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

In the matter of:)	
)	Adversary Proceeding
CLAUDINE D. PALMER)	
(Chapter 7 Case <u>92-40915</u>))	Number <u>93-4180</u>
)	
<i>Debtor</i>)	
)	
)	
CLAUDINE D. PALMER)	
)	
<i>Plaintiff</i>)	
)	
)	
v.)	
)	
GEORGIA HIGHER EDUCATION)	
ASSISTANCE CORPORATION)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

On December 27, 1993, Debtor initiated this proceeding seeking to discharge a student loan under section 523(a)(8)(B) of the Bankruptcy Code. The matter came on for hearing on June 1, 1994. Based upon the evidence adduced at trial and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor obtained the student loan in question from First American Bank of Georgia in order to attend a vocational school. Debtor completed her training and was certified as a nursing assistant. Thereafter, she obtained employment in this capacity at a Savannah hospital earning approximately \$4.20 per hour. Debtor was involved in an accident while at this job which temporarily prevented her from being able to fulfill all of the duties of her job. As a result, she found other employment as a security officer at a local college of art and design.

During the period in which Debtor was working as a security officer, she filed a Chapter 13 case and attempted to make payments on the student loan. Debtor's security officer position was terminated, and she was forced to convert her case to one under Chapter 7. After losing her job at the art college, Debtor was unable to obtain other employment and currently survives on aid from the State of Georgia, while attending college.

The student loan has a present balance of \$3,788.98, and has been assigned to the Georgia Higher Education Assistance Corporation ("GHEAC").

Currently Debtor receives approximately \$260.00 per month in food stamps, \$280.00 per month from welfare, and lives in state subsidized housing, making monthly rental payments of eleven dollars (\$11.00). Debtor has two minor children and does not receive child support or other assistance from a parent or any other party. Debtor's current expenses

completely consume the funds she receives from the State. However, her expenses include a payment of \$37.00 per month for cable television service, including premium channels.

As noted, Debtor continues to be unemployed, but is attending Savannah State College for the purpose of obtaining a nursing degree. Debtor is twenty-four (24) years of age, in good health, and expects to receive a bachelor degree in nursing in approximately five years. She is enrolled in nursing classes at Savannah State and is attempting to obtain Pell Grants from the United States Government to fund her attendance. Debtor will not be obligated to repay these grants; however, the fact that the student loan in question remains outstanding has so far prevented her from obtaining the grants.

After obtaining her nursing degree, Debtor expects to be earning approximately \$14.00 per hour as a nurse. Thus, it appears that Debtor's financial situation should improve dramatically upon graduation, particularly in light of the fact that she will have discharged the bulk of her debts in her Chapter 7 proceeding and will not have incurred any further student loan obligations from nursing school.

Debtor asserts that she is entitled to a "hardship discharge" of the student loan under the provisions of section 523(a)(8) of the Bankruptcy Code. GHEAC, however, contends that, while her current financial condition is austere, Debtor does not qualify for a hardship discharge under section 523(a)(8).

CONCLUSIONS OF LAW

11 U.S.C. § 523(a)(8) provides:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt--

(8) For an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit or non-profit institution, or for an obligation to repay funds received as an educational benefit, scholarship, or stipend, unless--

(A) Such loan, benefit, scholarship, or stipend overpayment first became due before more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

(B) Excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents.

Although the overriding policy of the Bankruptcy Code is to provide debtors with a fresh start, *see Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934), it is clear that Congress intended to make the discharge of student loans more difficult than the discharge of other debts. *Brunner v. New York State Higher Educ. Services Corp.*, 831 F.2d 395 (2nd Cir. 1987). As a result, section 523(a)(8) excepts from discharge a debt which is based upon an educational loan when such a loan is made, insured or guaranteed by a governmental unit or non-profit institution, unless one of the following two conditions are present: (1) The debtor filed his or her bankruptcy petition more than seven years after the

loan first became due; or (2) Excepting the debt from discharge will impose an undue hardship upon the debtor and the debtor's dependents.

The creditor bears the burden of proving by a preponderance of the evidence that debt falls within the general exception to discharge stated in section 523(a)(8), while the debtor bears the burden of proving by a preponderance of the evidence that the debt falls within either of the exceptions stated in subsections (A) and (B) of section 523(a)(8). *See Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); *In re Ballard*, 60 B.R. 673, 674 (Bankr. W.D.Va. 1986).

GHEAC clearly established at trial that the loan in question in this case is of the sort described in section 523(a)(8). I therefore conclude that GHEAC has borne its burden of proving by a preponderance of the evidence that the student loan falls within the exception to discharge set forth in section 523(a)(8).

