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NOT FOR PUBLICATION

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

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-14-1416-PaKiTa
)	
ERICA ADAM,)	Bankr. No. 12-12968-PC
)	
Debtor.)	Adv. Proc. No. 12-01295-DS
_____)	
)	
ERICA ADAM,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
GREGORY LEE DOBIN,)	
)	
Appellee.)	
_____)	

Argued and Submitted on March 19, 2015
at Pasadena, California

Filed - April 6, 2015

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

Appearances: Christopher Charles Gautschi argued for appellant Erica Adams; Vaughn Michael Greenwalt of Lang, Hanigan & Carvalho, LLP argued for appellee Gregory Lee Dobin.

Before: PAPPAS, KIRSCHER, and TAYLOR, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Chapter 7² debtor Erica M. Adam ("Adam") appeals the judgment
2 of the bankruptcy court declaring that her debt for attorney's
3 fees owed to creditor Gregory Lee Dobin ("Dobin") is excepted from
4 discharge under § 523(a)(15). We AFFIRM.

5 **I. FACTS**

6 In August 1998, Adam, her spouse at the time, Dobin, and
7 Stefan Adam ("Stefan"),³ Adam's brother, entered into a
8 partnership they called Equestrian Performance Center (the
9 "Center") to own and operate a horse boarding facility. The
10 Center acquired the property for the horse breeding facility in
11 Moorpark, California (the "Property"). Hildegard Adam
12 ("Hildegard"), Adam's mother and Stefan's aunt, provided \$167,000
13 to the Center in exchange for a 20 percent interest in partnership
14 profits. Title to the Property was held in the names of Hildegard
15 and Stefan.

16 **The Three Pre-Divorce Bankruptcies**

17 On October 12, 1999, Adam and Dobin filed a chapter 13
18 bankruptcy petition. Bk. Case No. 99-21852. On their Schedule B,
19 in response to question 13 that directs debtors to list any
20 "interests in partnerships or joint ventures," Adam and Dobin
21 replied "none." The bankruptcy case was converted to a chapter 7
22 case on November 18, 1999, Dobin and Adam received a discharge on
23

24
25 ² Unless otherwise indicated, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
27 Rule references are to the Federal Rules of Bankruptcy Procedure,
28 Rules 1001-9037, and all Civil Rule references are to the Federal
Rules of Civil Procedure 1-86.

³ We refer to some persons by first name for clarity; we
intend no disrespect.

1 March 2, 2000, and the case was closed as a "no asset" case on
2 March 7, 2000.

3 On August 17, 2000, Adam and Dobin filed another chapter 13
4 petition. Bk. Case No.00-17500-KT. On their Schedule B in this
5 case, Adam and Dobin again responded "none" to question 13
6 regarding any partnership interests they may hold. This case was
7 dismissed on October 23, 2000.

8 On February 5, 2001, Adam and Dobin filed a third chapter 13
9 petition. Case No. 01-10909-KT. Once again, they responded
10 "none" to the partnership question on Schedule B. The case was
11 dismissed on May 24, 2001.⁴

12 **The Family Law and Civil Actions**

13 On October 24, 2003, Adam filed a petition in the Family Law
14 Division of the Superior Court of California for the County of
15 Ventura (the "Family Court") seeking dissolution of her marriage
16 to Dobin (the "Family Law Action").

17 On June 24, 2004, Dobin filed a separate action (the "Civil
18 Action") in Family Court against Adam, Hildegard, Stefan, EPC,
19 LLC, and the Center ("the Civil Action Defendants"). In a first
20 amended complaint in the Civil Action, Dobin asserted claims for
21 dissolution of the Center, partition of the Property, and for
22 damages for Adam's alleged breach of contract, fraud in the
23 inducement, and conversion. More particularly, Dobin alleged
24 that: (1) Dobin, Adam, Stefan, and Hildegard had entered into an
25 oral agreement in 2003, which modified the terms of the Center

26
27 ⁴ The bankruptcy court would later find that "the interest
28 of Dobin and Adam in [the Center], the business operated by [the
Center], and the Property were not disclosed in the schedules and
statements" in the three pre-divorce bankruptcy cases.

