

*Student loan not provided  
for in Ch 13 plan  
is not discharged.*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>87-10354</u>
DARRYL JEROME COGLE	)	
	)	
Debtor	)	
	)	
WISCONSIN HIGHER EDUCATION	)	
CORPORATION	)	
	)	
Plaintiff	)	
	)	
vs.	)	Adversary Proceeding
	)	Number <u>88-1039</u>
DARRYL JEROME COGLE	)	
	)	
Defendant	)	

ORDER

Wisconsin Higher Education Corporation (WHEC) has brought its complaint against Darryl Jerome Cogle, debtor in the underlying Chapter 13 proceeding, seeking a determination of nondischargeability of a debt owed to it. A factual determination made in the underlying Chapter 13 proceeding on the motion WHEC to set aside confirmation and to allow late filed claim dated April 20, 1988 were not altered by the evidence in this adversary proceeding. The order denying the motion to set aside confirmation and allow late claim was appealed to the United States District Court for the Southern District of Georgia and affirmed by order entered January

**FILED**  
at 3 O'clock & 49 min P.M  
Date 3-22-89 *JSW*  
MARY C. BECTON, CLERK  
United States Bankruptcy Court

27, 1989. Having determined that neither revocation of confirmation nor allowance of late filed claim were appropriate, this court must now determine whether the debt due WHEC will be discharged under the provisions of 11 U.S.C. §1328 at the conclusion of the debtor's confirmed Chapter 13 plan. More specifically stated, the issue presented questions whether the debt due WHEC was provided for by the plan as contemplated under §1328(a).

WHEC, in its argument in favor of nondischargeability, has relied on the decision of the Honorable William C. O'Kelly, U. S. District Judge for the Northern District of Georgia, in the unpublished decision U. S. v. Lee, No. C-87-702-A, U.S. v. Levine No. C-87-703-A, U. S. v. Hochman, No. C-87-704-A, U. S. v. Alexander, No. C-87-705-A and U. S. v. Schneider, No. C-87-706-A, consolidated for final order issued July 23, 1987. The final result in the Lee case has no relevancy in this proceeding. The Lee decision dealt with the impact of the provisions of 42 U.S.C. §294f(g) upon the "super discharge" provisions of 11 U.S.C. §1328(a) in dealing with Health Education Assistance Loans (HEAL). The loans in question in this adversary proceeding are not "HEAL" loans and 11 U.S.C. §294f(g) is inapplicable.

General student loans, if included within the Chapter 13 plan, may be included within the §1328(a) discharge upon completion of the required payments under the plan. See In re: Reese, 38 B.R. 681, 682 (N.D. Ga. 1984); U. S. v. Lee, No. C-87-702-A et al. p. 7

(N.D. Ga. July 23, 1987). However, only debts provided for in the debtor's Chapter 13 plan can be discharged. A claim must be allowed in order to be "provided for by the plan" under §1322(b)(6) and thus discharged under §1328(a). In re: Dunn, 83 B.R. 694 (Bankr. Neb. 1988); In re: Pritchett, 55 B.R. 557 (Bankr. W.D. Va. 1985); In re: Martinez, 51 B.R. 944 (Bankr. Colo. 1985) In re: Hefner 32 B.R. 382 (Bankr. W.D. N.Y. 1983). Bankruptcy Rule 3004 supports this provision which requires the filing of a claim in order for a debt to be "provided for by the plan" by authorizing the debtor or trustee to file a claim in the name of a creditor within 30 days after expiration of the time for filing claims prescribed by Bankruptcy Rule 3002(c) or 3003(c). The rule also requires the clerk to give notice by mail of the filing to the creditor, the debtor and trustee. The rule further authorizes the creditor to file its own timely proof of claim, which claim will supercede the proof of claim filed by the debtor or trustee.

The order confirming plan, allowing claims and directing distribution in the underlying Chapter 13 case provided

4. Except as the plan provides otherwise, disbursement shall commence and be made by the Trustee on a monthly basis following this confirmation and such disbursements shall be made in the following order and for the purposes mentioned.

(a) Costs and commissions as the Court may from time to time approve;

(b) attorneys fees, including expenses are allowed in the amount of \$400.00 payable in minimum monthly installments of \$15.00 to debtor's attorney;

- (c) payments to creditors who have filed claims as set forth in exhibit "A" attached;
- (d) claims subsequently allowed.

As noted in the previous order denying the allowance of a late filed claim on behalf of WHEC, no proof of claim was filed or listed in the referenced exhibit "A" to the order of confirmation. The plan as confirmed does not provide for the debt due WHEC; therefore the debt due WHEC is not discharged.

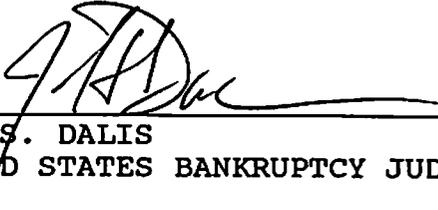
The debtor has objected to the timeliness of this complaint to determine dischargeability of debt contending that the issue of dischargeability does not ripen until conclusion of payments under the plan or upon application for a "hardship" discharged under §1328(b). The debtor is generally correct; however, courts do recognize exceptions. A complaint to determine the dischargeability of debt may be filed at any time before the discharge is granted if the debt (1) is arguably one of two exceptions provided for in §1328(a), (a) i.e., certain long-term debt or (b) alimony and child support, or (2) is a debt not provided for in the debtor's Chapter 13 plan, or (3) is a debt provided for in the plan which has gone into default. (emphasis added) U. S. v. Lee, supra at p. 16; see also In re: Cleveland, 64 B.R. 810, 812 (Bankr. S.D. Calif. 1986). Granted, no debt is dischargeable under §1328(a) until successful completion of all payments under a Chapter 13 plan; however, as in the present case where the confirmed Chapter

13 plan fails to provide for the debt, there is no logic or judicial economy afforded by waiting to see if successful completion of the plan occurs. Successful completion of the plan has no relevancy to this creditor which was not provided for under the plan.

IT IS THEREFORE ORDERED that judgment is entered for plaintiff Wisconsin Higher Education Corporation against defendant/debtor Darryl Jerome Cogle finding that the debt due plaintiff as evidenced by five promissory notes executed by Darryl Jerome Cogle to Bank of Middleton, Wisconsin and assigned to plaintiff herein as follows:

<u>DATE OF NOTE</u>	<u>AMOUNT</u>
February 13, 1980	\$2,000.00
October 2, 1980	\$2,500.00
April 14, 1981	\$500.00
November 14, 1981	\$2,500.00
October 15, 1982	\$2,500.00

was not provided for under debtor's confirmed plan; therefore is not discharged in the defendant/debtor's underlying Chapter 13 Case No. 87-10354. No monetary damages are awarded.

  
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JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 22<sup>nd</sup> day of March, 1989.