UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

Cite as: [Unpublished]

Dennis M. Duoss and Rita M. Duoss, Debtors
Bankruptcy Case No. 00-34080-7

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

August 28, 2003

Briane F. Pagel, Krekeler Strother, S.C., Madison, WI for Debtors

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

The debtor, Madeline Mulrey ("Mulrey") (formerly Rita Duoss) is a graduate of the University of Wisconsin Law School who began her study of law at Marquette University School of Law ("Marquette). In her application for admission to the bar, she was required to present a transcript from Marquette. Marquette has conditioned its delivery of a transcript upon Mulrey's payment of past due student loans. Mulrey has yet to pay Marquette or to receive her Marquette transcript and brings this motion to hold Marquette in violation of her bankruptcy discharge injunction.

As part of her student loan package for 1998-9 at Marquette, Mulrey signed a promissory note for $8,880.00. On January 6, 1999, Marquette disbursed $500.00 in emergency aid to Mulrey, and shortly thereafter disbursed an additional $8,880.00, $4,080.00 derived from a Federal Direct Subsidized Stafford Loan and $4,800.00 from a Federal Direct Unsubsidized Loan. Marquette applied $4,560.00 of the loan to Mulrey's Spring semester tuition and paid $3,820.00 directly to Mulrey. The check to her was labeled "Bursar Tuition Refund."

After receiving the loan funds and prior to the "drop deadline," Mulrey withdrew from Marquette. Marquette returned to its sources the $8,880.00 received from the federal government and reversed Mulrey's Spring 1999 tuition charge. At that time, Mulrey owed Marquette a total of $4,320.00, ($500 for emergency aid and $3,820.00 she had been paid directly). The Office of Student Loan Accounts and Collections of Marquette dunned Mulrey and on April 26, 1999, collected $10.00 which was credited to the balance. Marquette received no additional payments and in due time placed Mulrey's account with General Revenue Corporation, a collection agency.

Mulrey filed a Chapter 7 petition on September 19, 2000. She included the debt to Marquette on her Schedule F designating it as for "tuition." General Revenue Corporation was notified of the bankruptcy and ceased its collection. On January 4, 2001, Mulrey received her discharge.

Mulrey contends that her debt to Marquette is not a student loan and that it has been discharged. She argues that Marquette is violating the permanent injunction provision of 11 U.S.C. §524(a). She is incorrect. Marquette is subrogated to the government entities which it reimbursed for Mulrey's student loans, and its methods of collecting from Mulrey are unexceptionable as a matter of bankruptcy law.

When a person or entity satisfies the debt which was to have been paid by the debtor, that person or entity is entitled to exercise all the remedies and rights that the creditor possessed against that debtor. Gearing v. Check Brokerage Corp., 233 F.3d 469, 471-472 (C.A.7.Ill.,2000) Subrogation is available when payment was made to protect the subrogee's own interest, repayment by the subrogee was not voluntary, the debt paid was one for which the subrogee was not primarily liable, the entire debt was paid, and subrogation would not injure the rights of others. In re Carley Capital Group, 119 B.R. 646, 649 (W.D.Wis.,1990) "Equitable subrogation has been extended to . . . the non-dischargeability of student loans." In re Lakemaker, 241 B.R. 577, 582 (Bkrtcy.N.D.Ill.,1999)

Marquette did not return the $8,880.00 received from the U.S. Department of Education as a volunteer. Marquette operates its student loan program, under 34 CFR §685.300[1], and must comply with requirements established by the U.S. Department of Education with respect to loans made under the Direct Loan Program. 34 CFR §668.22(g)[2] requires Marquette to return, when a student withdraws, either the total amount of unearned Title IV assistance or an amount equal to the total institutional charges[3] incurred by the student for the payment period or period of enrollment multiplied by the percentage of Title IV grant or loan assistance that has not been earned by the student. When Mulrey withdrew from Marquette she had not "earned" any Title IV assistance for the Spring semester. Marquette, following 34 CFR §668.22(g), returned all of the Title IV assistance to the U.S. Department of Education.

Mulrey is primarily liable for the funds returned to the William D. Ford Federal Direct

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[1]34 CFR §685.300 Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program.