1 partnership agreement; (2) Stefan withdrew from the partnership in
2 2003; (3) it was orally agreed that Adam and Dobin thereafter
3 would hold equitable title to 80 percent of the Center business
4 and Property and that Hildegard would hold a 20 percent equitable
5 interest in the business and Property in satisfaction for the
6 loans she made to start up the business and acquire the Property;
7 (4) it was orally agreed to pay Stefan for his ownership interest
8 but no price was fixed; (5) Hildegard formed EPC, LLC, thereafter;
9 and (6) Hildegard and Adam transferred the assets of the Center
10 into EPC, LLC without Dobin's knowledge and consent.

11 The Family Court consolidated the Family Law Action and Civil
12 Action for a bench trial, which was held on twenty-two days
13 between 2005 and 2009. On October 29, 2009, the Family Court
14 entered a judgment in the consolidated action (the "Original
15 Judgment") consisting of two parts: one part expressly resolved
16 the Family Law Action; the other resolved the Civil Action.

17 The Original Judgment was amended on April 20, 2010, to
18 include several rulings not relevant in this appeal, but otherwise
19 incorporating the substance of the Original Judgment (the "Amended
20 Judgment"). The Amended Judgment also contained two components.⁵
21 In its first three pages, the Amended Judgment resolved the claims
22 raised in the Civil Action, wherein the Family Court ruled that:
23 (1) Dobin was awarded \$76,200 against the Civil Action Defendants;
24 and (2) Dobin was awarded the entire interests of the Civil Action
25 Defendants in the Property and the business operated at the

26
27 ⁵ The Amended Judgment explained that "[t]he two parts -
28 this Amended Judgment and the revised family law judgment - shall
be signed and filed together and will constitute the revised
judgment."

1 Property as punitive damages.

2 The second part of the Amended Judgment resolved the claims
3 asserted in the Family Law Action. It did so through use of a
4 standard "check the box" form for a California dissolution
5 judgment, together with an "Attachment A" to the form setting
6 forth several specific rulings. The paragraphs of Attachment A
7 which are pertinent in this appeal included:

8 "1. Neither party has established the right to an award of
9 spousal support."

10 "2. The Court finds by clear and convincing evidence that
11 Erica Adams breached her fiduciary duties owing to
12 Gregory Dobin by denying the existence of the
13 partnership she knew to exist and that her conduct was
14 fraudulent as defined in Civil Code 3294."

15 "7. The Court awards to Gregory Dobin the entire community
16 interest in, or any claims to a community interest in,
17 [the Property] as well as any interest in the entities
18 known as EPC, LLC, Equestrian Performance Center, and
19 Equestrian Property, LLC."

20 "10. The court finds that Mr. Dobin is entitled to recover
21 from Erica Adams the attorney's fees he has incurred in
22 connection with these actions in the sum of \$300,000."⁶

23 The Amended Judgment was entered on April 10, 2010. It was
24 not appealed.

25 **This Bankruptcy Case and Adversary Proceeding**

26 On August 6, 2012, Adam filed a petition under chapter 7.
27 Dobin commenced the adversary proceeding in this appeal on
28 November 2, 2012. In the complaint, Dobin alleged that his claims

25 ⁶ In Attachment A, the Amended Judgment also allocated
26 various assets of the parties' marital community (pensions,
27 charging the parties with assets in their possession, crediting
28 them with payments on tax obligations). The court concluded that,
after the allocation, Dobin recovered \$12,484 more than Adam.
Thus, the state court credited \$6,242 against the \$300,000 fee
award "to equalize the division of community property."

