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Tuesday, June 20, 2000

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## UNITED STATES BANKRUPTCY COURT

### NORTHERN DISTRICT OF CALIFORNIA

In re JOSEPH BUCCOLA,

No. 99-12863

[Debtor](#) ⓘ(s).

\_\_\_\_\_ /

LINDA BUCCOLA,

[Plaintiff](#) ⓘ(s),

v.

A.P. No. 99-1247

JOSEPH BUCCOLA,

[Defendant](#) ⓘ(s).

\_\_\_\_\_ /

## **Memorandum of Decision**

Plaintiff Linda Buccola was married to debtor and defendant Joseph Buccola for about 19 years. After their divorce in 1997, Joseph was given most of the community property and was ordered to make an equalizing payment to Linda of \$50,000.00. About \$35,000.00 remains unpaid. The issue before the court is whether this obligation is nondischargeable pursuant to § 523(a)(15) of the [Bankruptcy Code](#)<sup>i</sup>. Once a former spouse has shown that the debt arises out of marital dissolution, the burden shifts to the debtor to show either that he does not have the ability to pay the debt or that the benefit of the [discharge](#)<sup>i</sup> to him outweighs the detriment to his spouse. *In re Jodoin*, 209 B.R. 132, 138 (9<sup>th</sup> Cir.BAP 1997). In this case, Joseph has not met his burden as to either issue. Linda is a manicurist, earning about \$850.00 per month. Joseph is a contractor of long standing specializing in termite repair and foundation work. He has demonstrated no benefit to him which would outweigh the detriment to Linda if she is deprived of her share of the community. The court does not believe that Joseph has been forthright in his argument that he cannot afford to pay his obligation to Linda. He has produced income figures for only part of one year, leaving the court with suspicions that he has manipulated his figures to reflect lack of income. Moreover, as a self-employed contractor he is in a position to earn money without documentation as well as "slack off" in order to show lower income. Linda has produced a 1998 loan application in which Joseph told a lender that his income was \$9,500.00 per month. Under these circumstances, the court cannot say that Joseph has met his burden of proving that he is unable to pay his obligation to Linda. For the foregoing reasons, judgement will be entered in favor of Linda declaring that the balance owed to her by Joseph is nondischargeable. Linda shall also recover her costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Linda shall submit an appropriate form of judgment forthwith.

Dated: June 20, 2000

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)<sup>i</sup>

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