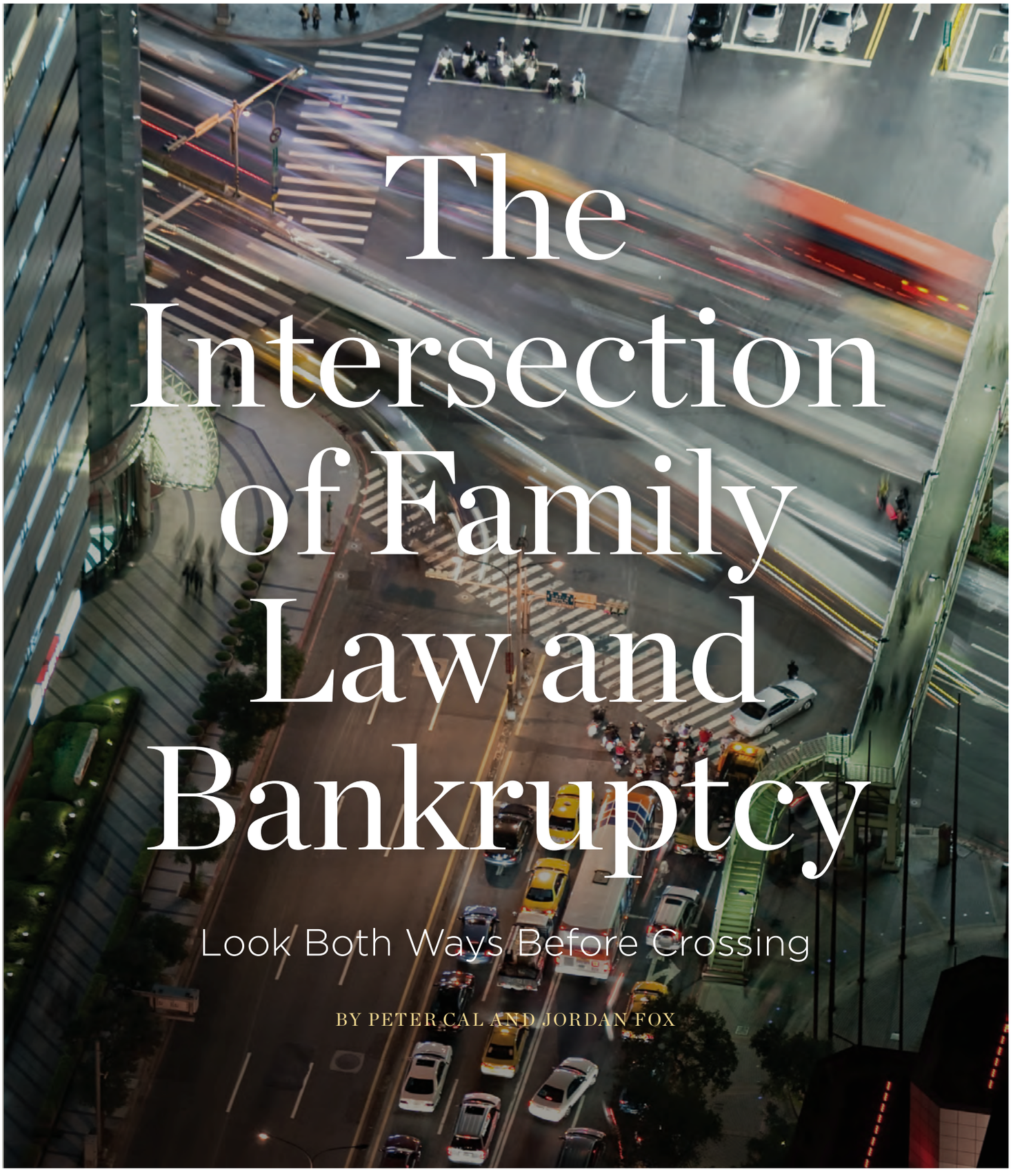

The Intersection of Family Law and Bankruptcy

Look Both Ways Before Crossing

BY PETER CAL AND JORDAN FOX

This article discusses the treatment of domestic support obligations in bankruptcy cases.

When handling dissolution of marriage cases, expertise in both family law and bankruptcy law is necessary to maximize a client's recovery and avoid significant risks.