1 against Adam as evidenced in the Amended Judgment were excepted
2 from discharge under § 523(a) for several reasons. First, Dobin
3 alleged that his claims were nondischargeable under § 523(a)(2)(A)
4 because Adam had fraudulently represented to him that, if he
5 contributed money and labor, cosigned partnership loans, and moved
6 onto the Property, he would have an ownership interest in the
7 Property and businesses. Under § 523(a)(4), Dobin alleged that
8 Adam had breached her fiduciary duty to him by denying the
9 existence of the partnership. And under § 523(a)(6), Dobin
10 alleged that Adam had wilfully and maliciously damaged him.

11 Adam filed an answer on November 28, 2012, generally denying
12 the allegations.

13 Adam filed a motion for summary judgment on May 15, 2013.
14 Adam argued that Dobin lacked standing to assert his damage claims
15 against her because those undisclosed claims were property of the
16 estate in the first bankruptcy case filed by Dobin and Adam in
17 1999.

18 On July 17, 2013, Dobin filed a proposed amended complaint to
19 assert an additional exception to discharge claim under
20 § 523(a)(15). In addition to the monetary damages Dobin sought in
21 the original complaint, he asserted an additional claim for the
22 \$300,000 in attorney's fees he had been awarded in the Amended
23 Judgment because it was, he argued, a debt owed by Adam to a
24 former spouse (i.e., Dobin) that was incurred in the course of the
25 parties' dissolution action.⁷

26 Then, on July 18, 2013, Dobin filed a cross-motion for
27

28 ⁷ The bankruptcy court granted Dobin's request to amend the
complaint on August 13, 2013.

1 summary judgment. In it, Dobin asserted he was entitled to
2 summary judgment on the newly stated § 523(a)(15) claim, and
3 repeated his earlier allegations under §§ 523(a)(2)(A), (a)(4),
4 and (a)(6).

5 The bankruptcy court heard the two summary judgment motions
6 on August 29, 2013, and took the issues under advisement. On
7 October 8, 2013, the court entered a Memorandum Decision (the
8 "Memorandum Decision"). The court denied summary judgment on
9 Dobin's claim under § 523(a)(15) without prejudice because that
10 claim had not been asserted in his original adversary complaint,
11 which was still in effect when the motions were filed. The
12 bankruptcy court determined that disputed issues of fact remained
13 regarding Adam's alleged fiduciary breach and Dobin's other claims
14 under § 523(a)(4). As to the Dobin's claims under § 523(a)(2)(A)
15 and (a)(6), the court dismissed both claims because Dobin lacked
16 standing to raise them:

17 It is undisputed that Dobin and Adam failed to disclose
18 their interest in EPC, the business operated by EPC, and
19 the Property in the 1999 bankruptcy. . . . Property of
20 the estate that is not scheduled or otherwise
administered by the time the case is closed remains
property of the estate forever.

21 Memorandum Decision at 10. The court entered orders granting in
22 part and denying in part Adam's motion for summary judgment, and
23 denying Dobin's summary judgment without prejudice.

24 Both Adam and Dobin filed second motions for summary judgment
25 on February 27, 2014. Dobin again sought an exception to
26 discharge under § 523(a)(15) for the \$300,000 in attorney's fees.
27 Adam's motion addressed both the § 523(a)(4) and (a)(15) claims.
28 Among Adam's arguments, she stressed that Dobin could not be

1 rewarded for wrongful pursuit of claims that he not only did not
2 own but had concealed in three bankruptcy cases.⁸

3 The bankruptcy court heard the second round of summary
4 judgment motions on April 10, 2014. The court expressed concern
5 about deeming civil claims, made in connection with a family law
6 action that had nothing to do with the marriage dissolution other
7 than the fact that there were two spouses involved, excepted from
8 discharge under § 523(a)(15). However, after taking the motions
9 under submission, on April 14, 2014, the court ruled:

10 The attorney fee award of \$300,000 under the Amended
11 Judgment was incurred by Adam in the course of the
12 marriage dissolution between Adam and Dobin, and the sum
13 of \$300,000, less the credit of \$6,242 remained owing by
14 Adam to Dobin on the petition date. It is accordingly
ORDERED that [Dobin's] motion for summary judgment is
granted, and the balance of the \$293,758 owing on the
attorney fee award under the Amended Judgment is
nondischargeable under 11 U.S.C. § 523(a)(15).

