

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT

BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560

FAX (605) 224-9020

August 5, 2004

Carolyn K. Dick, Esq.,
Counsel for Debtor
141 North Main Avenue, Suite 705
Sioux Falls, South Dakota 57104

Dale A. Wein,
Chapter 13 Trustee
Post Office Box 759
Aberdeen, South Dakota 57402

Siouxland Federal Credit Union
Post Office Box 807
South Sioux City, Nebraska 68776-0807

Subject: *In re Stacy J. Koolstra*,
Chapter 13; Bankr. No. 04-40056

Dear interested parties and counsel:

The matter before the Court is the objection by Debtor to the proof of claim filed by Siouxland Federal Credit Union and the Credit Union's response. A hearing was held July 7, 2004. Appearances included Trustee Dale A. Wein and Carolyn K. Dick for Debtor. Counsel did not appear for the Credit Union. As set forth below, Debtor's objection will be overruled.

Summary of material facts. Stacy J. Koolstra ("Debtor") filed a Chapter 13 petition in bankruptcy on January 15, 2004. She proposed a plan on January 15, 2004, and Trustee Dale A. Wein filed an objection to insure Debtor's appearance at a meeting of creditors. The confirmation hearing was continued twice to let expire the deadline for filing a proof of claim.

Siouxland Federal Credit Union (Credit Union) filed a proof for an unsecured claim of \$28,171.26 and another proof for an unsecured claim of \$773.55. On June 1, 2004, Debtor filed an objection to the Credit Union's \$28,171.26 claim. She stated that the debt owed to the Credit Union had been partially

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assumed by her former husband, Darron Koolstra, in their divorce, and that she is only liable for one-half of the debt. The relevant provision in the parties' divorce-related settlement provided:

9.2.3. The indebtedness of approximately \$33,000.00 owed to Siouxland Federal Credit for the purchase of the parties' two vehicles shall be divided equally between the parties, such that the Wife shall assume and pay one-half of the indebtedness through a refinance with Siouxland Federal Credit. The wife shall accomplish the refinancing immediately upon the Husband's payment of one-half of the existing indebtedness (anticipated to be accomplished immediately upon entry of a decree of dissolution). Pending the division of the indebtedness, each party shall pay one-half of the monthly obligation on this \$33,000.00 indebtedness.

The divorce was granted in Iowa and governed by that state's laws. The present record does not explain why the Credit Union's large claim has not been reduced in the manner set forth above.¹

The Credit Union responded to Debtor's claim objection on June 14, 2004. It argued that the loan was made jointly to Debtor and her former spouse and that the divorce decree could not

¹ While Debtor listed the Credit Union as a secured creditor for \$28,171.26 and stated that the collateral was a 1997 Plymouth Grand Voyager, which she took in the divorce, and a 1995 Nissan Altima, which her former husband took in the divorce, neither vehicle was listed in her schedule of assets. Instead, Debtor's Statement of Financial affairs indicated one or both of the vehicles were repossessed pre-petition, which would mean that the Credit Union should have been scheduled as a general, unsecured creditor.

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alter that joint liability.² A hearing was held July 7, 2004, in conjunction with the confirmation of Debtor's proposed plan. The Court took both matters under advisement.

Discussion. The Credit Union is correct. Though the Iowa divorce court divided assets and liabilities between Debtor and her former spouse, see Iowa Code § 598.21, that divorce judgment and property settlement did not alter or sever their joint liability to the Credit Union. The divorce judgment and related property settlement did not constitute a novation of Debtor and her former husband's notes and security agreements with the Credit Union since the Credit Union was not a party to the divorce-related agreement. See *In re Integrated Resources Life Insurance Company*, 562 N.W.2d 179, 182-83 (Iowa 1997).

Many a debtor wishes that by such an expression [of an intention to delegate] he could get rid of his debts.... In spite of such an "assignment," the debtor's duty remains absolutely unchanged. The performance required by a duty can often be delegated; but by such a delegation the duty itself is not escaped.

Id. (quoting 4 Arthur L. Corbin, *Corbin on Contracts* § 866 (1951)). Though Debtor (and now her bankruptcy estate) may have a claim against Darron Koolstra for one-half of the amount due to the Credit Union, Debtor remains obligated to the Credit Union for the full amount of the debt. Absent a different agreement with the Credit Union, Debtor will need to recognize the full debt owed to the Credit Union in her Chapter 13 plan.

An order overruling Debtor's objection to the Credit Union's claim of \$28,171.26 will be entered. Trustee Wein shall advise the Court by letter whether Debtor will need to file a modified plan to account for the full claim and, thus, whether confirmation of Debtor's plan dated January 13, 2004, needs to

² The Credit Union's response was filed by one of its collection managers. The response stated no one would appear at the hearing because of a scheduling conflict. By letter dated June 14, 2004, the Court advised the Credit Union that as a corporation, it could only appear in the case through counsel. Apparently, the Credit Union decided not to retain counsel since an attorney did not appear for it at the July 7, 2004, hearing. In light of the Credit Union's large claim, that decision may not have been the wisest.

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be denied.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)