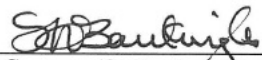




SO ORDERED.
SIGNED this 25th day of August, 2016

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 3:14-bk-32050-SHB

SALVADOR A. GAUDIANO

Debtor

MEMORANDUM AND ORDER

Before the court is the Objection to Claim of Kathleen Gaudiano filed by Debtor on January 18, 2016, through which Debtor seeks to establish the correct amount of his domestic support and property settlement obligations owed to his former spouse, Kathleen Gaudiano. A hearing on the Objection to Claim was held on August 23, 2016. The record before the Court consists of five stipulations of fact filed on August 14, 2016, together with all documents of record in Debtor's bankruptcy case pursuant to Rule 201 of the Federal Rules of Evidence. This Memorandum and Order constitutes the Court's determination in resolution of the Objection to Claim, and the Court's findings of fact and conclusions of law pursuant to Rule 52(a) of the

Federal Rules of Civil Procedure, made applicable to contested matters by Rules 9014(c) and 7052 of the Federal Rules of Bankruptcy Procedure.

Debtor filed his Chapter 11 bankruptcy case on June 25, 2014. On October 10, 2014, Ms. Gaudiano filed a proof of claim in the amount of \$3,540,000.00, representing the total amount that was awarded to her pursuant to the Final Judgment for Divorce entered by the Knox County Chancery Court on February 25, 2009, incorporating therein the parties' Marital Dissolution Agreement requiring Debtor to pay, *inter alia*, alimony *in solido* in the amount of \$10,000.00 monthly for a period of fifteen years, transitional alimony in the amount of \$7,500.00 monthly for fifteen years, lump sum payments totaling \$500,000.00 as additional alimony *in solido*, and the mortgage owed on the residence located in Maitland, Florida. At the hearing on the Objection to Claim, the parties stipulated that the claim should include the unpaid portion of the \$500,000.00 lump sum obligation as of the petition date, plus interest, which was \$117,490.41. The parties also stipulated that the past due amount owed to Wells Fargo on the Florida mortgage obligation was \$130,314.38, leaving in contention the amount of the alimony *in solido* and the amount of transitional alimony.

In defense of the Objection to Claim, Ms. Gaudiano argued that she did not agree with the arrangement through which Debtor could offset from the \$10,000.00 monthly alimony *in solido* payments owed to her \$7,500.00 paid to the law firm of Bernstein, Stair & McAdams for attorneys' fees awarded to the firm by the state court. Notwithstanding Ms. Gaudiano's lack of agreement, this issue was previously determined and is the law of the case. Following the September 2, 2015 evidentiary hearing on confirmation of Debtor's Chapter 11 plan, the Court held that the alimony *in solido* award is in the nature of a property settlement such that it is merely a debt owed by Debtor to Ms. Gaudiano that can be offset by the indemnification

judgment awarded to Debtor against Ms. Gaudiano relating to the attorneys' fees. Accordingly, taking into account all credits and offsets, the balance to be included in the proof of claim for alimony *in solido* is \$1,483,547.55.¹

Ms. Gaudiano also argued that she should be allowed to include 100% of the payments awarded to her for transitional alimony, which the parties stipulated is in the nature of support rather than property settlement. Finding that resolution of this issue is a matter of law, the Court agrees with Debtor's reliance on 11 U.S.C. § 502(b)(5), which provides that a claim for a domestic support obligation exempted from discharge under 11 U.S.C. § 523(a)(5) that has not matured as of the petition date is not an allowed claim. *See U.S. v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986) ("Section 523(a)(5) of the Bankruptcy Code renders obligations for alimony, maintenance, or support nondischargeable. In turn, Section 502(b)(5) disallows claims against the bankruptcy estate for alimony, support and maintenance that are not matured on the date the petition for relief under the bankruptcy laws is filed. Thus, unmatured claims for alimony, support and maintenance that are non-dischargeable are not allowable against the assets of the bankruptcy estate."). Accordingly, because Ms. Gaudiano may not include any unmatured transitional alimony payments, *i.e.*, any payments to which she was not entitled prior to the petition date, the claim shall include only the \$30,000.00 past due transitional alimony payments owed to Ms. Gaudiano on June 25, 2014.

Accordingly, the Court directs the following:

1. To the extent that Debtor objects to the \$3,540,000.00 amount provided by Ms. Gaudiano in her proof of claim filed on October 10, 2014, Debtor's Objection to Claim is SUSTAINED.

¹ Although Ms. Gaudiano did not agree that her claim should be reduced for the offset, she did agree through counsel that the \$1,483,547.55 would be the correct amount if the offset is permitted.

2. Based on the parties' stipulations and the determination of this Court, Ms. Gaudiano is entitled to a claim in Debtor's bankruptcy case in the amount of \$1,761,352.34, of which \$147,490.41 is domestic support obligation (consisting of \$117,490.41 owed from the lump sum alimony payment and \$30,000.00 owed as of the petition date for past due transitional alimony) and \$1,613,861.93 is property settlement debt (consisting of \$130,314.38 owed on the Florida mortgage and \$1,483,547.55 owed as alimony *in solido*).

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