

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions for Publishing and Posting on Website

Will this Opinion be Published? No

Bankruptcy Caption: In re Brian Lewandowski

Bankruptcy No. 05 B 01726

Adversary Caption: Jennifer L. Frey v. Brian J. Lewandowski

Adversary No. 05 A 01282

Date of Issuance: September 26, 2005

Judge: Bruce W. Black

Appearance of Counsel:

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)	
)	
Brian J. Lewandowski)	Case Number: 05 B 01726
)	Chapter 7
Debtor)	
<hr/>		
Jennifer L. Frey)	
)	Adversary Number: 05 A 01282
Plaintiff)	
)	Judge Bruce W. Black (Joliet)
v.)	
)	
Brian J. Lewandowski)	
)	
Defendant.)	

MEMORANDUM OPINION AND SUMMARY JUDGMENT

Jurisdiction in this court is proper under 28 U.S.C. §1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. Venue is proper under 28 U.S.C. §1408 and §1409. This matter constitutes a core proceeding under 28 U.S.C. §157(b).

The plaintiff (Jennifer) is the former spouse of the debtor-defendant (Brian). Jennifer has filed a two count adversary complaint seeking a determination of the non-dischargeability of Brian’s obligations under a marital settlement agreement incorporated into the terms of a judgment for dissolution of marriage entered in their divorce. The two counts rely on sections 523(a)(5) and 523(a)(15) of the Bankruptcy Code respectively. Brian has answered both counts of the complaint, although his answer is deficient under Local Bankruptcy Rule 5005-3(A).

Brian has also filed a “Motion for Summary Judgment.” Brian’s motion is deficient for failing to comply with the requirements of Local Bankruptcy Rule 7056-1, which requires a motion for summary judgment to be supported by a memorandum of law and a statement of undisputed facts. The motion could be denied for these shortcomings. Nevertheless, because Jennifer has responded to the motion, because the facts are not in dispute, and because the law is

straight-forward, I will address the merits, or lack thereof, of the motion.

Unlike many marital settlement agreements bankruptcy judges see, the agreement here between Jennifer and Brian specifically covers the possibility of a bankruptcy case by the obligor in great detail. The essence of the agreement is that Brian agrees, in article VIII, to pay thousands of dollars to Jennifer to equalize their assets. The agreement goes on to provide, in articles X and XI, that if Brian discharges his marital obligations in bankruptcy, he will then become obligated to pay maintenance to Jennifer and that his maintenance obligation will not be terminable by the statutory events, including Jennifer's remarriage.

Except for stating, without supporting authority, that an attempt to make a marital debt non-dischargeable "is void as a matter of law," Brian's motion does not challenge that part of the agreement whereby a bankruptcy discharge triggers his maintenance obligation. Believing in general that individuals should be bound by their agreements, even marital settlement agreements entered into without legal counsel, and because Brian has offered no authority to support his position, I decline to invalidate the agreement of the parties here.

Brian also attacks count 1 of the complaint on the ground that Jennifer's remarriage renders her "not capable of receiving maintenance," citing section 510(c) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/510(c). Because the section cited begins "[u]nless otherwise agreed by the parties..." this argument is frivolous. It is rejected as having no merit.

Brian's remaining argument directed against count 1 appears to be that it is premature because Brian's marital obligations under article VIII of the agreement have not yet been discharged. Thus, the argument goes, there is no maintenance obligation under article XI to be ruled non-dischargeable. Such an argument ignores the fact that this adversary proceeding seeks a declaratory judgment of non-dischargability. It is ripe for decision because Brian has, indeed, filed his petition under chapter 7 of the Bankruptcy Code seeking to discharge these obligations. Because Brian has presented no authority to support his position, and because he has agreed to pay maintenance if his marital obligations are discharged, this argument, too, is rejected.

Accordingly, although the facts are not in dispute, I conclude that Brian is not entitled to judgment as a matter of law on count 1. Therefore, the motion is DENIED regarding count 1.

The motion inartfully attacks count 2 of the complaint for failing to allege sufficient facts to support a claim under section 523(a)(15) of the Bankruptcy Code. As Jennifer correctly

points out, this portion of the motion would more accurately be premised on Federal Rule of Bankruptcy Procedure 7012 and Federal Rule of Civil Procedure 12(b)(6). It ignores the notice-pleading rules governing federal complaints and is without merit. It is also untimely, given Brian's answer. Therefore, the motion is also DENIED regarding count 2.

Jennifer has not filed a cross motion for summary judgment, but the prayer in her response to the motion for summary judgment seeks "such other and further relief as the Court deems appropriate and just." Because the facts are not in dispute, because Brian has furnished no authority to support his arguments, and because I believe the marital settlement agreement of the parties comports with both Illinois law regarding dissolution of marriage and the federal bankruptcy law, I conclude that the agreement is enforceable, that it should be enforced, and that Jennifer is entitled to judgment as a matter of law on count 1.

ACCORDINGLY, IT IS THE ORDER, JUDGMENT, AND DECLARATION of this court that the marital settlement agreement of the parties is enforceable; and consequently if Brian discharges his obligations thereunder in bankruptcy, he will be obliged to pay maintenance under article XI of the agreement and that maintenance obligation will not be dischargeable.

Pursuant to Federal Rule of Civil Procedure 56(d) and Federal Rule of Bankruptcy Procedure 7056, a status conference on count 2 is hereby scheduled for October 14, 2005, at 9:30 a.m. in Joliet. (Given my ruling on count 1, I would anticipate Jennifer's motion to voluntarily dismiss count 2. If such a motion is made and granted, this Judgment will become final and appealable.)

September 26, 2005

Bruce W. Black, U.S. Bankruptcy Judge