15 Order, at 2, April 14, 2014. Adam's summary judgment motion was
16 denied.

17 The bankruptcy court entered a judgment on August 13, 2014,
18 declaring Dobin's \$293,758 claim excepted from Adam's discharge
19 under § 523(a)(15). Adam timely appealed.

20 II. JURISDICTION

21 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
22 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

23 III. ISSUE

24 Whether the bankruptcy court erred in granting summary
25

26 ⁸ Although the second round of summary judgment motions also
27 discussed Dobin's claim under § 523(a)(4), the focus shifted to
28 the § 523(a)(15) claim. Ultimately, the bankruptcy court approved
the stipulation of the parties to dismiss Dobin's § 523(a)(4)
claim.

1 judgment in favor of Dobin that Adam's debt for the attorneys fees
2 was excepted from discharge under § 523(a)(15).

3 IV. STANDARD OF REVIEW

4 We review the bankruptcy court's grant of summary judgment de
5 novo. Omega S.A. v. Costco Wholesale Corp., 776 F.3d 692, 695
6 (9th Cir. 2015). Summary judgment is appropriate "if the
7 pleadings, the discovery and disclosure materials on file, and any
8 affidavits show that there is no genuine dispute as to any
9 material fact and that the movant is entitled to judgment as a
10 matter of law." Civil Rule 56(a), incorporated by Rule 7056.
11 Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th
12 Cir. 2008).

13 V. DISCUSSION

14 **The bankruptcy court did not err in granting summary**
15 **judgment that Dobin's claim against Adam for the \$293,758 in**
16 **attorney's fees was excepted from discharge under**
17 **§ 523(a)(15).**

18 In this appeal, the parties agree that there are no disputed
19 material facts. Instead, they spotlight a question of bankruptcy
20 law for the Panel's consideration: whether Dobin's claim against
21 Adam for the attorney's fees awarded to him by the state court in
22 the Amended Judgment is excepted from discharge in Adam's
23 bankruptcy case under § 523(a)(15). For the reasons that follow,
24 we agree with the bankruptcy court that the bankruptcy court's
25 grant of summary judgment in Dobin's favor on this issue was
26 appropriate.

26 A. Congress, the Courts, and § 523(a)(15)

27 Section 523(a)(15) excepts non-support debts arising in
28 connection with a divorce or dissolution proceeding from discharge

1 in bankruptcy. The evolution of § 523(a)(15) demonstrates
2 Congress's intent to spread as large a net, and to include as many
3 marriage dissolution-related claims as possible, within this
4 exception to discharge. The current version of the relevant Code
5 provision reads:

6
7 **§ 523. Exceptions to discharge**

8 (a) A discharge under section 727 . . . of this title
9 does not discharge an individual debtor from any debt -
10 . . . (15) to a spouse, former spouse, or child of the
11 debtor and not of the kind described in paragraph (5)
12 that is incurred by the debtor in the course of a
divorce or separation or in connection with a separation
agreement, divorce decree or other order of a court of
record, or a determination made in accordance with State
or territorial law by a governmental unit[.]

13 § 523(a)(15)(2015).

14 This discharge exception has undergone changes over the
15 years. While the Bankruptcy Code, and its predecessors, have long
16 included a discharge exception for a debtor's obligations for
17 state court awards to a former spouse for alimony, maintenance and
18 support, see e.g., § 523(a)(5)(establishing a discharge exception
19 for a "domestic support obligation" as defined in § 101(14A)),
20 Congress amended § 523 of the Bankruptcy Code in 1994 to add
21 § 523(a)(15) as a new discharge exception. As one circuit court
22 explained, "[t]he fact that Congress saw a need to add this
23 provision to section 523 strongly suggests that the language in
24 section 523(a)(5) does not cover obligations incurred as part of a
25 property division incident to divorce. The existence of this new
26 provision suggests Congress envisioned that there would be other
27 types of payments authorized in divorce agreements that would not
28 qualify as alimony, maintenance, or support." In re Evert,