[2]34 CFR §668.22(g) Treatment of Title IV Funds When a Student Withdraws; Return of Unearned Aid, Responsibility of the Institution.

[3]34 CFR §668.22(g)(2) For purposes of this section, "institutional charges" are tuition, fees, room and board, and other educationally-related expenses assessed by the institution.

Loan Program. By applying for a William D. Ford Federal Direct Loan and delivering her promissory note, Mulrey authorized Marquette to pay directly to the U.S. Department of Education "that portion of a refund or return of Title IV, HEA program funds from the school that is allocable to the loan." 34 CFR §685.306(a) Mulrey "contemplated" that Marquette would refund or return loan proceeds in the case of a withdrawal. *See* In re Hammarstrom, 95 B.R. 160 (Bkrtcy.N.D.Cal.,1989)

A loan is non-dischargeable under §523(a)(8)[4] if the loan was made for the purpose of allowing the debtor to obtain an education and was "made, insured, or guaranteed by a governmental unit or made under a program funded at least in part by a governmental unit." Matter of Barth, 86 B.R. 146, 148 (Bkrtcy.W.D.Wis.,1988) It is not relevant whether the debtor actually derived educational benefits. Id. at 148. The U.S. Department of Education loaned money to Mulrey through the William D. Ford Federal Direct Loan Program. The loaned amount is within the scope of §532(a)(8). Subrogating Marquette to the U.S. Department of Education's position means that the loan remains non-dischargeable under §523(a)(8). Mulrey's obligation to repay the loan, therefore, continues.

The legislative intent of the §523(a)(8) is "to safeguard the financial integrity of the education loan program and to curb abuses by limiting the instances in which student loans can be discharged in bankruptcy." In re Flint, 238 B.R. 676, 679 (E.D. Mich.,1999), *citing* Santa Fe Medical Services, Inc. v. Segal, 57 F.3d 342, 348-49 (C.A.3.Pa.,1995) "523(a)(8) is to protect the lender when a borrower, who often would not qualify under traditional underwriting standards, files a Chapter 7 Bankruptcy petition." In re Lakemaker, 241 B.R. 577 (Bkrtcy.N.D.Ill.,1999), *citing* Santa Fe Medical Services, Inc. v. Segal, 57 F.3d 342, 348 (C.A.3.Pa.,1995), *citing* In re Merchant, 958 F.2d 740 (C.A.6.Mich.,1992) Failure to allow equitable subrogation would result in Mulrey having what was always understood to be an educational loan discharged in her Chapter 7 case,[5] an outcome inconsistent with the legislative intent of §523(a)(8).

As a subrogee, Marquette "stands in the shoes" of the U.S. Department of Education. Marquette is entitled to all of the U.S. Department of Education's rights against the debtor,

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[4]§523(a)(8) provides that:

> A discharge under §727 . . . does not discharge an individual debtor from any debt for an educational 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 nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship, or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents.

[5]Chapter 7 voluntary petition was filed by the Debtor on September 19, 2000. An Order Discharging Debtor was filed on January 4, 2001.

including the right to collect the non-dischargeable loan. Marquette is not required to release the transcripts to Mulrey. Marquette can retain the transcript of a debtor whose educational loans are in default and are not dischargeable in a chapter 7 proceeding. Johnson v. Edinboro State College, 728 F.2d 163 (C.A.3.Pa.,1984), In re Billingsley, 276 B.R. 48, 55 (Bkrtcy.D.N.J.,2002), *citing* Johnson v. Edinboro State College, 728 F.2d 163, 166 (C.A.3.Pa.,1984) The Bankruptcy Code does not nullify a university policy of "withholding transcripts from those students who have not made payments on their educational loans, have not approached the college to arrange a more flexible repayment schedule, and have not had their debts discharged." Johnson v. Edinboro State College, 728 F.2d 163, 166 (C.A.3.Pa.,1984)

Mulrey's various arguments based upon Marquette's subsequent characterization of the funds owed to it by Mulrey are of no merit. The true nature of the obligation, not how it was described after it became past due governs how this obligation is viewed in bankruptcy.