This article addresses critical issues a practitioner must navigate when a client's spouse or ex-spouse files a bankruptcy case before or after entry of a divorce decree. It explains key concepts necessary to understanding options in the family law context after a bankruptcy filing and discusses

- the scope of the automatic stay and when a motion for relief from stay should be filed;
- abstention;
- the scope of the discharge under different chapters of the Bankruptcy Code;
- plan confirmation issues and strategies to maximize recoveries in the event of a bankruptcy filing; and
- best practices for crafting a state court dissolution and support order when a future bankruptcy filing is expected.

Key Concepts

Whether a debt is a domestic support obligation (DSO), what assets are property of the bankruptcy estate, and the chapter of the Bankruptcy Code[1] under which the debtor seeks relief are critical to determining whether the automatic stay applies and whether a debt is dischargeable in a bankruptcy case.

DSOs and Other Debts

In a bankruptcy case filed after a divorce proceeding, it is critical to understand the different treatment provided for the various types of debts incurred in the divorce proceeding. The Bankruptcy Code creates two categories for debts incurred in divorce proceedings: (1) DSOs (11 USC section 523(a)(5)); and (2) any other debt incurred in a divorce proceeding (11 USC section 523(a)(15) debts).[2]

> "The Bankruptcy Code creates two categories for debts incurred in divorce proceedings: (1) DSOs (11 USC section 523(a)(5)); and (2) any other debt incurred in a divorce proceeding (11 USC section 523(a)(15) debts)."

DSOs have greater protection in the Bankruptcy Code than other debts incurred in a divorce proceeding in three important ways. First, DSOs cannot be discharged under any Bankruptcy Code chapter, but section 523(a)(15) debts can be discharged in a chapter 13 proceeding. Second, collection of DSOs generally isn't subject to the automatic stay, but collection of section 523(a)(15) debts is subject to the automatic stay. Third, a DSO is treated as a first priority claim and is paid before other unsecured claims.

Section 101(14)(A) of the Bankruptcy Code defines a DSO as a debt that is owed to a spouse, a former spouse, or a child of the debtor that is in the nature of alimony, maintenance, or support and is established by a separation agreement, divorce decree, property settlement agreement, or court order. Whether a debt is a DSO is determined by federal bankruptcy law, not state law.[3] To determine whether a debt is a DSO, the bankruptcy court analyzes the shared intent of the parties and whether the obligation, in substance, was support or in the nature of support. In determining the parties' intent, the bankruptcy court looks to the underlying agreement itself, as well as the surrounding circumstances, such as employment status, level of education, and the need for support.

Regardless of how the parties label the obligation, if it has the practical effect of providing support, the obligation is a DSO.[4] The Tenth Circuit has held that the term DSO is entitled to a broad application.[5] DSOs can include not only payments to the former spouse, but also payments to third parties that have the practical effect of reducing the former spouse's living expenses. For example, an obligation owed to a credit card company to pay a joint credit card debt of a former spouse[6] or an obligation to pay a mortgage and hold the former spouse harmless from the obligation to pay the mortgage can both be characterized as DSOs.[7] DSOs can also include attorney fees incurred in a state court proceeding related to the receipt or enforcement of DSOs.[8]

In sum, bankruptcy courts may have a broader view of what qualifies as a DSO than a family law attorney initially may expect. For example, what may appear to be a property

transfer under state law could, under certain circumstances, be a DSO in a bankruptcy case.

Property of the Bankruptcy Estate

The Bankruptcy Code defines property of the estate very broadly to encompass all legal or equitable interests of the debtor in property as of the commencement of the bankruptcy case,[9] with a few exceptions not relevant to this article. In a chapter 7 case, property of the bankruptcy estate *does not* include post-petition earnings or other property acquired by the debtor after the bankruptcy filing.[10] However, in chapter 11 and 13 cases, property of the bankruptcy estate *does* include property acquired post-petition and post-petition earnings.[11]

The Different Chapters of the Bankruptcy Code

The property that is included in the bankruptcy estate and the availability of a discharge vary under the different Bankruptcy Code chapters. It is thus important to identify at the commencement of the bankruptcy case the Bankruptcy Code chapter under which the debtor has chosen to file.