1 342 F.3d 358, 367-68 (5th Cir. 2003). As noted by the court, it
2 is evident that § 523(a)(15) was intended by Congress to encompass
3 debts between former spouses that fall outside the scope of the
4 exception addressing domestic support obligations in
5 § 523(a)(5). As a bankruptcy court has observed, "Congress
6 balanc[ed] two public policies in sections 523(a)(5) and (a)(15):
7 the Bankruptcy Code's purpose of providing a fresh start to a
8 deserving debtor; and the importance of a debtor's obligations to
9 his family" and works to prevent the non-debtor spouse from being
10 "left out-of-pocket because of a debtor's bankruptcy filing."
11 In re Brooks, 371 B.R. 761, 766-67 (N.D. Tex. 2007) (citations
12 omitted).

13 If the addition of § 523(a)(15) in 1994 operated to broaden
14 the scope of those marital debts excepted from bankruptcy
15 discharge, in 2005, BAPCPA went even further. Before BAPCPA, a
16 debt otherwise covered by § 523(a)(15) was nonetheless
17 dischargeable if the debtor was financially unable to repay the
18 debt or if the benefit to the debtor associated with discharge of
19 that debt outweighed the detriment resulting therefrom to the
20 spouse, former spouse or child of the debtor. See Ashton v.
21 Dollaga (In re Dollaga), 260 B.R. 493, 495 (9th Cir. BAP 2001).
22 BAPCPA removed both the financial capacity criterion and the
23 balancing of debtor's benefit against the creditor's detriment
24 from the amended discharge exception. Bendetti v. Gunness
25 (In re Gunness), 505 B.R. 1, 5 (9th Cir. BAP 2014);
26 In re Dumontier, 389 B.R. 890, 896 (Bankr. D. Mont. 2008).

27 Courts have acknowledged that BAPCPA's changes to
28 § 523(a)(15) significantly expanded the scope of the debts covered

1 by that section. Because Congress enacted § 523(a)(15) to broaden
2 the types of marital debts that are nondischargeable, beyond those
3 described in § 523(a)(5), "by implication a § 523(a)(15) exception
4 from discharge would also be construed more liberally than other
5 § 523 exceptions." Taylor v. Taylor (In re Taylor), 478 B.R.
6 419, 428 (10th Cir. BAP 2012); Berse v. Langman (In re Langman),
7 465 B.R. 395, 405 (Bankr. D.N.J. 2012) ("This provision has been
8 read to encompass a range of matrimonial debts, including
9 obligations arising out of property settlement agreements and
10 equitable distribution judgments."). The exception applies to all
11 debts, separate and community. In re Kinkade, 707 F.3d 546,
12 549-50 (5th Cir. 2013); see also March, Ahart & Shapiro, CAL.
13 PRACT. GUIDE: BANKRUPTCY § 22:270-22:272.3 (Rutter Group 2013) ("In
14 effect, therefore, taken together with § 523(a)(5), virtually all
15 domestic relations obligations (whether for support, a property
16 division or otherwise), are excepted from discharge if incurred in
17 connection with marriage dissolution or rooted in a separation
18 agreement, dissolution judgment, other court order, or a
19 governmental agency determination.").

20 As further evidence of Congressional intent to treat
21 exceptions to discharge under § 523(a)(15) broadly, we note that
22 BAPCPA also modified § 523(c)(1). After the amendment, debts
23 falling under section § 523(a)(15) are no longer included in the
24 category of debts that are discharged automatically if a party
25 does not request a determination from the bankruptcy court.
26 Gilman v. Golio (In re Golio), 393 B.R. 56, 61 (Bankr. E.D.N.Y.
27 2008) ("The enactment of subsection 523(a)(15) and the increase in
28 the scope of the discharge exception effected by the 2005

1 amendments, expresses Congress's recognition that the economic
2 protection of [] spouses and children under state law is no longer
3 accomplished solely through the traditional mechanism of support
4 and alimony payments.").

