UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

In re:	:	
SARA B. LADDS Debtor	:	BK No. 04-12010 Chapter 7
CHRISTIAN J. LADDS Plaintiff	:	
v.	:	A.P. No. 04-1050
SARA B. LADDS Defendant	:	

ORDER REFUSING ABSTENTION AND GRANTING INJUNCTIVE RELIEF

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on the Debtor/Defendant Sara Ladds' request for "a preliminary injunction" to prevent her ex-husband from prosecuting in the Providence County Family Court a recently filed Motion for Relief. There are no disputed issues of fact, so upon consideration of the arguments, the pleadings, and for the reasons set forth below, the Court will retain jurisdiction of the parties' dischargeability dispute. Ancillary thereto, the Defendant's request for injunctive relief is GRANTED.[1]

BACKGROUND

In September 2003, Sara and Christian Ladds were divorced, and as part of the final divorce judgment they entered into a marital settlement agreement wherein Sara assumed responsibility for a Capital One credit card debt on which she and Christian were jointly liable. After Sara defaulted on said debt she filed this Chapter 7 case, and Christian, who is not in bankruptcy and who is still personally liable on the Capital One debt, brought an adversary proceeding in this Court to have that

[1] Probably due to the urgency of things from the Debtor's standpoint at least, this matter has been presented awkwardly, in the nature of a request for injunctive relief. The Court, however, deems it more appropriate to address the issue on the basis of whether or not to abstain regarding the Family Court Motion for Relief.

debt declared nondischargeable as to Sara. Christian maintains that the Capital One debt is nondischargeable under 11 U.S.C. § 523(a)(5) because it is in the nature of alimony, maintenance and support. He also alleges that his ex-wife's Capital One debt is nondischargeable under Section (a)(15), and/or Sections 523(a)(2)(A) (fraud), (a)(4) (defalcation), and (a)(6) (wilful and malicious injury). In Christian's adversary proceeding here, pursuant to Bankruptcy Rule 7026, the parties have filed a Discovery Plan and there is in place a Scheduling Order requiring discovery to be completed by February 7, 2005, with a Joint Pre-Trial Order due by February 28, 2005. The parties have been advised that they can expect a trial on the merits in the Bankruptcy Court in March 2005.

On November 2, 2004, however, with the above-referenced adversary proceeding moving forward as described in the Bankruptcy Court, Christian filed the subject "Motion for Relief" in the Providence County Family Court for essentially the same relief sought by him in this Court.

DISCUSSION

At issue is whether the Defendant is required to litigate the dischargeability of her Capital One credit card debt both in

state court and in this Court. Regardless of how it is otherwise described, this dispute involves abstention, and regarding abstention this Court has consistently said:

> Bankruptcy courts and state courts have concurrent jurisdiction to hear and decide matters arising under Section 523(a)(5). *See ... Siragusa v. Siragusa (In re Siragusa*), 27 F.3d 406, 408 (9th Cir.1994); *Hopkins v. Hopkins,* 487 A.2d 500, 503-04 (R.I.1985). The circumstances under which a bankruptcy court may abstain in favor of a state court to adjudicate the same issues are spelled out in 28 U.S.C. § 1334(c)(1). *See Siragusa,* 27 F.3d at 408. Section 1334 states in part:
>
> > (a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.
> > (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
> > (c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
>
> 28 U.S.C. § 1334. For nearly a century and a half, federal courts have ... abstained or avoided interfering with the determination of family law matters. *Barber v. Barber,* 62 U.S. (21 How.) 582, 584 (1858).
>
> [Indeed], alimony, maintenance, or support

> are not standard debtor/creditor situations, but involve important issues of family law. Traditionally, the federal courts have been wary of becoming embroiled in family law matters. For that reason, federal courts generally abstain from deciding diversity "cases involving divorce and alimony, child custody, visitation rights, establishment of paternity, child support, and enforcement of separation or divorce decrees still subject to state court modification."
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> *Ingram v. Hayes,* 866 F.2d 368, 369 (11th Cir.1988); *see also Crouch v. Crouch,* 566 F.2d 486, 487 (5th Cir.1978). *See generally Simms v. Simms,* 175 U.S. 162, 20 S.Ct. 58, 44 L.Ed. 115 (1899) (the subject of domestic relations belongs to state, not federal law). "The reasons for federal abstention in these cases are apparent: the strong state interest in domestic relations matters, the competence of state courts in settling family disputes, the possibility of incompatible federal and state court decrees in cases of continuing judicial supervision by the state, and the problem of congested dockets in federal courts." *Crouch,* 566 F.2d at 487. *Carver v. Carver,* 954 F.2d 1573, 1578 (11th Cir.), *cert denied,* 506 U.S. 986, 113 S.Ct. 496, 121 L. Ed.2d 434 (1992) (footnote omitted).

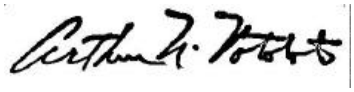
Lembo v. Read (*In re Lembo*), 262 B.R. 21, 25-25 (Bankr. D.R.I. 2001).

Jurisdiction over the dischargeability of debts resides in the Bankruptcy Court, while issues involving alimony, maintenance, and support are considered matters of state law where abstention is appropriate, given the family court's history with the parties and considering judicial economy. If

Mr. Ladds' adversary proceeding involved Section 523(a)(5) issues only, the decision would be easy, and this Court would probably defer to the family court. However, in his lawsuit in this Court Mr. Ladds asserts dischargeability issues where abstention is not permissible, i.e., under 11 U.S.C. § 523(c)(1), the bankruptcy court has *exclusive* jurisdiction over adversary proceedings brought under Sections 523(a)(2), (4), (6), or (15). *See In re Crawford*, 183 B.R. 103, 105 (Bankr. W.D. Va. 1995). By including and asserting each of these exclusively bankruptcy sections in his Bankruptcy Court complaint, Mr. Ladds has made this Court's retention of the dispute mandatory. As for the predictable question – should Mr. Ladds' complaint be bifurcated, with abstention granted as to the discretionary 523(a)(5) issue? – judicial economy and common sense require that question to be answered in the negative. Since bifurcation is not appropriate, and abstention not permissible under the statute, the Bankruptcy Court will retain jurisdiction over all issues raised in Christian Ladds' Bankruptcy Court complaint, and the matter shall proceed here, in accordance with the December 2, 2004, Scheduling Order. Implicit herein is this Court's order enjoining Christian Ladds

from prosecuting his Motion for Relief pending in the Rhode Island Family Court.

Dated at Providence, Rhode Island, this 31st day of January, 2005.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 1/31/2005