In general, an individual with few unencumbered assets who wants a discharge files a chapter 7 bankruptcy case. There are, however, limits on the amount of income an individual can earn and still be eligible for chapter 7 relief.[12] Subject to certain debt limits, an individual with regular income can file a chapter 13 bankruptcy case.[13] In the chapter 13 case, an individual seeks to confirm a plan and pay his creditors from disposable income over a period of three to five years. Chapter 11 is also available to individuals seeking to reorganize and is generally used where the individual does not satisfy chapter 13's debt limits or is not eligible for a chapter 7 case based on his income level. Chapter 12 is available for family farmers seeking to reorganize through a plan.

Scope of Relief

For debts incurred in a divorce proceeding, the scope of the discharge differs depending on the Bankruptcy Code chapter under which the debtor files a bankruptcy case. In a chapter 13 case, a section 523(a)(15) debt typically is paid through a plan on the same basis as other unsecured claims and is discharged when plan payments are complete, but a DSO is not discharged. Under chapters 7, 11, and 12, DSOs and section 523(a)(15) debts are not discharged.

PRACTICE TIPS FOR HANDLING BANKRUPTCY ISSUES IN DIVORCE PROCEEDINGS

1. Consult with competent bankruptcy counsel. The rules of the bankruptcy court are unique and do not necessarily follow the standard pathways in the domestic arena.
2. File a motion for relief from stay even if you think you are dealing with a DSO. This is a situation where it is better to ask for permission than to beg for forgiveness.
3. To the maximum extent possible, characterize the obligations imposed by the divorce orders as in the nature of support and provide the bankruptcy court with as much information as possible about the state court's and the parties' intent. Where appropriate, state the facts regarding how the order reduces the creditor spouse's monthly expenses and note that absent a particular order, the court would have granted a higher or longer support order.
4. Where possible, secure the spouse's obligation to make a payment or property transfer with a security interest in the relevant property.
5. Consider including language in a settlement agreement that permits the parties to return to the domestic court to adjust support payments in the event a spouse fails to meet his obligations with respect to property allocations.
6. Again, consult with competent bankruptcy counsel!

The Automatic Stay

Among other things, a bankruptcy filing stays

1. the commencement or continuation of litigation against the debtor;
2. the enforcement of a judgment obtained before the commencement of the bankruptcy case against either the debtor or property of the bankruptcy estate;
3. any act to exercise control over property of the bankruptcy estate; and
4. any act to collect, assess, or recover a pre-petition claim against the debtor.[14]

The protection of the automatic stay is broad, and exceptions to the automatic stay are applied narrowly.[15] The consequences to the client and the attorney for violating the automatic stay can be severe. Any act in violation of the automatic stay is void, even where there is no notice of the bankruptcy filing.[16] An individual injured by a willful violation of the automatic stay can recover actual damages, including costs and attorney fees. The award of actual damages is mandatory.[17] Punitive damages also can be awarded.[18]

There are exceptions to the automatic stay for certain types of family law proceedings. The automatic stay does not apply to the commencement or continuation of a civil action

- to establish paternity;
- to establish or modify an order for a DSO;
- concerning child custody or visitation;

- to dissolve a marriage, except to the extent the dissolution proceeding seeks to determine the division of property that is property of the estate; or
- regarding domestic violence.[19]

Further, the automatic stay does not apply to the collection of a DSO from property *that is not property of the estate*,[20] to a wage garnishment,[21] or to a criminal proceeding against the debtor, including a criminal contempt proceeding brought to enforce a pre-petition order of the state court.[22]

A creditor must notify the state court in a pending proceeding of the bankruptcy filing. This is often done by filing a "Suggestion of Bankruptcy." A creditor must also affirmatively cease all collection efforts, including taking steps to withdraw an income assignment or wage garnishment if it involves the collection of section 523(a)(15) debts.[23]

When is a Debt a DSO?

As stated above, whether a debt created by a divorce decree is a DSO is determined by the intent of the parties and the court's consideration of the surrounding circumstances. The Tenth Circuit has stated that the label attached to an obligation does not control, even if the relevant agreement is unambiguous.[24] In short, whether a debt is a DSO raises inherently factual issues.[25] In addition, even when the debt is a DSO, collection of the DSO is stayed upon the filing of a bankruptcy case, unless collection is from property that is not property of the bankruptcy estate or is based on a DSO wage garnishment.[26] For these reasons, it is often more judicious to seek relief from the automatic stay before proceeding in the pending state court divorce proceeding.

State Court Contempt Proceedings

Bankruptcy courts generally refer to contempt proceedings as civil (which are subject to the automatic stay) and criminal (which are not subject to the automatic stay). Colorado state law refers to remedial sanctions and punitive sanctions for contempt.[27] A contempt proceeding seeking remedial sanctions is civil, and one seeking punitive sanctions is criminal.[28]

When pursuing a contempt proceeding in state court against a debtor in a pending bankruptcy case, a former spouse should ensure that the trial court makes appropriate findings to support its conclusion that the proceeding is criminal and not civil.[29] A criminal contempt proceeding is designed to vindicate the dignity of the court by punishing the contemnor for knowingly violating a court order. The primary consideration in determining whether a contempt proceeding is criminal is the purpose and character of the sanctions imposed against the contemnor.[30] If the contemnor can purge the contempt by paying the judgment, the proceeding is a civil contempt proceeding and is subject to the automatic stay.[31] For a contempt proceeding to be criminal, a trial court must find that the contemnor acted willfully in refusing to pay (that is, she had knowledge of the order and the ability to pay the debt but nevertheless failed to do so).[32] Particularly in a chapter 11 or 13 case, where property of the estate includes post-petition earnings, it is less likely the contemnor would have assets that could be used to pay the DSO. Once again, relief from the stay could be sought in the bankruptcy court to avoid any doubts as to the application of the automatic stay in a contempt proceeding.

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If there is any doubt whether the automatic stay applies, a motion for relief from the automatic stay should be filed with the bankruptcy court.[33] The motion should seek a ruling that the automatic stay does not apply or, alternatively, seek relief from the automatic stay if the court finds the automatic stay does apply.[34]

Relief from Stay

Relief from the stay is sought by filing a motion in the bankruptcy case.[35] Typically, a decision will be made in 30 to 60 days.[36] Where necessary, relief from the stay can be sought on an emergency basis.[37] It is a summary proceeding determined on an expedited basis. Accordingly, the bankruptcy court does not rule on the merits of the claims.[38]

Under section 362(d)(1) of the Bankruptcy Code, relief from stay "shall be granted" for cause. Because "cause" is not defined in the Bankruptcy Code, relief from stay for cause "is a discretionary determination made on a case by case basis."[39] To determine whether cause exists to lift the automatic stay, bankruptcy courts "apply a balancing test to weigh the hardships suffered by the creditor under the automatic stay against those suffered by the Debtors if the stay is lifted."[40] Once the moving party makes an initial showing of cause, the burden shifts to the debtor to demonstrate why the stay should remain in place. [41]

In re Curtis

In the Tenth Circuit, courts apply the "*Curtis* factors" to determine whether to grant relief from the automatic stay to allow a creditor to pursue claims in a pending state court proceeding. The *Curtis* factors are:

1. whether relief would result in a partial or complete resolution of the issues;
2. lack of any connection with or interference with the bankruptcy case;
3. whether the other proceeding involves the debtor as a fiduciary;
4. whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
5. whether the debtor's insurer has assumed full responsibility for defending it;
6. whether the action primarily involves third parties;
7. whether litigation in another forum would prejudice the interests of other creditors;
8. whether the judgment claim arising from the other action is subject to equitable subordination;
9. whether the movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
10. the interests of judicial economy and the expeditious and economical resolution of litigation;
11. whether the parties are ready for trial in the other proceeding; and
12. the impact of the stay on the parties and the balance of harms.[42]

"Not all of these factors will be relevant in every case . . . [a]nd the court need not give equal weight to each factor."[43] Relief from stay is appropriate where the bankruptcy court could not grant complete relief to the parties.[44] This consideration is particularly relevant in a divorce proceeding related to the division of property because the bankruptcy court does not have jurisdiction to resolve issues such as custody and support.[45] While "the divorce court is the best forum for the division of marital property," the bankruptcy court retains jurisdiction to "adjudicate the impact of the state court's division of property in a manner that reflects the priorities established by the Bankruptcy Code."[46]

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Abstention

Bankruptcy courts sometimes abstain from a case that involves complex issues of state law. Family law proceedings often fall into this category. Abstention is governed by 28 USC section 1334(c) and can be mandatory or discretionary.

Mandatory abstention applies when all of the following elements are present: (1) a party files a timely motion to abstain;[47] (2) the action is based on state law; (3) an action is pending in state court; (4) the action can be timely adjudicated in state court; (5) there is no independent basis for federal jurisdiction other than bankruptcy; and (6) the matter is "non-core."[48] Actions are non-core if they do not depend on the bankruptcy laws for their existence and could proceed in another court.[49]

Courts consider 12 factors when deciding whether permissive abstention applies.[50] Not all 12 factors must be present for permissive abstention to be appropriate. Ultimately, permissive abstention focuses on the federal court's duty of comity to state courts and the respect the federal courts should show to the state courts, particularly as to family law and domestic relations matters.[51]

At the outset of the bankruptcy case, counsel should evaluate whether the state court is a more favorable forum based on the specific nature of the family law issues, the state court's expertise with the relevant family law issues, and the extent to which the state court has already delved into the issues in the pending state court proceedings. A former spouse should consider requesting the bankruptcy court to abstain from deciding state law issues, such as what property is marital property. Under Colorado domestic law, title to property does not necessarily control the characteristic of that property as marital or separate.[52] Even if an asset is titled solely in a debtor's name, the divorce court may determine that the asset qualifies as marital property and the former spouse's interest in such property would not be property of the bankruptcy estate.[53] It is important to remember that relief from stay may be necessary before proceeding in the state court if the bankruptcy court abstains.

The Discharge

One of the primary reasons for filing a bankruptcy case is to obtain a discharge of debts.[54] The Bankruptcy Code allows individuals to discharge pre-petition debts, subject to certain exceptions,[55] and imposes a "discharge injunction" against any efforts to collect a discharged debt.[56] Similar to a violation of the automatic stay, a violation of the discharge injunction exposes a person to actual damages, punitive damages, costs, and attorney fees.[57] Therefore, it is essential to understand which debts incurred in a divorce proceeding are discharged.

In a chapter 7, 11, and 12 case, DSOs and section 523(a)(15) debts are not discharged.[58] In contrast, in a chapter 13 case, DSOs are not discharged and section 523(a)(15) debts are discharged.[59] As explained above, whether a debt incurred in a divorce proceeding is a DSO often depends on disputed factual issues. Therefore, when seeking to collect a debt incurred in a divorce proceeding after a debtor obtains a chapter 13 discharge, it is good practice to ask the state court to make a finding that the debt is a DSO and, therefore, was not discharged.

To best protect the creditor spouse, the practitioner should suggest a form of order in the state court order that confirms the payments fit within the definition of a DSO. Where appropriate, focus on the relative income and education level of the parties and who the primary caregiver for the children is, and include this information in recital paragraphs. The parties can include an express statement that a particular payment is in the nature of support and would not be dischargeable in the event of a future bankruptcy filing.[60] If the former spouse will retain property in exchange for a payment, the client spouse should remain on the title until the payments are made. If the title is already in the former spouse's name, consider whether the obligation to make the payment can be secured by a lien against the property and perfect that lien as soon as practicable.

Other grounds for objecting to discharge may exist depending on the specific facts of a case. These could include a debt incurred based on fraud,[61] embezzlement or larceny,[62] or willful or malicious injury.[63] The bankruptcy court has exclusive jurisdiction to determine these claims,[64] and there are strict deadlines for commencing an action based on these types of claims.[65]

Plan Confirmation Issues

Plan confirmation provides an opportunity for a DSO creditor to protect her interests.

A chapter 13 plan cannot be confirmed unless the debtor is current on the payment of all post-petition DSOs.[66] In addition, a pre-petition DSO is entitled to first priority when plan payments are distributed to unsecured creditors.[67] After a chapter 13 plan is confirmed, property of the estate vests in the debtor unless the plan provides otherwise.[68] A plan should provide that property of the estate vests in the debtor except for those funds necessary to make the payments required under the confirmed plan.[69] There are a number of additional requirements that a chapter 13 plan must satisfy to be confirmed.[70]

A confirmed chapter 13 plan binds the debtor and all creditors.[71] The U.S. Supreme Court has stated that a DSO is not dischargeable under any circumstances.[72]

> "Bankruptcy courts, including courts in the District of Colorado, do not agree on what it means for property of the estate to vest in the debtor after a plan is confirmed."

These principles create confusing situations. Bankruptcy courts, including courts in the District of Colorado, do not agree on what it means for property of the estate to vest in the debtor after a plan is confirmed.[73] The issue becomes significant because the automatic stay precludes collection activity of DSOs from property of the estate, except for wage garnishments. Even if the automatic stay does not preclude collection activity after confirmation of a chapter 13 plan, the terms of the plan could do so for a pre-petition DSO.[74]

For these reasons, a DSO creditor must carefully review the chapter 13 plan to ensure that it includes payment for all pre-petition DSOs and that excessive amounts are not included in property of the estate after plan confirmation.