5 In sum, the trend in recent case law is to construe
6 § 523(a)(15) expansively to cover a broader array of claims
7 related to domestic relations within the discharge exception.
8 See, e.g., In re Wise, 2012 WL 5399075, at *6 (Bankr. E.D. Tex.
9 Nov. 5, 2012) (§ 523(a)(15) "rendered as non-dischargeable
10 virtually all obligations arising between spouses as a result of a
11 divorce decree."); Quarterman v. Quarterman (In re Quarterman),
12 2012 Bankr. LEXIS 4924, at * 9-10 (Bankr. D. Ariz. October 17,
13 2012) ("The Section is not limited to simply divorce decree
14 judgments alone but excepts any debt incurred by the debtor in the
15 course of divorce or any debt in connection with a divorce
16 decree.").⁹

17 _____
18 ⁹ But see In re Tracy, 2007 WL 420252, at *2 (Bankr. D.
19 Idaho Feb. 2, 2007) where the bankruptcy court cautioned against
20 adopting too broad an interpretation of § 523(a)(15). In Tracy,
21 the debtor's former spouse sought a determination from the
22 bankruptcy court that the debt owed to him pursuant to a state
23 court judgment regarding personal property left in the parties'
24 marital home was nondischargeable. Id., at *1. The debtor argued
25 that § 523(a)(15) excluded from discharge any debt "arising under
26 **any** order of a court to a former spouse." Id. (emphasis added).
27 The Tracy court rejected this approach as too broad, and held that
28 in order for the debt to be excepted from discharge under
§ 523(a)(15), the former spouse had to show that the debts in
question "were incurred by the debtor in the course of a divorce
or separation or in connection with a separation agreement or
divorce decree or other order of a court of record." Id., at *3
(citing Gamble v. Gamble (In re Gamble), 143 F.3d 223, 225 (5th
Cir. 1998)). The Tracy court noted that although the debts owed
to the former spouse by the debtor arose out of a dispute
regarding the parties' property rights subsequent to their
divorce, the parties began a new relationship as landlord and

(continued...)

1 **B. Section 523(a)(15) Applied to This Case**

2 1. Dobin's Arguments

3 Using this legislative and case law review for context, we
4 turn to the issues in the present appeal. To establish his case
5 for exception to discharge of the attorney's fees under
6 § 523(a)(15), Dobin was required to establish three elements:
7 (1) that the debt in question is owed to a former spouse of the
8 debtor; (2) that the debt is not a support obligation within the
9 meaning of § 523(a)(5); and (3) that the debt was incurred in the
10 course of a divorce or separation or in connection with a
11 separation agreement, divorce decree, or other order of a court of
12 record. In re Taylor, 478 B.R. at 428; McFadden v. Putnam
13 (In re Putnam), 2012 Bankr. LEXIS 6117, at * 58 (Bankr. E.D. Cal.
14 August 30, 2012).

15 That two of these elements are satisfied is undisputed.
16 Dobin is the former spouse of debtor Adam. In addition, the
17 parties do not dispute that the debt Adam owes Dobin under the
18 state court's Amended Judgment for attorneys' fees is not a
19 domestic support obligation as provided in §§ 523(a)(5) and
20 101(14A). The only remaining question is whether that debt for
21 fees was incurred in the course of a divorce, or in connection

22 _____
23 ⁹(...continued)
24 tenant when the former spouse rented the home to the debtor. Id.
25 In Tracy, the court concluded that because the debts actually
26 arose out of the parties' post-divorce dealings as landlord and
27 tenant, the debts were unrelated to the dissolution of their
28 marriage. Id.

