse, former spouse, or child of the debtor and  
6 not of the kind described in paragraph (5) that is incurred  
7 by the debtor in the course of a divorce or separation or in  
8 connection with a separation agreement, divorce decree or  
accordance with State or territorial law by a governmental  
unit; . . . .

9 (Emphasis added.)

10 Thus, both § 523(a)(5) and § 523(a)(15) are subject to the  
11 same limiting phrase, which references debts to "a spouse, former  
12 spouse, or child of the debtor." Even so, many cases, both  
13 before and after BAPCPA, have de-emphasized or ignored this  
14 phrase, instead choosing to focus on the "nature" of the  
15 underlying debt as determining the applicability of the statute.  
16 See In re Bub, 494 B.R. 786, 795-96 (Bankr. E.D.N.Y. 2013)  
17 (listing cases); Kassicieh v. Battisti (In re Kassicieh), 425  
18 B.R. 467, 474-77 (Bankr. S.D. Ohio 2010) (same).

19 Of these cases, Beaupied v. Chang (In re Chang), 163 F.3d  
20 1138 (9th Cir. 1998), is the only published Ninth Circuit Court  
21 of Appeals decision directly addressing the issue. In In re  
22 Chang, the unmarried father and mother of a minor child were  
23 fighting over custody of the child. The mother accused the  
24 father of sexually abusing the child, which led to the state  
25 court's appointment of a guardian ad litem and a host of neutral  
26 experts and the accrual of nearly \$100,000 in expert and guardian  
27 ad litem fees. Id. at 1140. The father paid most of these fees  
28 during the course of the litigation, but the state court

1 ultimately apportioned liability for the fees such that it  
2 ordered the mother to reimburse the father for a portion of the  
3 fees he paid and further ordered the mother to pay the guardian  
4 ad litem directly for a portion of his fees remaining unpaid.

5 Id.

6 On appeal from a decision of the bankruptcy court declaring  
7 both these debts nondischargeable, this Panel reversed, holding  
8 that neither debt was owed to a spouse, former spouse or child of  
9 the debtor. Chang v. Beaupied (In re Chang), 210 B.R. 578, 582-  
10 83 (9th Cir. BAP 1997). But the Court of Appeals reversed this  
11 Panel and reinstated the bankruptcy court's nondischargeability  
12 judgment. In re Chang, 163 F.3d at 1141-42. The court of  
13 appeals held that "the identity of the payee is less important  
14 than the nature of the debt," id. at 1141, and explained that,  
15 even though the fees were not directly payable to a child of the  
16 debtor - a person explicitly covered by § 523(a)(5) - it was  
17 sufficient that the fees were incurred for that child's benefit  
18 and were in the nature of support for that child. See id. at  
19 1141 & n.1.

20 Some decisions discussing Chang and other, similar cases  
21 have broken down the cases into two distinct lines of authority.  
22 See, e.g., In re Kassicieh, 425 B.R. at 474-77 (listing and  
23 categorizing cases); Simon, Schindler & Sandberg, LLP v.  
24 Gentilini (In re Gentilini), 365 B.R. 251, 254-56 (Bankr. S.D.  
25 Fla. 2007) (same). The first line focuses on whether the debt  
26 arose from goods, services or other benefits or relief provided  
27 to the spouse, former spouse or child of the debtor in  
28 conjunction with domestic relations proceedings. Sometimes, the

1 goods, services, benefits or relief provided have been referred  
2 to as the "bounty" of the debt. See In re Kassicieh, 425 B.R. at  
3 476 (citing Levin v. Greco, 415 B.R. 663, 666-67 (N.D. Ill.  
4 2009)). And the second line of cases focuses on the economic  
5 impact discharge of the debt would have on the spouse, former  
6 spouse or child of the debtor, and whether the state court  
7 presiding over the domestic relations proceedings had provided  
8 for that impact to fall on the debtor. See, e.g., Holliday v.  
9 Kline (In re Kline), 65 F.3d 749, 751 (8th Cir. 1995); Pauley v.  
10 Spong (In re Spong), 661 F.2d 6, 10-11 (2d Cir. 1981).

11 One thing is clear from all of these cases. Even when the  
12 debt was not directly payable or owed to the spouse, former  
13 spouse or child of the debtor, the bounty of that debt had flowed  
14 to one of those family members explicitly covered by the statute,  
15 or the discharge of the debt would have adversely impacted the  
16 finances of one of those explicitly-covered family members.

