

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

DANIEL E. PROCTOR

Case No. 95-12365 K

Debtor

JOANNE L. HARTMAN
a/k/a JOANNE L. PROCTOR

Plaintiff

-vs-

AP 95-1282 K

DANIEL E. PROCTOR

Defendant

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Attorney for Plaintiff

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Attorney for Debtor

The ambiguities in the record presented are such as to command denial both of the Debtor/Defendant's Motion for Summary Judgment and the Plaintiff/Ex-Spouse's Cross-Motion for Summary Judgment. The matter must be set down for trial, if it is not settled.

DISCUSSION

(1) The fact that the colloquy that occurred in open court before Justice Forma on June 5, 1987, referred to "maintenance," and (2) the fact that the 1989 Promissory Note seems clearly to be linked to the oral stipulation reached in open court, and (3) the fact that Ms. Hartman's May 6, 1987 Affidavit under Domestic Relations Law § 236(b) was specifically acknowledged by the Debtor (in his May 27, 1987 Affidavit) as demonstrating a need for his assistance to "enable her to continue her lifestyle in a normal and reasonable fashion," and (4) the offer to prove that the parties treated the payments as alimony or maintenance for tax purposes, all stand in contradistinction to the facts that (A) the colloquy in open court before Justice Forma treated the added liability as an amendment to "Article 2 of the aforesaid agreement" which Article dealt with "debts which are presently in the wife's name, but in reality are obligations of the husband" instead of in connection with "Article IV- support and maintenance" which was specifically struck from the agreement, and (B) the 1989 promissory note treated the obligation as a loan by the Plaintiff, rather than as an obligation arising from the matrimonial proceeding, and (C) the Plaintiff sued on the Note, not the 1987 Judgment of Divorce.

In sum, the record presented in connection with these motions is a "mixed bag,"

raising a genuine issue of material fact regarding the parties' intentions at the time that the oral stipulation was made in open court and at pertinent times thereafter.

The matter is not proper for Summary Judgment. Further scheduling orders will issue at the calendar call on July 16, 1997 at 11:30 a.m.

SO ORDERED.

Dated: Buffalo, New York
July 8, 1997

/s/Michael J. Kaplan

U.S.B.J.