While other details of chapter 13 plan confirmation are beyond the scope of this article, counsel should consider whether a client would benefit by successfully objecting to plan confirmation based on DSO issues. A debtor's failure to remain current on the payment of post-petition DSOs is ground for blocking confirmation of the plan, as well as grounds for dismissal or conversion of the case.[75] If a debtor is unable to confirm a plan, the bankruptcy case would be converted to chapter 7 or dismissed.[76] Under either of these scenarios, no debt based on a divorce proceeding would be discharged, whether or not it is a DSO.

Conclusion

The Bankruptcy Code protects the interests of former spouses and dependent children of a debtor by prioritizing DSOs. Practitioners must be well-versed with the avenues for relief under the various Bankruptcy Code chapters to maximize the recovery for the former spouse and dependent children if a bankruptcy case is filed. CL

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NOTES

1. The Bankruptcy Code is codified at USC Title 11.

2. DSOs are defined at Bankruptcy Code section 101(14A). Any other debt incurred in a divorce proceeding is included in the exception to discharge provided by section 523(a)(15) of the Bankruptcy Code.

3. *See, e.g., Sampson v. Sampson (In re Sampson)*, 997 F.2d 717, 721 (10th Cir. 1993) (whether a debt is a nondischargeable DSO is a question of federal law).

4. *Id.* at 726 (finding an obligation is in substance support where it "effectively functions as the former spouse's source of income").

5. *Jones v. Jones (In re Jones)*, 9 F.3d 878, 882 (10th Cir. 1993) (support as used in section 523(a)(5) of the Bankruptcy Code is entitled to a broad application).

6. *In re Wodark*, 425 B.R. 834, 837 (B.A.P. 10th Cir. 2010) (obligation to pay joint credit card debt is a DSO even where there is no express hold harmless or indemnification agreement with the former spouse).

7. *See Robinson v. Robinson (In re Robinson)*, 921 F.2d 252, 253 (10th Cir. 1990); *Busch v. Hancock (In re Busch)*, 369 B.R. 614, 622–23 (B.A.P. 10th Cir. 2007).

8. *Jones*, 9 F.3d at 882 (attorney fees incurred in a child custody proceeding are a nondischargeable DSO); *In re Notary*, 547 B.R. 411, 421–22 (Bankr. D. Colo. 2016) (attorney fees incurred in the course of a divorce proceeding are nondischargeable even if they are to be paid by the debtor spouse directly to the other spouse's attorneys).

9. 11 USC § 541(a)(1); *In re Dagen*, 386 B.R. 777, 781 (Bankr. D. Colo. 2008).

10. 11 USC § 541(a)(6) (excluding from property of the estate post-petition earnings of an individual debtor).

11. 11 USC §§ 1115(a) and 1306(a).

12. 11 USC § 707(b).

13. 11 USC § 109(e).

14. 11 USC § 362(a).

15. *Dagen*, 386 B.R. at 781 (the automatic stay "throws a broad blanket of protection over a debtor and property of the estate"); *Gazzo v. Ruff (In re Gazzo)*, 505 B.R. 28, 35 (Bankr. D. Colo. 2014) (the automatic stay should be construed broadly in favor of the debtor and the exception should be applied narrowly).

16. *Job v. Calder (In re Calder)*, 907 F.2d 953, 956 (10th Cir. 1990).

17. *In re Gagliardi*, 290 B.R. 808, 819–20 (Bankr. D. Colo. 2003).

18. 11 USC § 362(k).

19. 11 USC § 362(b)(2)(A).

20. 11 USC § 362(b)(2)(B).

21. 11 USC § 362(b)(2)(C); *Jordahl v. Dyal (In re Jordahl)*, 555 B.R. 861, 866–67 (Bankr. S.D. Ga. 2016) (section 362(b)(2)(C) limits the exception to withholding income through wage garnishments or income deduction orders).

22. 11 USC § 362(b)(1).

23. *See, e.g., Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002) (automatic stay imposes affirmative duty on creditor in pending action to dismiss or stay proceeding); *Lawrence Athletic Club v. Scroggin (In re Scroggin)*, 364 B.R. 772, 779–80 (B.A.P. 10th Cir. 2007) (judgment creditor must notify garnishee of release of garnishment to effectuate termination of garnishment).

