

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

IN RE: KATHERINE MARIE EDWARDS,

DEBTOR,

KURT A. EDWARDS,

PLAINTIFF,

KATHERINE MARIE EDWARDS,

DEFENDANT.

BKY NO. 03-40559

ADV. NO. 03-4096

**RESPONSE OF KATHERINE MARIE EDWARDS TO MOTION  
OF KURT A. EDWARDS TO APPROVE AGREEMENT  
AND ENTER JUDGMENT OF NONDISCHARGEABILITY**

TO: Plaintiff above-named and his attorney, Thomas W. Van Hon, Esq., 19 SE Second Avenue, P.O. Box N, Fairfax, MN 55332.

Debtor Katherine Marie Edwards (“Debtor”) requests that the motion of Kurt A. Edwards (“Kurt”) to enter judgment of nondischargeability against her be denied on the grounds that nothing in the “Agreement – Term Sheet” attached to Kurt’s motion papers authorizes Kurt to confess judgment against her in Bankruptcy Court. Rather, Debtor agreed to permit Kurt to confess judgment against her in state district court.

1. Kurt commenced this nondischargeability proceeding claiming that Debtor, his ex-wife, is indebted to him in the amount of \$30,264.93, and that such indebtedness is nondischargeable under §523(a)(5) and (6) of the Bankruptcy Code. The alleged indebtedness arises out of the dissolution of the parties’ marriage. Specifically, Kurt A. Edwards alleges the following:

- a. Debtor owes him \$4,191.35 in nondischargeable child support payments.

- b. The family law court allowed Debtor to live in the marital residence, pending its sale or refinancing, subject to a lien in favor of Kurt to secure his equity therein, and ordered Debtor to make the monthly mortgage payments. Debtor failed to make certain mortgage payments. To avoid foreclosure and loss of his equity, Kurt paid \$6,073.58 in delinquent mortgage payments to the mortgagee. Kurt subsequently obtained judgment against Debtor for this amount. Kurt contends that this judgment is nondischargeable as a liability "in the nature of alimony, maintenance or support" under §523(a)(5)(B).
- c. Kurt alleges that Debtor fraudulently represented to him that she had the ability to refinance the marital homestead for a sufficient amount to pay off his interest in the residence (\$20,000) and to pay off the \$6,073.58 judgment. Kurt claims that, in reliance on these statements, he continued hearing to hold Debtor in contempt for failing to sell or refinance the home; whereupon, she did not obtain the refinancing, and sold the homestead without paying him anything. Kurt claims that, as a consequence, Debtor is liable to him for \$26,073.58 and the liability is nondischargeable under §523(a)(6).

2. Debtor admits that she owes Kurt \$4,191.35, through February 2003, in back child support payments and admits that this indebtedness is not dischargeable. Debtor denies that Kurt's judgment against her for \$6,073.58 is nondischargeable and asserts that the underlying indebtedness was not a liability in the nature of alimony, maintenance or support. Debtor denies making the unconditional representation to Kurt Edwards that she had the ability to refinance the home for an amount sufficient to provide him with proceeds of \$26,073.58. Debtor alleges that she was unable to refinance the home; that she sold it, and that there were no net proceeds of the sale from which to make any payment to Kurt.

3. The parties entered into an Agreement – Term Sheet under which Debtor agreed to pay, in full settlement of the adversary proceeding, the sum of \$15,000, in consecutive monthly installments of \$100, at no interest. Agreement – Term Sheet, para. 1. In the event of default, Debtor granted Kurt the right “to confess judgment against her *in state district court* in the amount of \$30,264.93, less all payments that Kathy Edwards has made up to the date of default .

.. ”. (Emphasis added). Agreement – Term Sheet, para. 4. Debtor agreed that the state court judgment would be non-dischargeable in bankruptcy. Id.

4. The Agreement – Term Sheet provides that it “shall be documented in a formal Settlement Agreement.” Subsequently, counsel for Kurt and for Debtor drafted a more extensive Settlement Agreement (the “Settlement Agreement.”), a copy of which is attached hereto as Exhibit A. The Settlement Agreement includes a Stipulation To Entry Of Judgment in this adversary proceeding. The Stipulation provided, in part, that “the debtor is willing to stipulate to a nondischargeable judgment in the amount of \$15,000.00” and requested that this Court enter an order for entry of such judgment "providing that the judgment is nondischargeable under §523(a) of the Bankruptcy Code.” A copy of the Stipulation is attached hereto as Exhibit B.

5. Debtor declined to sign the Settlement Agreement or Stipulation. She stated to her counsel that she lacked the funds to make the \$100 monthly payments.

**WHEREFORE**, Debtor/Defendant Katherine M. Edwards requests that the motion of Plaintiff Kurt A. Edwards be denied insofar as it seeks to have judgment of nondischargeability entered against her, or, in the alternative, that a non-dischargeable judgment in the amount of no more than \$15,000.00 be entered against, and for such other relief as the Court deems just and equitable.

**PARSINEN KAPLAN ROSBERG & GOTLIEB, P.A.**

Dated: \_\_\_\_\_

By: /s \_\_\_\_\_

David A. Orenstein (#121447)  
100 South Fifth Street, Suite 1100  
Minneapolis, MN 55402  
(612) 333-2111  
Attorneys for Debtor/Defendant

**VERIFICATION**

I, David A. Orenstein, attorney for Debtor Katherine Edwards, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: \_\_\_\_\_

s/ \_\_\_\_\_  
David A. Orenstein