17 Relying on Chang and other, similar cases, Jeanette and  
18 Karton ask us to hold that the fee awards Patricia owes them are  
19 nondischargeable under either § 523(a)(5) or § 523(a)(15). And  
20 yet they admit that neither of them is a spouse, former spouse,  
21 or child of Patricia's. Additionally, it is uncontroverted that  
22 the bounty of the debt - the benefit of Karton's attorney's  
23 services - did not flow to a spouse, former spouse, or child of  
24 Patricia's. Nor would the discharge of this debt in Patricia's  
25 bankruptcy case adversely affect the finances of a spouse, former  
26 spouse, or child of Patricia's.

27 Because the familial relationships explicitly covered by the  
28 statute are not implicated in the same manner they were

1 implicated in any of the above-referenced decisions, § 523(a)(5)  
2 and § 523(a)(15) are inapplicable. We are not aware of any cases  
3 extending the coverage of these nondischargeability provisions as  
4 far as Jeanette and Karton have asked us to, nor have they cited  
5 us to any such cases.

6 Jeanette and Karton attempt to bridge the gap between them  
7 and Patricia by asserting that the state court effectively  
8 created the missing familial relationship by joining Patricia in  
9 the dissolution proceedings as a party to the fraudulent transfer  
10 lawsuit. In essence, Jeanette and Karton contend that, by  
11 joining Patricia as a party in the dissolution proceedings, the  
12 state court effectively made Jeanette Patricia's spouse or former  
13 spouse for purposes of § 523(a)(5) and § 523(a)(15). We  
14 disagree. The California procedural rule governing joinder on  
15 which they rely, Rule 5.24 of the California Rules of Court, is  
16 there to ensure that interested third parties are joined into  
17 dissolution proceedings when their rights, duties and/or property  
18 interests are at issue in the those proceedings. See Hogoboom &  
19 King, CAL. PRACTICE GUIDE: FAMILY LAW ¶¶ 3:440-3:443 (Rutter Group  
20 2013). The cited procedural rule does not purport to create a  
21 new familial relationship where none previously existed.

22 Alternately, Jeanette and Karton argue that the requisite  
23 familial relationship can be "imputed" to Patricia. According to  
24 Jeanette and Karton, because Patricia's current husband Paul used  
25 to be married to Jeanette and because Patricia allegedly  
26 participated in Paul's scheme to fraudulently transfer community  
27 assets belonging to both Paul and Jeanette, Paul's familial  
28 status as Jeanette's former husband can and should be imputed to

1 Patricia. Once again, Jeanette's and Karton's contention, while  
2 creative, lacks merit. The nondischargeability decisions  
3 addressing imputed conduct, intent and liability are based on  
4 long-established principles of agency and vicarious liability.  
5 See Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa), 287  
6 B.R. 515, 524-26 (9th Cir. BAP 2002)(discussing the historical  
7 development of the law in this area). None of these decisions  
8 and none of these legal principles in any way would support our  
9 imputing a familial relationship between two unrelated parties.

10 On a broader level, Jeanette and Karton contend that the  
11 policy favoring the enforcement of domestic relations obligations  
12 overrides the policy favoring a fresh start for debtors to such  
13 an extent that § 523(a)(5) and § 523(a)(15) should be liberally  
14 construed, unlike other exceptions to discharge. We admit that  
15 some decisions have suggested as much. See In re Kline, 65 F.3d  
16 at 750-51; Shine v. Shine, 802 F.2d 583, 585 (1st Cir. 1986).  
17 But we disagree with these cases on this point. All exceptions  
18 to discharge are to be construed narrowly so that they are  
19 confined to their plainly-expressed terms. See Bullock v.  
20 BankChampaign, N.A., 133 S.Ct. 1754, 1760-61 (2013); Kawaauhau v.  
21 Geiger, 523 U.S. 57, 62 (1998). And the structure of § 523  
22 indicates that all discharge exceptions are subject to the same  
23 general standards, like the applicable burden of proof and scope  
24 of their construction. See Grogan v. Garner, 498 U.S. 279, 287-  
25 88 (1991).

26 Put another way, each exception to discharge represents  
27 Congress' attempt to balance the debtor's entitlement to a fresh  
28 start against strong competing policy concerns. See Bullock, 133

1 S.Ct. at 1761; see also Ghomeshi v. Sabban (In re Sabban), 600  
2 F.3d 1219, 1222 (9th Cir. 2010); In re Chang, 163 F.3d at 1140.  
3 To the extent Congress has not adequately balanced the competing  
4 policies, Congress will need to amend the discharge exceptions.  
5 It is not up to the courts to expand the coverage of the  
6 exceptions under the guise of an improper and unwarranted liberal  
7 construction of the exceptions.

8 **CONCLUSION**

9 For the reasons set forth above, we AFFIRM the bankruptcy  
10 court's summary judgment in favor of Patricia.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28