24. *Sampson*, 997 F.2d at 722–23.

25. *Id.* at 721 ("Whether an obligation to a former spouse is actually in the nature of support is a factual question . . . .").

26. *Gazzo*, 505 B.R. at 42 (trial court must make a specific finding that there is non-estate property from which the debtor can pay the DSO) (citing *In re Marriage of Weis*, 232 P.3d 789 (Colo. 2010)).

27. *See* CRCP 107.

28. *In re Marriage of Cyr*, 186 P.3d 88, 91–92 (Colo.App. 2008) (discussing elements of punitive and remedial contempt).

29. *In re Marriage of Nussbeck*, 974 P.2d 493, 501 (Colo. 1999) (identifying the findings the trial court should make when deciding a contempt proceeding is criminal, including that the contemnor had the ability to pay).

30. *Weis*, 232 P.3d at 796 (discussing a contempt proceeding in the context of the failure to pay a DSO).

31. *Id.* at 797 ("A civil, or remedial, contempt proceeding—such as one involving a sanction that can be purged—is subject to the stay.").

32. *Id.* (contempt proceeding is not criminal where the trial court finds the debtor does not have the ability to pay the debt). *See also Cyr*, 186 P.3d at 92.

33. *See, e.g., Gagliardi*, 290 B.R. at 818 ("A creditor and its agents act at their own peril when they usurp the bankruptcy court's role in determining the scope of the automatic stay, without binding authority that is clearly applicable to the facts at hand. Filing a stay relief motion is an inexpensive form of insurance against a stay violation award.").

34. *See Barner v. Saxon Mtg. Servcs., Inc. (In re Barner)*, 597 F.3d 651, 654 (5th Cir. 2010) (concluding that a declaration that the automatic stay does not apply does not "fall within the bounds of Rule 7001" and can be obtained by motion rather than adversary proceeding).

35. *See* Fed.R.Bankr.P. 4001(a).

36. 11 USC § 362(e) (setting forth deadlines in which the court must decide the motion). These deadlines can be extended by the court or waived by the moving party.

37. *See generally* Fed.R.Bankr.P. 4001(a)(2).

38. *See Santangelo Law Offices, P.C. v. Touchstone Home Health LLC (In re Touchstone Home Health LLC)*, 572 B.R. 255, 283 (Bankr. D. Colo. 2017) ("Relief from stay proceedings are summary in nature and determined on an expedited basis. 'It is not a full determination on the merits.'") (quoting *U.S. Bank, N.A. v. Brumfiel (In re Brumfiel)*, 514 B.R. 637, 645 (Bankr. D. Colo. 2014)).

39. *In re Dryja*, 425 B.R. 608, 611 (Bankr. D. Colo. 2010) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)).

40. *In re Rouse*, 301 B.R. 86, 89 (Bankr. D. Colo. 2003).

41. 11 USC § 362(g); *Dryja*, 425 B.R. at 611.

42. *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984).

43. *Dryja*, 425 B.R. at 611 (quotation omitted). *See also Dampier v. Credit Invs., Inc. (In re Dampier)*, 2015 Bankr. LEXIS 3800 at *9 (B.A.P. 10th Cir. Nov. 5, 2015).

44. *See Baack v. Horizon Womens Care Prof'l LLC (In re Horizon Womens Care Prof'l LLC)*, 506 B.R. 553, 559 (Bankr. D. Colo. 2014) (refusing relief from stay provides no benefit to any party where the bankruptcy court cannot deal with the unresolved issues); *Midwest Motor Supply Co. v. Hruby (In re Hruby)*, 512 B.R. 262, 270 (Bankr. D. Colo. 2014) (where the bankruptcy court does not have jurisdiction to resolve the disputes "denying relief cannot serve any interest of judicial economy").

45. *Dryja*, 425 B.R. at 611–12 (discussing state court expertise on issues related to division of property); *MacDonald v. MacDonald (In re MacDonald)*, 755 F.2d 715, 717 (9th Cir. 1985) ("It is appropriate for bankruptcy courts to avoid incursions into family law matters out of consideration of economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters.") (citation omitted).

46. *Dryja*, 425 B.R. at 613.

