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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

JACK DEFEO and MICHELLE D.
DEFEO,

Debtors.

Case No. 97-5-6198 JRG
Chapter 7

JOHN W. RICHARDSON, Trustee,

Plaintiff,

vs.

Adversary No. 98-5052

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

JACK DEFEO and MICHELLE D.
DEFEO,

Defendants.

I. INTRODUCTION

The Chapter 7 trustee for the bankruptcy estate of Berry Best Growers Cooperative ("Berry Best") filed a motion for summary judgment seeking the court to declare the criminal restitution obligation imposed by the Superior Court for the County of Monterey against the defendant, Jack Defeo, declared nondischargeable as a matter of law.

The trustee contends that the restitution judgment imposed

1 by the Superior Court ordering the defendant to pay \$275,000 as
2 part of his criminal sentence is nondischargeable as a matter of
3 law pursuant to 11 U.S.C. § 523(a)(7). The trustee also argues
4 that the debt is enforceable against the separate property of
5 the defendant as well as the community property of the defendant
6 and his wife, Michelle Defeo.

7 **II. FACTUAL BACKGROUND**

8 The facts material to the issue of this case are undisputed.
9 In 1995, defendant worked for Berry Best as a salesman; it was
10 later discovered that the defendant had sold strawberries at a
11 price well below the market value and had deposited the proceeds
12 into his own accounts. Due to the defendant's illegal scheme,
13 Berry Best lost more than \$1.3 million worth of strawberries
14 causing it to have to file for bankruptcy on or about October
15 31, 1996.

16 The defendant and his wife filed their voluntary petition
17 under Chapter 7 of the Bankruptcy Code on or about July 24,
18 1997. On February 11, 1998, the trustee filed an adversary
19 proceeding against the debtors seeking a determination that
20 their debt to Berry Best was nondischargeable pursuant to 11
21 U.S.C. § 523(a)(7). On January 13, 1999, the Superior Court for
22 the County of Monterey sentenced the defendant to three years in
23 state prison and ordered him to pay restitution in the amount of
24 \$275,000 to the estate of Berry Best. The defendant has not paid
25 any of the ordered restitution.

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27 **III. DISCUSSION**

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1 Bankruptcy Rule 7056 states that Rule 56 of the Federal
2 Rules of Civil Procedure applies to the adversary proceedings in
3 bankruptcy. Summary judgment as a matter of law is appropriate
4 if there is "no genuine issue as to any material fact." FED. R.
5 Civ. P. 56(c).

6 **A. Dischargeability Of The Restitution Judgment.**

7 The trustee argues that the restitution award of \$275,000 is
8 nondischargeable pursuant to 11 U.S.C. § 523(a)(7).

9 The Supreme Court held "that § 523(a)(7) preserves from
10 discharge any condition a state criminal court imposes as part
11 of a criminal sentence." Kelly v. Robinson, 479 U.S. 36, 50, 107
12 S.Ct. 353, 361 (1986). The Court went on to state that §
13 523(a)(7) precludes from discharge such debt that is "for a
14 fine, penalty, or forfeiture payable to and for the benefit of a
15 government unit, and is not compensation for actual pecuniary
16 loss." Id. The Court reasoned that because criminal
17 restitution judgments are not for the victim's actual
18 compensation but for the State's interests in rehabilitation and
19 punishment, they are imposed "for the benefit of" the State.
20 Id. at 53. A criminal sentence is within the meaning of §
21 523(a)(7) because it considers the state's interest. Id.

22 The Ninth Circuit Bankruptcy Appellate Panel agreed with the
23 Supreme Court's decision in Kelly v. Robinson which held that §
24 523(a)(7) preserved from discharge any obligation imposed by a
25 state court as part of a criminal sentence. In re Steiger, 159
26 B.R. 907, 912 (9th Cir. B.A.P. 1993). In Steiger, a state court
27 imposed restitution order, for a vehicular homicide and
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1 vehicular assault case, was held to be part of a criminal
2 sentence and therefore nondischargeable. Id. The purpose of the
3 restitution was to promote "the penal and rehabilitative
4 interests of the State" and not the "compensation of the
5 victim." Id. at 912 (citing Kelly v. Robinson, 479 U.S. at 53,
6 107 S.Ct. at 363).

7 In the instant case, the Superior Court imposed the
8 restitution judgment as part of the defendant's criminal
9 sentence for embezzlement and other crimes committed against
10 Berry Best. The \$275,000 restitution order is nondischargeable
11 as a matter of law pursuant to § 523(7)(a) and the holdings of
12 Kelly and Steiger.

13 **B. Restitution Judgment Is A Community Property Debt.**

14 The trustee argues that the restitution obligation is
15 enforceable against the Defeos' community property. The
16 controlling Ninth Circuit opinion in In re Soderling, 998 F.2d
17 730, 734 (9th Cir. 1993) held that a restitution debt imposed
18 against one spouse constituted community debt and was
19 enforceable against community property.

20 Soderling held that a federal criminal judgment incurred
21 during marriage and prior to the commencement of the bankruptcy
22 case was a debt under California community property law, and
23 that the claim was nondischargeable against the community
24 property. Id. at 734.

25 State law determines whether a creditor holds a claim
26 against the community property. In re Soderling, 998 F.2d 730,
27 733 (9th Cir. 1993) (citing In re Sweitzer, 111 B.R. 792, 793
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1 (Bankr. W.D. Wis.1990). The law applicable to the state where
2 the debtor and his spouse lived when the petition was filed
3 should measure the community property portion of the bankruptcy
4 estate. Id. at 733. "Three criteria must be met before an
5 obligation has the status of a community claim: 1) it must be a
6 debt owed by one of the spouses; 2) it must be satisfiable from
7 community property under applicable state law; and 3) the
8 community property from which the debt could be satisfied under
9 state law must be included within the assets which would pass to
10 the debtor's bankruptcy estate, whether or not such assets exist
11 at the commencement of the case." Id. at 733 (citing Alan
12 Pedlar, Community Property and the Bankruptcy Reform Act of
13 1978, 11 St. Mary's L.J. 349, 351-52 (1979), quoted in In re
14 Sweitzer, 111 B.R. at 793).

15 Because defendant and his wife lived in California during
16 and immediately after the filing of the Chapter 7 petition, it
17 is appropriate for California law to govern in ruling whether
18 the debt owed from the criminal judgment is a debt enforceable
19 against the community estate. In California, a debt incurred by
20 either spouse that occurs before or during marriage can be held
21 accountable by the community estate. CAL. FAM. CODE ANN. § 910
22 (West 1999).

23 The criminal restitution obligation of \$275,000 meets the
24 three criteria as set forth in Soderling for a community claim.
25 First, the restitution obligation is a debt owed by the husband.
26 Second, it is satisfiable under California law because it was
27 incurred by defendant during the marriage. Third, the community
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1 property from which the debt could be satisfied is property of
2 the bankruptcy estate because it existed at the time of the
3 bankruptcy filing. In re Mantle, 153 F.3d 1082. Thus, according
4 to the holding in Soderling, all of the Defeos' community
5 property is potentially liable for payment of the debt.

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7 **IV. CONCLUSION**

8 This court grants the plaintiff's motion for summary
9 judgment and finds the \$275,000 criminal restitution judgment
10 ordered by the Superior Court is nondischargeable pursuant to 11
11 U.S.C. § 523(a)(7). The court also holds that the restitution
12 is enforceable against the Defeos' community property.

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