This conclusion shifts to Debtor the burden of proving that the loan falls within one of the exceptions contained in subsections (A) and (B) of section 523(a)(8). There is no dispute that Debtor filed her bankruptcy petition within seven years of the loan coming due. Therefore, the exception stated in subsection (A) of section 523(a)(8) is not applicable to this case. Thus, the remaining issue in this case is whether Debtor has proven that excepting the student loan from discharge will impose an undue hardship upon her.

A showing of mere hardship without showing *undue* hardship is not sufficient, *see* Ballard, 60 B.R. at 674. According to one court:

The fact that a debtor's budget may be tight for the foreseeable future is the norm rather than the exception when one files for bankruptcy. Undue hardship is not established by proof that repayment of a student loan would merely bring about unpleasantness. More than present inability to repay is required to establish undue hardship.

In re Burton, 117 B.R. 167, 169 (Bankr. W.D.Pa. 1990) (citations omitted). Whether a debtor will experience undue hardship must be determined on a case-by-case basis after a fact specific inquiry. *See* Andrews v. South Dakota Student Loan Assistance Corp., (In re Andrews), 661 F.2d 702 (8th Cir. 1981). In previous decisions dealing with the issue of undue hardship under section 523(a)(8)(B), this Court has adopted the three-part test set forth in In re Brunner, 46 B.R. 752 (D.C.N.Y. 1985) *aff'd* 831 F.2d 395 (2nd Cir. 1987). *See* Linda Bruyette Gado Alexander v. Fla. Dept. of Educ., et.al. (In re Linda Bruyette Gado Alexander, Ch.7 Case No. 488-00306, Adv. Pro. No. 488-0065, slip op. at 6 (Bankr. S.D.Ga. June 14, 1989); Kelli Marie Cheshier v. Georgia Higher Education Assistance Corp (In re Kelli Marie Cheshier), Ch.7 Case No. 91-41090, Adv. Pro. No. 91-4086, slip op. at 7 (Bankr. S.D.Ga. March 2, 1992). This test requires a debtor seeking a discharge of a student loan under the undue hardship exception to satisfy each of the following three elements:

- (1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her

dependents if forced to repay the loans;

- (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) that the debtor has made good faith efforts to repay the loans.

Brunner, 831 F.2d at 396.

Although it is not the only test adopted by courts dealing with the undue hardship standard, the Brunner test has been, and continues to be, widely followed. *See e.g.*, In re Healey, 161 B.R. 389 (E.D.Mich. 1993); In re Conner, 89 B.R. 744, 747 (Bankr.N.D.Ill. 1988); In re Webb, 132 B.R. 199, 201 (Bankr. M.D.Fla. 1991); In re Ipsen, 149 B.R. 583, 585 (Bankr. W.D.Mo. 1992); In re Bakkum, 139 B.R. 680, 682 (Bankr. N.D.Ohio 1992); In re Connor, 83 B.R. 440, 445 (Bankr. E.D.Mich. 1988). Accordingly, this Court will continue to employ the Brunner test in determining whether a debtor has met his or her burden under the undue hardship standard of section 523(a)(8)(B).

In applying the test to the facts of this case, I conclude that Debtor has not satisfied her burden under the first two prongs of the test. Debtor is intelligent, in good health, and capable of obtaining and continuing employment which would allow her to make payments on her loan obligations to Georgia Higher Education in the future. Her circumstances are not such that there is no hope of her being employed and paying off the

loan. While she is not now employed, that status is a result of her personal decision to go to college and not a result of disability, lack of employable skills, or other cause beyond her ability to control. She could return to work as a nurse's aide, utilizing the skills which she obtained in the course of study for which she borrowed funds and improve her standard of living sufficiently to repay this debt, but has chosen not to do so. A hardship imposed because Debtor has elected to forego employment is not an "undue" hardship. Her future prospects appear to be bright as the Debtor is attempting to further her education to eventually obtain gainful employment as a nurse. While payment of the student loan may impose a hardship upon Debtor in the near term,¹ it does not appear to this Court that the hardship will be "undue" as required by section 523(a)(8)(B). "The fact that a debtor's budget may be tight for the foreseeable future is the norm rather than the exception." In re Bakkum, 139 B.R. at 682 (citation omitted). Accordingly, I conclude that the debt which Debtors owe to the Georgia Higher Education Assistance Corporation is non-dischargeable under 11 U.S.C. § 523(a)(8).

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Debtor's obligation to the Georgia Higher Education Assistance Corporation, in the amount of \$3,788.98, is excepted from discharge under 11 U.S.C. § 523(a)(8).

¹ While she testified that she has no funds remaining at the end of each month, merely redirecting her cable television payments to this loan would retire it within a reasonable time. Her decision instead to subscribe to cable television, like her decision not to work, negates her contention that repayment would cause "undue hardship."

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1993.