26 As we will see below, in this case, Dobin's claims were based
27 upon Adam's actions and events occurring during her marriage to
28 Dobin, and were considered in connection with the overall
disposition of the issues in the dissolution action, with the
money obligation evidenced in the dissolution judgment.

1 with a divorce decree. We conclude that it is.

2 First, we note that while the procedure employed by the
3 Family Court here may seem somewhat unusual in other states,
4 resolution of the parties' claims in the consolidated action
5 comported with California state law. California law generally
6 allows consolidation of related matters pending before a
7 California court. CAL. CODE CIV. PROC. § 1048(a) ("When actions
8 involving a common question of law or fact are pending before the
9 court, it may order a joint hearing or trial of any or all the
10 matters in issue in the actions; it may order all the actions
11 consolidated and it may make such orders concerning proceedings
12 therein as may tend to avoid unnecessary costs or delay.").

13 In particular, as relevant here, when a dissolution
14 proceeding is pending in the Family Court division while a civil
15 action involving a breach of spousal duty or otherwise raising
16 issues that may impact division of assets is pending in the civil
17 division of the same court, consolidation is appropriate. CAL.
18 FAM. CODE § 1101(f) ("Any action may¹⁰ be brought under this section
19 [claim for breach of fiduciary duty by a spouse] without filing an
20 action for dissolution of marriage, legal separation, or nullity,
21 **or may be brought in conjunction with the action** or upon the death
22 of a spouse.") (emphasis added). As the Family Court has the
23 primary right to decide these issues, the consolidation must occur
24 such that the Family Court decides the issues. Askew v. Askew,

25

26 ¹⁰ Adam argues that the bankruptcy court erred by referring
27 to the phrase "may be brought" as "must be brought." We consider
28 this a distinction without a difference. Whether the statute
provides that the court may do something, or must do something, it
is statutory authority to **do** something.

1 22 Cal.App.4th 942, 961-62 ("After a family law court acquires
2 jurisdiction to divide community property in a dissolution action,
3 no other department of a superior court may make an order
4 adversely affecting that division."); In re Marriage of Schenck
5 228 Cal. App.3d 1474, 1483-1484 (1991) (civil law and motion
6 department had no authority to order the sale of the family home
7 based on husband's accrued support arrearages when the family law
8 court still had jurisdiction to divide the community interest in
9 that home). Here, the state court explicitly invoked the
10 authority granted under Cal. Fam. Code § 1101(f) in issuing the
11 Amended Judgment.

12 Even if it had the authority to entertain Dobin's breach of
13 fiduciary claims against Adam, she argues that the state court
14 lacked authority to order a combined attorney's fee award for both
15 the dissolution action and the civil action. As discussed below,
16 we conclude that the fee award was made in conjunction with the
17 family law action. That it was made in the same judgment as the
18 other awards resolving the Civil Action is immaterial.¹¹ A
19 critical element of a divorce proceeding is the division of
20 community property. An obligation for a debt related to the
21 division of community property in a divorce may constitute a debt
22 excepted from discharge under § 523(a)(15) where, as in this
23 appeal, Adam's obligation to pay the attorney's fees was

24
25 ¹¹ Indeed, there is case law supporting a single award of
26 attorney's fees in a consolidated, multiple action, family court
27 judgment. Guardianship of Paduano, 215 Cal. App. 3d 346, 352
28 (1989) ("Because of the consolidation order, the guardianship and
family law proceedings were one and the same, and thus, no
segregation of fees and costs was necessary."). However, as
explained below, in this case, there were separate awards for both
the civil and family parts of the Amended Judgment.

1 incorporated in the Amended Judgment. Short v. Short
2 (In re Short), 232 F.3d 1018, 1022-23 (9th Cir. 2000) (holding
3 that a property division claim comes within purview of
4 § 523(a)(15).

