

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

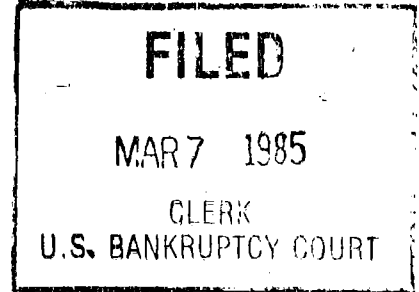
In re:

Case Number:

FREDERICK R. HEFNER
KATHLEEN B. HEFNER,
f/k/a Kathleen B. Rossman,

EF7-84-00696

Debtors.



FREDERICK R. HEFNER and
KATHLEEN B. HEFFNER,
f/k/a Kathleen B. Rossman,

Plaintiff,

Adversary Number:

v.

84-0163-7

FIRST AMERICAN BANK OF FREDERICK,
UNIVERSITY OF WISCONSIN-STOUT,
UNIVERSITY OF WISCONSIN BOARD OF
REGENTS, WISCONSIN HIGHER EDUCATION
CORPORATION, ATTORNEY GENERAL,

Defendants.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER ADJOURNING CONSIDERATION OF
DISCHARGEABILITY OF STUDENT LOAN DEBTS

Debtors Frederick R. and Kathleen B. Hefner, by Attorney James A. Wendland, having filed a Complaint to determine dischargeability of debt; and Wisconsin Higher Education Corporation, by Attorney William H. Olson, having filed an Answer; and University of Wisconsin System Board of Regents, by Attorney Patricia B. Hodulik, having filed an Answer; and a trial

having been held; and the Debtors appearing in person and by counsel; and the Defendants appearing by counsel; the Court, being fully advised in the premises, FINDS THAT:

1. From 1978 through 1982 Debtor Frederick R. Hefner borrowed \$11,402 under the Guaranteed Student Loan program and \$3,728 under the National Direct Student Loan program. Said loans were incurred during pursuit of a bachelor degree in industrial technology (with an emphasis in construction) and one semester of post-graduate study.

2. From 1979 through 1981 Debtor Kathleen B. Hefner borrowed \$2,500 under the Guaranteed Student Loan program and \$2,108 under the National Direct Student Loan program. Said loans were incurred during two years of undergraduate study.

3. These obligations first became due within five years of the Hefners' petition for relief under the Bankruptcy Code. The Hefners have been able to make, or attempt to make, only nominal payments toward these obligations.

4. Both of the Hefners have been unsuccessful in obtaining work in their chosen fields. Ms. Hefner is currently employed by a public service agency and Mr. Hefner is self-employed as a carpenter.

5. The Hefners' monthly income is approximately \$1,000. The Hefners' necessary monthly expenses total approximately \$1,300. The Hefners have no significant equity in any assets.

6. The Hefners have custody of three children, ages 6-10, from former marriages. Ms. Hefner's former husband is responsi-

ble for \$135 a month in child support but makes only occasional payments. Mr. Hefner's former wife has no support obligation.

7. Both of the Hefners have sought and continue to seek more remunerative employment. Their search has been hampered by economic conditions in the area--especially in the building industry--and by limited resources to explore opportunities elsewhere. Nevertheless, the Hefners are young, capable people and the Court believes that they will ultimately succeed in their quest.

Discussion

8. Under 11 U.S.C. sec. 523(a)(8)(B), certain student loans which first become due within five years of the filing of the debtor's petition are non-dischargeable unless excepting such debts from discharge will impose an undue hardship on the debtor and the debtor's dependents. (Under 11 U.S.C. sec. 523(a)(8)(A), certain loans which first become due before five years before the filing of the debtor's petition are dischargeable--Congress was concerned that former students with well paying jobs would take advantage of temporary post-graduate poverty to avoid student loan obligations. See 3 L. King, Collier on Bankruptcy sec. 523.18 (15th ed. 1984). This is not such a case.)

9. "'Some hardship may be expected by the statute; it is the "undue," the unreasonable, unconscionable hardship which the debtor is not expected and required to bear.'" In re Tobin, 18 B.R. 560, 562 (Bankr.W.D.Wis. 1982).

10.

In deciding whether the repayment of a student loan would constitute undue hardship, the court is to consider the facts and circumstances of each individual debtor to determine "whether there are such unique circumstances as to render it less likely or likely only with extreme difficulty, or unlikely at all that the bankrupt will within the foreseeable future be able to honor his commitment."

Id. at 561.

11. Here, it is clear that any current repayment of the Hefners' student loan obligations would impose an undue hardship on the Hefners and their dependents. However, in the foreseeable future, the Hefners' income may increase to the point that student loan payments would not be an undue hardship on the family.

12. This Court has been reminded by counsel for the Wisconsin Higher Education Corporation that, as a court of equity, it may extend the term of the Hefners' loans, declare only a portion of the loans dischargeable or retain jurisdiction to ensure fairness. Annot., 63 A.L.R.Fed. 570, secs. 5[c] & 6[c](1983).

13. "It seems that a discretion exists in the Bankruptcy Court to determine the remedy of undue hardship resulting from temporary lack of income, which by its nature can ameliorate or change." In re Hemmen, 7 B.R. 63, 66 (Bankr.N.D.Ala. 1980).

CONCLUSION OF LAW

The Court should retain jurisdiction to fashion an equitable remedy which takes into account the Debtors' past financial

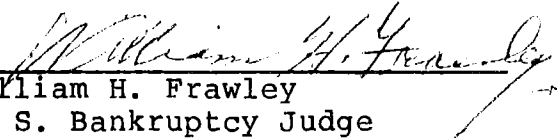
difficulties, current situation and uncertain but potentially bright future.

ORDER

IT IS ORDERED THAT this matter be adjourned for one year.

Dated: March 7, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney James A. Wendland
Attorney William H. Olson
Attorney Patricia B. Hodulik

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