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Wednesday, May 15, 2002
VINCENT M. DEDOMINICO,

No. 01-10563

[Debtor](#) ⓘ(s).

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LAURA GOMEZ EASTWOOD,

[Plaintiff](#) ⓘ(s),

v.

A.P. No. 01-1077

VINCENT M. DEDOMENICO,

[Defendant](#) ⓘ(s).

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Memorandum of Decision

Plaintiff Laura Eastwood and debtor and defendant Vincent DeDomenico were married from 1986 to 1991. DeDomenico is from a wealthy family; Eastwood has since remarried into a wealthy family.

In 1995, the parties entered into a stipulated judgment resolving their property rights. Under the judgment, DeDomenico was ordered to pay Eastwood an equalizing payment of \$1,122,157.00, attorneys' fees of \$27,161.25, and an additional \$170,000.00 denominated as "a non-taxable property division" but in fact unpaid spousal support. In this [adversary proceeding](#) ⓘ, Eastwood seeks a determination that DeDomenico's obligations under the judgment are nondischargeable.

Prior to his marriage to Eastwood, DeDomenico had inherited a large sum from his family. However, he spent most of it or lost it to bad investments or failed business ventures, so that he had little left when he filed his [Chapter 7](#) petition on March 14, 2001.

DeDomenico has no significant skills or education beyond high school. He is employed as an assistant to his father operating a small tourist railroad. He is paid about \$48,000.00 in salary by his father, and receives additional assistance from his parents to care for and educate his two children from his second marriage. His parents have purchased his residence from the [bankruptcy estate](#) and rent it to him at a below-market rate. They also supply him and his wife with vehicles. His total income, giving value to the support from his parents in addition to his salary, is probably in the range of \$75,000 to \$80,000 per year. He has no income whatsoever in excess of his expenses. It is very unlikely he could earn anything close to this amount working for anyone else.

It appears that the equalizing payment in the dissolution judgment is dischargeable under § 523(a)(15)(A) of the [Bankruptcy Code](#), in that DeDomenico clearly does not have the ability to pay even a small part of the obligation. Eastwood urges the court to consider his parents' wealth in determining DeDomenico's ability to pay, but the statute clearly provides that the debt is discharged if the debtor has no ability to pay it from income or property of the debtor. DeDomenico has no present or contingent future interest in any of his parents' property. Their wealth alone does not make his debt to Eastwood nondischargeable.

On the other hand, the evidence supports Eastwood's contention that \$170,000.00 of the judgment was for unpaid spousal support, even though it was otherwise denominated in the stipulated judgment. Obligations for spousal support are nondischargeable pursuant to § 523(a)(5) of the Code. The designation of an item in a settlement or decree as support or division of property is not dispositive. In re Seixas, 239 B.R. 398, 402 (9th Cir. BAP 1999). Even an obligation designated as a property settlement may actually be a support obligation. In re Gianakas, 917 F.2d 759, 763 (3rd Cir. 1990). While the evidence on this issue is thin, Eastwood's testimony and the fact that the obligation was treated separately from the equalizing payment convince the court that this part of the judgment was for past due support and was denominated as a property division for tax purposes.

For the foregoing reasons, the court will enter a judgment declaring that \$170,000.00 of the state court decree, together with interest thereon, is nondischargeable and the balance of the obligations in that decree have been discharged. Eastwood shall recover her costs of suit.

This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Eastwood shall submit an appropriate form of judgment forthwith.

Dated: May 15, 2002

Alan Jaroslovsky
U. S. [Bankruptcy Judge](#)

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