



**ORDERED** in the Southern District of Florida on January 20, 2012.

  
Raymond B. Ray, Judge  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)  
Broward Division

In re:

JEAN PHIPIPPE MOUHICA,  
Debtor(s).

Case No. 11-28929-BKC-RBR  
Chapter 13

**ORDER OVERRULING OBJECTION TO CLAIM OF CHERISE MOUHICA [DE 17]**

**THIS MATTER** came before the Court for an evidentiary hearing on January 9, 2012, on the Debtor's Objection to the Claim [DE 17] of his ex-wife, Cherise Mouhica [Claim #7-1]. After having heard argument from the parties, listened to and evaluated the credibility of the Debtor and Ms. Mouhica, and accepted into evidence the Marital Settlement Agreement, the Court overrules the Debtor's Objection to Ms. Mouhica's Claim.

**Findings of Fact**

After two children and a little less than ten years of marriage, the Debtor and Cherise Mouhica (“Creditor”) signed a Mediated Marital Settlement Agreement (“Settlement Agreement”) on September 28, 2010. The parties agreed the Creditor would stay in the marital home with the children.

Article 4 of the Settlement Agreement, entitled “Debts of Parties,” provided that the Debtor and Creditor would each be responsible for one-half of the second equity line on the marital home. The parties agreed to the Creditor paying the full amount of the second equity line on or around the first of each month. The Debtor would then reimburse the Creditor before the last day of the month. The monthly payment totaled approximately \$385 as of September 28, 2010. If the monthly payment changed, the Creditor would inform the Debtor who would then reimburse the Creditor one-half of the new amount. Subsection E. of Article 4 explained the parties’ intention “to file bankruptcy either as a married couple prior to the dissolution of marriage or as individuals post-divorce.”

The Settlement Agreement waived alimony entirely. Because the parties agreed to an equal time sharing schedule, the Settlement Agreement also waived child support.

Article 6 related to the parties’ children, aged eight and ten. The Settlement Agreement provided that the Creditor would pay all expenses of the children in full. The Debtor would then reimburse the Creditor with one-half of the following: \$62.74 for health insurance, \$136.14 for pre-paid college, extra-curricular activities, lunch money, field trips, school supplies, and other required school expenses.

The state court entered a Final Judgment of Dissolution of Marriage on January 24, 2011. The Final Judgment contained a hand-written provision explaining that “[b]ecause of the timesharing schedule and comparable income, the parents shall not exchange child support.”

[Claim #7-1 at p.15]

The Debtor stopped reimbursing the Creditor with his one-half of the payment for the second equity line in April or May 2011. Shortly thereafter, the Debtor filed a bankruptcy petition under chapter 13 on July 7, 2011.

Schedule J belies the Debtor's testimony that he pays all of the expenses articulated in Article 6 of the Settlement Agreement. On Schedule J, the Debtor listed a \$100 expense for "[a]limony, maintenance, and support paid to others." The Debtor also listed \$50 under "[o]ther" for "School: Tuition/ Supplies/ Uniform."

The Debtor scheduled \$75,000 as an unsecured nonpriority claim being owed to the Creditor on Schedule F. The Creditor filed a proof of claim, Claim #7-1, listing \$75,000 as a domestic support obligation under 11 U.S.C. § 507(a)(1). The Debtor objected to the claim [DE 17] on the basis that the claim was for equitable distribution and not for domestic support. Accordingly, the Debtor sought to reclassify the claim as a general unsecured claim.

The Debtor and Creditor testified at the hearing. Portions of the Debtor's testimony were inconsistent with the Settlement Agreement and also with the Creditor's testimony. The Court will therefore disregard those portions of the Debtor's testimony and instead rely on the Settlement Agreement and Creditor's testimony.

The issue before the Court is whether the Debtor's one-half payment to the Creditor for the second equity line should be considered a domestic support obligation under 11 U.S.C. § 523(a)(5). The Court answers the question in the affirmative.

