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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	Adversary Proceeding
STEPHEN GRISSOM	)	
(Chapter 7 Case <u>97-43441</u> )	)	Number <u>98-4026</u>
	)	
<i>Debtor</i>	)	
	)	
JULIE KITCHENS	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
STEPHEN GRISSOM and	)	
UNITED STATES OF AMERICA,	)	
INTERNAL REVENUE SERVICE	)	
	)	
<i>Defendants</i>	)	

**ORDER ON DEFENDANT UNITED STATES'S MOTION TO DISMISS**

Plaintiff filed this adversary proceeding on February 9, 1998. The complaint consists of two counts. Count One alleges that the divorce agreement between Plaintiff and Defendant Stephen Grissom assigned sole responsibility for tax debts to Mr. Grissom, and that the liability to the Internal Revenue Service is non-dischargeable pursuant to 11 U.S.C.

Section 523(a)(2).<sup>1</sup> (Doc. 1, ¶ 4). Count Two contends that the tax liability owed should not be enforceable by the IRS against Ms. Kitchens and requests that this Court enter a declaratory judgment to that effect. (Doc. 1, ¶ 6).

Defendant United States filed a Motion to Dismiss on March 17, 1998, alleging that Plaintiff lacks standing to bring Count One of this complaint. (Doc. 5, p3). The Motion further alleges that this Court lacks subject matter jurisdiction to determine liability of a non-debtor to the IRS (Doc. 5, p3), and that this Court may not enter a declaratory judgment with respect to tax liability. (Doc. 5, p4).

I. As to Count One, the motion of the United States is GRANTED. The United States Supreme Court has summarized the jurisprudence of standing as follows:

Over the years, our cases have established that the irreducible

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<sup>1</sup> 11 U.S.C. § 523(a)(2) provides:

A discharge under section 727 . . . does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

The body of the complaint alleges nondischargeability pursuant to Section 523(a)(2). The prayer for relief, on the other hand, alleges that the debt is non-dischargeable under Section 523(a)(1)(C), which provides:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

This Court assumes that the Plaintiff brings this nondischargeability action pursuant to Section 523(a)(1), which specifically addresses tax liabilities.

constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

The party invoking federal jurisdiction bears the burden of establishing these elements. Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-562, 119 L.Ed. 2d 351, 112 S.Ct. 2130, 2136-2137 (1992) (internal citations omitted).

Plaintiff cannot meet these requirements. In the first instance, Plaintiff does not make even a general allegation in her complaint that the IRS has or will actually attempt to collect these tax debts from her. Assuming, however, that the threat of a collection action is actual and not speculative, Plaintiff still does not have standing as against the IRS. The remedy which Plaintiff seeks – a determination that her ex-husband's debt to the IRS is non-

dischargeable – is not likely to redress her injury – that the IRS will attempt to collect the debt from her as a joint and several obligor.

Put another way, whether or not Mr. Grissom's debt to the IRS is discharged, the United States may still proceed against Ms. Kitchens as a joint obligor. Ms. Kitchens's complaint seeks to enforce the divorce decree against the IRS, which is not a party to that settlement. Essentially, what Ms. Kitchens is seeking is a determination that her ex-husband's obligation to *her* under the divorce decree is non-dischargeable. If Ms. Kitchens is successful, she will then have the right to indemnification from her husband should the IRS pursue its remedies against her.

A determination by this Court concerning the debt owed by Debtor to the IRS, however, would neither provide her protection from action by the IRS nor would it entitle her to any more relief from her husband beyond what is in the divorce decree. Thus, any remedy she seeks against the IRS would be unlikely to redress her alleged injury of having to answer for the tax debt. This lack of redressability becomes more clear in light of the inability of this Court to grant relief as between Ms. Kitchens and the IRS in the form of a determination of liability owing, as discussed below.

II. With respect to Count Two, the motion of the United States is GRANTED. The jurisdiction of this Court does not extend to the separate liabilities of

taxpayers who are not debtors under the Bankruptcy Code. U.S. v. Huckabee, 783 F.2d 1546, 1549 (11<sup>th</sup> Cir. 1986). Moreover, even if this Court possessed such jurisdiction, declaratory judgment is not an available remedy to Ms. Kitchens. This Court cannot enter declaratory judgments with respect to Federal taxes, with exceptions not applicable to this case. *See* 28 U.S.C. § 2201.

The United States is therefore DISMISSED as a party to this adversary. The scheduling order entered by this Court on April 20, 1998, remains in effect with regard to the remaining parties, Mr. Grissom and Ms. Kitchens. The parties are directed to file a joint consolidated pre-trial statement accordingly, and the clerk will be directed to set a trial date for the September calendar to determine the dischargeability of any debt owed to Ms. Kitchens under the divorce decree.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of June, 1998.