

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

IN RE:)	
)	
CLYDE LEROY HARRISON)	
)	CASE NO. 07-32645(1)(7)
_____ Debtor(s))	
)	
SANDRA L. HARRISON)	
)	AP NO. 07-3571
Plaintiff(s))	
)	
v.)	
)	
CLYDE LEROY HARRISON)	
)	
_____ Defendant(s))	

MEMORANDUM-OPINION

This matter is before the Court on the Motion for Summary Judgment of Plaintiff Sandra L. Harrison (“Harrison”) against Defendant Clyde Leroy Harrison (“Debtor”). The Court reviewed Harrison’s Motion for Summary Judgment and her Supporting Memorandum and the Response of Debtor to Harrison’s Motion for Summary Judgment. For the following reasons, the Court will **GRANT** Harrison’s Motion for Summary Judgment. A Judgment accompanies this Memorandum-Opinion.

UNDISPUTED FACTS

Debtor and Harrison were married but began divorce proceedings in 2002. The Decree dissolving the marriage was entered by the Hardin Circuit Court in 2003. In 2004, as part of the divorce, the Hardin Circuit Court determined that Debtor owed Harrison \$83,000.00 resulting from the sale of a mobile home park. Debtor appealed this ruling to the Kentucky Court of Appeals. On

September 16, 2005, the Kentucky Court of Appeals entered an Order remanding the matter to the Hardin Circuit Court to recalculate the amount of proceeds to be awarded to Harrison from the sale of the mobile home park.

On May 15, 2007, the Hardin Circuit Court issued an Order awarding Harrison \$34,588.09 as her share of the sale of marital property.

On August 3, 2007, following the scheduling of a show cause hearing due to Debtor's failure to pay the Judgment of the Hardin Circuit Court, Debtor filed his Voluntary Petition seeking relief under Chapter 7 of the United States Bankruptcy Code.

On November 5, 2007, Harrison instituted this adversary proceeding contending the debt is nondischargeable pursuant to 11 U.S.C. §523(a)(15).

LEGAL ANALYSIS

Summary Judgment is appropriate under Rule 7056 of the Federal Rules of Bankruptcy Procedure when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Bankr. P. 7056; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). There are no disputed facts in this case and under the applicable law, Harrison is entitled to judgment in her favor as a matter of law.

The facts of this case are undisputed. The issue before the Court is whether the version of 11 U.S.C. §523(a)(15) that went into effect when the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 ("BAPCPA") became effective applies to Debtor's case. Harrison contends BAPCPA applies to the case because the Debtor's bankruptcy was instituted after BAPCPA's effective date. Debtor contends BAPCPA does not apply to this

adversary proceeding because the divorce case was commenced well before the effective date of BAPCPA.

The case law is clear on this issue. BAPCPA became effective for all bankruptcy cases filed on or after October 17, 2005. See, BAPCPA, Pub. Law 109-8,119 Stat. 23 (2005). Amendments made by BAPCPA do not apply to cases before its effective date. See, In re McKinney, 457 F.3d 623, 624-25 (7th Cir. 2006). The undisputed facts established that Debtor's case was commenced on August 3, 2007, well after the effective date of BAPCPA. The amendments to the Bankruptcy Code instituted by BAPCPA apply to Debtor's case since the Petition was filed after the effective date, October 17, 2005. In re Sears, 2008 WL 111231 (Bankr. N.D. Ohio 2008). Under 11 U.S.C. §523(a)(15), to be excepted from discharge, the debt must: (1) be to a spouse, former spouse or child of the debtor; (2) not be of the type described in paragraph 5 of §523, which excepts domestic support obligations; and (3) have been incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court. Id. There is no dispute that the debt in issue in this case is not a support obligation. It clearly is a debt owed to a former spouse and was incurred in connection with a divorce decree or order of court. As such, it is nondischargeable.

CONCLUSION

For all of the above reasons, the Motion for Summary Judgment of Plaintiff Sandra L. Harrison is **GRANTED**. A Judgment accompanies this Memorandum-Opinion.

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JUDGMENT

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion of Plaintiff Sandra L. Harrison for Summary Judgment be, and hereby is, **GRANTED**. There are no genuine issues of material fact and Harrison is entitled to Judgment as a matter of law. The debt in issue is declared nondischargeable pursuant to 11 U.S.C. §523(a)(15).

This is a final and appealable Judgment. There is no just reason for delay.