#### **Conclusions of Law**

The Bankruptcy Code makes exceptions to discharge for certain obligations, among them are "domestic support obligations." 11 U.S.C. § 523(a)(5). The Code defines a domestic support obligation as "a debt . . . that is . . . in the nature of alimony, maintenance, or support . . . of each spouse, former spouse, or child of the debtor . . . without regard to whether such debt is expressly so designated . . . ." 11 U.S.C. § 101(14A). A court's determination as to whether

an obligation constitutes a support obligation, within the meaning of the section 523(a), is a case-specific, factual determination after examination of all relevant facts and circumstances. *Cummings v. Cummings*, 244 F.3d 1263, 1265 (11th Cir. 2001); see *In re Benson*, 441 Fed. Appx. 650 (11th Cir. 2011). Although state law “provide[s] guidance,” the “constructs of federal law control.” *In re Spence*, 02-12093-AJC, 2009 WL 3483741, at \*3 (Bankr. S.D. Fla. Oct. 26, 2009) (citing *Strickland v. Shannon*, 90 F.3d 444, 446 (11th Cir. 1996)).

A court’s initial focus should be on whether the parties’ written agreement clearly expresses an intent to treat the obligation as alimony, maintenance, or support. *Cummings*, 244 F. 3d 1263 at 1266. However, mere labels are not decisive. *Id.* at 1265. The dischargeability of an obligation must be determined by the substance of the liability, rather than its form. *In re Benson*, 441 Fed. Appx. at 651. Therefore, in determining whether a particular debt is in the nature of alimony, maintenance, or support, the court must examine the underlying purpose of the obligation, and determine the function which the parties intended the award to serve. See *Cummings*, 244 F. 3d at 1266.

Having considered the provisions of the Settlement Agreement and the testimony of the parties, the Court concludes that the parties agreed to impose the obligation to pay of one-half the second equity line upon the Debtor as a means of providing support for the parties' children. The function of the Debtor's payment was meant to enable the two minor children to continue residing in the marital home and attend the Parkland-area schools. Although the Settlement Agreement waived rights to child support, it did so in consideration for the benefits received in the agreement. Therefore, the Court finds that the obligation of the Debtor to pay one-half of the second equity line on the marital home is in the nature of support.

At the hearing, the Debtor contended that his obligation to pay post-majority mortgage expenses is dischargeable because he is not required under Florida law to support his children past the age of majority. In support, he points to no limitation being placed on the period of time

he must pay his share of the second equity line. However, as explained above, a domestic support obligation may be deemed in the nature of support under federal law even though it may not be classified as support under state law. See *In re Harrell*, 754 F.2d 902, 904 (11th Cir. 1985) (recognizing that “the language of § 523(a)(5) does not refer to a particular state law legal duty of support . . . . Congress chose instead to describe as not dischargeable those obligations in the ‘nature’ of support”). Therefore, the nature of the Debtor’s promise to pay the second equity line is not determined by the legal age of majority under state law.

The Debtor also contends that the provision to pay one-half of the second equity line is contained in the “Debts of the Parties” section rather than in the “Child Support” section. Again, whether domestic support obligations are labeled or designated as such is not dispositive. *Cummings*, 244 F. 3d at 1265. The function and nature of the Debtor’s obligation to pay one-half of the second equity line was to enable the children to continue residing in the marital home.

Finally, mortgage and loan payments, even if required to be made as a property settlement, have been found in some cases to be in the nature of support or alimony and, therefore, nondischargeable. See *In re Benson*, 441 Fed. Appx. at 652 (affirming a holding that “mortgage payments were non-dischargeable domestic support obligations” after referencing the agreement, state court contempt proceedings, and testimony); *In re Tatge*, 212 B.R. 604, 608 (8th Cir. 1997) (affirming holding that mortgage payments under a marital settlement agreement were “intended to serve as an award for alimony, maintenance or support”); *In re Montgomery*, 169 B.R. 442, 443-44 (Bankr. M.D. Fla. 1994) (holding that a monthly mortgage obligation imposed on the debtor to his ex-wife under a divorce decree was in the nature of alimony, support or maintenance and is nondischargeable pursuant to 523(a)(5)); *In re Brackett*, 259 B.R. 768, 775 (Bankr. M.D. Fla. 2001) (noting that when an obligation “relate[s] to the preservation of an asset, which is necessary to preserve the lifestyle of a spouse, particularly to

keep a roof over her head, it would be clearly an obligation in the nature of support . . . .”)  
(internal quotation marks omitted).

Therefore, it is

**ORDERED** that the Debtor’s Objection to Cerise Mouhica’s Claim #7-1 [DE 17] is  
**OVERRULED** without prejudice. This ruling is without prejudice to the parties’ rights to seek  
modification of child support in the state court.

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Copies to:  
Debtor  
Cherise Mouhica  
Robin Weiner, Trustee