47. Motions to remand are governed by 28 USC § 1452 and Fed.R.Bankr.P. 9027.

48. *Notary*, 547 B.R. at 417 (concluding that mandatory abstention applies where debtor removed state court action to bankruptcy court where attorneys for former spouse were seeking to collect nondischargeable fee award).

49. *Id.* at 419 (citing *In re Gardner*, 913 F.2d 151, 1518 (10th Cir. 1990)).

50. *Id.* at 419–20 (identifying the factors relevant to permissive abstention).

51. *Id.* at 419 ("comity is the respect owed by one political subdivision to honor the legislative, executive or judicial acts of other political subdivisions").

52. CRS § 14-10-113 (marital property includes all property acquired during the marriage unless it falls within limited exceptions found in CRS § 14-10-113(2)).

53. *See Dryja*, 425 B.R. at 612 (the nature and extent of a debtor's legal and equitable interests are determined by state law); *Reinbold v. Thorpe (In re Thorpe)*, 546 B.R. 172, 177 (Bankr. C.D. Ill. 2016) ("The divorce court is the appropriate forum to equitably allocate martial property.").

54. *See McVay v. DiGesualdo (In re DiGesualdo)*, 463 B.R. 503, 524 (Bankr. D. Colo. 2011) (a "central purpose of the Bankruptcy Code" is to provide a "fresh start" to the "honest but unfortunate debtor") (quoting *Standiferd v. U.S. Trustee*, 641 F.3d 1209, 1212 (10th Cir. 2011)).

55. *See* 11 USC §§ 727, 1141, 1228, and 1328.

56. *See* 11 USC § 524(a).

57. *See, e.g., Peyrano v. Sotelo (In re Peyrano)*, B.A.P. No. EO-160032, 2017 WL 2731299 at *6 (B.A.P. 10th Cir. June 26, 2017).

58. 11 USC §§ 523(a)(5) (DSO) and 523(a)(15) (any debt to a spouse, former spouse, or child other than a DSO incurred in a divorce proceeding).

59. 11 USC §§ 523(a) (5) and 1328(a)(2).

60. *See Weis*, 232 P.3d at 795.

61. 11 USC § 523(a)(2).

62. 11 USC § 523(a)(4).

63. 11 USC § 523(a)(6).

64. 11 USC § 523(c)(1); *Resolution Trust Corp. v. McKendry (In re McKendry)*, 40 F.3d 331, 335–36 (10th Cir. 1994).

65. Fed.R.Bankr.P. 4007(c) and (d); *Themy v. Yu (In re Themy)*, 6 F.3d 688, 689 (10th Cir. 1993) (noting that the Tenth Circuit has strictly construed the deadlines).

66. *See* 11 USC § 1325(a)(8).

67. *See* 11 USC § 507(a)(1).

68. 11 USC § 1327(b); *Dagen*, 386 B.R. at 782. *See also* 11 USC § 1322(a)(9) (chapter 13 plan must provide for the vesting of property of the estate in the debtor or any other entity on confirmation of the plan or at another time).

69. *See In re Segura*, No. 08-14280 MER, 2009 WL 416847 at **3–4 (Bankr. D. Colo. Jan. 9, 2009) (court will not confirm a plan in which the estate holds greater assets than is necessary to make plan payments).

70. *See generally* 11 USC § 1325 (identifying circumstance under which court must confirm a chapter 13 plan).

71. 11 USC § 1327(a).

72. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 273 n.10 (2010) (declining to state under what circumstances a judgment discharging a DSO could be set aside as void). As discussed herein, a confirmed chapter 13 plan can be res judicata in establishing the amount of DSOs that must be paid under a plan.

73. *See Segura*, 2017 WL 416847 at *6 (discussing different interpretations of vesting of property in the debtor after plan confirmation).

74. *See Dagen*, 386 B.R. at 783 (confirmed plan precluded collection of DSO).

75. 11 USC § 1307(c)(11).

76. *See* 11 USC § 1307(c)(5) (court may convert a chapter 13 case to a chapter 7 case or dismiss the chapter 13 case, whichever is in the best interests of creditors and the estate, if the debtor is unable to confirm a plan); *In re Khan*, No. 14-13514 MER, 2015 WL 739854 at *6 (Bankr. D. Colo. Feb. 19, 2015) (denying confirmation of amended chapter 13 plan and dismissing chapter 13 case where there is no evidence the debtor would be able to confirm a plan in the future).

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