5 On this record, we conclude that Dobin is entitled to a
6 judgment excepting his claim from discharge under § 523(a)(15).
7 Adam is his former spouse, and the attorney's fee award to Dobin
8 in the Amended Judgment is not a support obligation as that term
9 is understood in § 523(a)(5). Since that obligation was created
10 in the Amended Judgment, and in particular, in that portion of the
11 Amended Judgment resolving the Family Law Action claims using the
12 standard California form for dissolution judgments, we conclude
13 that Adam incurred the obligation to pay Dobin's attorneys fees in
14 connection with a divorce proceeding.

15 2. Adam's Defenses

16 Adam asserts that both the state court and the bankruptcy
17 court lacked jurisdiction over Dobin's claim against her because
18 they were based on Dobin's incorrect assumption that he owned the
19 Property and the business. Under bankruptcy law, Adam contends,
20 the Property and business interests of both Adam and Dobin became
21 property of the bankruptcy estate when they first filed their
22 chapter 7 petition in 1999, and remained so because they failed to
23 disclose their purported interests in those assets in their
24 schedules. See § 554(c); In re Chen, 308 B.R. 448, 461 (9th Cir.
25 BAP 2004). Consequently, Adam argues, the state court could not
26 award Dobin damages based on Adam's alleged fiduciary breach
27 arising from her control of the Property and the businesses.

28 Because, in essence, she contests whether the state court

1 reached a correct result, as we see it, Adam's argument that the
2 state court erred amounts to a collateral attack on that court's
3 final judgment. It has long been established that final judgments
4 are not subject to collateral attack. Chicot County Drainage
5 Dist. v. Baxter State Bank, 308 U.S. 371, 377-78 (1940). Res
6 judicata bars all claims based on the same "transactional nucleus
7 of facts" which "could have been asserted, whether they were or
8 not, in a prior suit between the parties." Costantini v. TWA,
9 681 F.2d 1199, 1201-02 (9th Cir. 1982); Ross v. IBEW, 634 F.2d
10 453, 457 (9th Cir. 1980); see also In re Marriage of Jackson,
11 136 Cal.App.4th 980, 988-989 (2006) (collateral attack on final
12 judgments not allowed absent unusual circumstances or compelling
13 policy considerations); 2 Witkin, CAL. PROCEDURE § 338 Jurisdiction,
14 pp. 961-963 (5th ed. 2008).

15 In this setting, Adam's suggestion that the state court did
16 not have subject matter jurisdiction over the fiduciary breach
17 claim is of no moment. Adam concedes that she did not challenge
18 the jurisdiction of the state court. "While it is often said that
19 jurisdiction can be raised at any point in the proceedings, this
20 does not mean that it can be raised after a decision has become
21 final. Where a party does not challenge jurisdiction until a
22 collateral proceeding, the issue is res judicata because it is
23 presumed to have been determined in the earlier proceeding."
24 Chicot County Drainage Dist, 308 U.S. at 377-78.

25 Adam's other arguments also lack merit. The one exception is
26 Adam's challenge to the amount of Dobin's nondischargeable
27 attorney's fees. Fairly summarized, Adam demands that the
28 attorneys fee award be apportioned between the Family Law Action

1 and Civil Action. But we find that unnecessary. All of the fees
2 were awarded "in connection with" the divorce proceedings, and the
3 fees were exactly the amount determined by the state court in the
4 Amended Judgment. In re Sasson, 424 F.3d 864, 872-73 (9th Cir.
5 2005) ("The bankruptcy court should ordinarily decline to allow
6 the parties to relitigate the debt amount and should give the
7 state court judgment as to the amount of debt preclusive effect.")

8 **VI. CONCLUSION**

9 In summary, the scope of § 523(a)(15) is broad. Dobin
10 established that the award of attorneys fees against Adam is a
11 debt owed to her former spouse, is not a domestic support
12 obligation, and was entered in connection with the parties'
13 divorce proceeding. The elements for an exception to discharge
14 under § 523(a)(15) were therefore established, and the bankruptcy
15 court did not err in excepting the attorney's fees from discharge.

16 We AFFIRM the judgment of the bankruptcy court.
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