

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

JUL 09 1986
CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

SANDRA DOROTHY DIETRICH,

WF7-83-02060

Debtor.

SANDRA DOROTHY DIETRICH,

Plaintiff,

Adversary Number:

v.

85-0355-7

WISCONSIN HIGHER EDUCATION
CORPORATION,

Defendant.

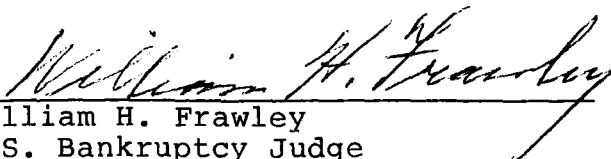
ORDER

The court having this day entered its memorandum opinion,
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the guaranteed student
loan obligations owed by the debtor to the Wisconsin Higher
Education Corporation are hereby discharged.

Dated: July 9, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge

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MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtor, by Guerdon Wallesverd, has filed this complaint pursuant to 11 U.S.C. § 523(a)(8) and Bankruptcy Rule 4007 seeking to discharge her guaranteed student loan obligations. The defendant, the Wisconsin Higher Education Corporation (WHEC), appears by William Olson and objects to the complaint. A hearing was held in this proceeding on June 18, 1986.

The amount due on the loan obligations owed by the debtor to WHEC was \$6,221.94 as of June 18, 1986. These obligations are from guaranteed student loans which have become due within the last five years. These obligations are excepted from the debtor's bankruptcy discharge unless the debtor can demonstrate

that such exception would constitute "undue hardship." 11 U.S.C. § 523(a)(8)(B).

The debtor is fifty years old, divorced, and does not have any dependents. She used the guaranteed student loans to help finance her education through Nicolet College. She received a degree in Office mid-management from Nicolet College in 1984. The debtor is presently employed as a secretary for Nicolet College. There is a possibility that her position may be terminated in the near future due to her employer's lack of funds. Her average gross pay amounts to approximately \$800.00 a month. Her average take-home pay amounts to approximately \$720.00 a month. The debtor was receiving \$100.00 a month for serving as a crisis intervention worker; however, she is not able to continue doing this in the future.

The debtor's monthly expenses are:

| | | |
|---------------------------------------|----|--------------|
| Irv & Arvella Seeley, car payment | \$ | 50.00 |
| Gasoline for car | | 80.00 |
| Van Natta Plumbing, plumbing services | | 50.00 |
| Auto insurance | | 40.00 |
| Life insurance | | 30.00 |
| Electrical | | 60.00 |
| Phone | | 50.00 |
| Guerdon A. Wallesverd, atty. | | 50.00 |
| Heat (in season) | | 100.00 |
| 1st National Bank, mortgage | | 285.26 |
| Auto maintenance | | 30.00 |
| Food | | 125.00 |
| Lakeland Med. Associates | | 20.00 |
| Church | | 25.00 |
| Trash pick up | | <u>15.00</u> |

TOTAL \$1,010.26

It is apparent that the debtor's monthly expenses substantially exceed her income. None of the debtor's monthly expenses are

frivolous or excessive. The chances of the debtor being able to improve her employment status are remote. Nor is it likely that the debtor will be able to significantly reduce her expenses.

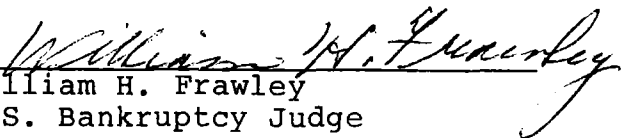
The sole issue presented in this proceeding is whether it would constitute "undue hardship" to except the debtor's student loan obligations from discharge. 11 U.S.C. § 523(a)(8)(B). This determination is necessarily a question of fact for the trial court to determine. The Bankruptcy Code provides for the discharge of guaranteed student loan obligations when it would cause unreasonable or unconscionable hardship to except such obligations from discharge. Matter of Tobin, 18 B.R. 562 (Bankr. W.D. Wis. 1982).

The facts of this case reveal that the debtor simply does not earn enough money to both satisfy her monthly expenses and make monthly payments on her guaranteed student loan obligations. It would be unreasonable and unconscionable to except these loan obligations from discharge. To except debts from discharge when the debtor has no ability to pay is clearly contrary to the fresh start policy of the Bankruptcy Code. It is the conclusion of the court that excepting the debtor's student loan obligations from discharge would constitute "undue hardship" to the debtor and, therefore, the debtor's guaranteed student loan obligations should be discharged.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: July 9, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge