

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In Re:

CHAPTER 7

ROSENDO RAYMOND ELIZONDO,  
JENNIFER FALLER ELIZONDO,  
a/k/a JENNIFER ANN FALLER,

Bky. 3-90-964

Debtors.

PATRICIA K. ELIZONDO,

Adv. 3-90-110

Plaintiff,

vs.

ORDER GRANTING  
SUMMARY JUDGMENT

ROSENDO RAYMOND ELIZONDO,  
JENNIFER FALLER ELIZONDO,  
a/k/a JENNIFER ANN FALLER,

DEFENDANTS.

At St. Paul, Minnesota.

This action was commenced by Plaintiff Patricia K. Elizondo against Defendants Rosendo and Jennifer Elizondo under 11 USC Section 523(a)(5), to have declared nondischargeable, as maintenance, a \$10,000 debt that arose out of a dissolution of marriage proceeding between Plaintiff and Rosendo Elizondo. Defendants have moved for summary judgment. The motion was heard on September 10, 1990, and the Court having considered arguments of counsel, briefs and affidavits of the parties, and being fully advised in the matter, now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

The state court dissolution records furnished by the parties do not suggest that the disputed debt in this proceeding was intended by anyone (the court or parties) to be maintenance. Those records, the pertinent undisputed facts and circumstances regarding the parties at the time, and the Plaintiff's own repeated and consistent characterization of the debt prior to bankruptcy, all indicate quite clearly that the debt was created in settlement of the marital property interests of the parties.

Plaintiff points to the discrepancy between her and Defendant Rosendo's incomes at the time as evidence that the debt was intended for maintenance, not settlement of property rights. Her income was \$16,000 a year, while his was \$31,000. However, Rosendo retained custody of, and sole financial responsibility for, the

couple's three teenage children under the dissolution decree.

Furthermore, the \$10,000 payment awarded to Plaintiff was not due for approximately two years post-decree, upon the eighteenth birthday of the youngest child. The provision contradicts the claim that Plaintiff was in need of support and maintenance at the time of the order, and that the award was intended to address the need. Finally, the money was to be paid in a single lump sum, which is also inconsistent with an ongoing need for maintenance.

## II.

Defendants seek an award of \$1,000 for attorney's fees and costs incurred in defending this action, and an unspecified sum under Federal Bankruptcy Rule 9011. They claim that the action was frivolously brought. It was.

The complaint contains misleading or false allegations of material fact, that are obvious upon the most cursory examination of the relevant records. For instance, the complaint states that "the matter [terms of the dissolution] was settled by written stipulation of the parties, and the Judgment and Decree was entered pursuant to that Stipulation." In fact, there was no agreement, and the matter went to judgment by default. The complaint is replete with allegations of "agreement" where in fact there was none.

Perhaps more importantly, the complaint contains an allegation that is on its face not sustainable. Paragraph 6 asserts "That at the time of the dissolution, Plaintiff was in need of rehabilitative spousal maintenance to meet her monthly living expenses and to assist her in obtaining training or assistance so that she could eventually become self-supporting." As noted, the matter went to judgment by default. Plaintiff's lawyer in the dissolution proceeding presumably drafted the Findings of Fact, Conclusions of Law, Order of Judgment, Judgment And Decree in that proceeding. Paragraph XVI (Findings of Fact) of that document, which is appended as an exhibit to the complaint in this adversary proceeding, recites: "That neither party is in need of spousal maintenance from the other."

The obvious, though argumentative, question to the Plaintiff is: "Were you lying to the state court when you submitted the Findings, or were you lying to the Bankruptcy Court when you filed the complaint in the adversary proceeding?" From the overwhelming evidence of state court documents; from Plaintiff's consistent prepetition characterization of the debt as property settlement; and, from the uncontroverted facts and circumstances of the parties at the time of the dissolution, it should have been obvious to Plaintiff's counsel that, while the issue raised in the pleadings might exist in the Plaintiff's mind, it could exist nowhere else.

Yet, counsel did not even secure the verified signature of the Plaintiff on the complaint. Had Plaintiff's counsel required verification before filing the complaint, and explained to Plaintiff the application of Rule 9011, there might well not have been a complaint.

This is vexatious litigation. Unfortunately, Plaintiff's counsel is the only individual who can be sanctioned under Rule 9011, since the rule provides for sanctions only against signatories. Sanction is appropriate because, at best, counsel signed the complaint and sponsored this litigation blindly at the direction of the Plaintiff, with no independent examination of the facts through readily available documents, and without regard to the consequences.

The theme of Rule 9011 is that litigation is a powerful process not to be initiated irresponsibly. In this case, it was

initiated irresponsibly. The litigation was commenced in violation of Rule 9011 in that it was not well- grounded in fact based upon a belief formed after reasonable inquiry by Plaintiff's counsel, who was the only signatory to the complaint. Sanction is appropriate in the amount of \$1,000.

III.

Based on the foregoing, IT IS HEREBY ORDERED:

1. Defendants are entitled to judgment that the debt owing by Rosendo Raymond Elizondo to Patricia K. Elizondo in the amount of \$10,000 which arose out of the dissolution of their marriage is in the nature of property settlement, and that the debt has been discharged by the general discharge granted the Debtors in Bankruptcy Case No. 3-90-964.

2. Plaintiff's attorney, Nancy L. Ponto, shall pay to Defendants the sum of \$1,000 in attorney's fees and costs as sanction for violation of Federal Rule 9011. Failure to make payment within 30 days from the entry of this order shall entitle Defendants to the entry of judgment consistent with this order.

LET JUDGMENT BE ENTERED ACCORDINGLY AS TO PARAGRAPH 1.

Dated: October 12, 1990

By The Court:

DENNIS D. O'BRIEN  
U.S. BANKRUPTCY JUDGE