

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED
JUL 30 1985
CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

KEITH SHOEMAKER

EF7-85-00247

Debtor.

KEITH SHOEMAKER,

Plaintiff,

Adversary Number:

v.

85-0052-7

ANCHOR SAVINGS & LOAN
WEST BEND MARINE BANK
ROBERT SHOEMAKER
ATTORNEY GENERAL,
STATE OF WISCONSIN
WISCONSIN HIGHER EDUCATIONAL
AIDS BOARD

Defendants.

OPINION AND ORDER DENYING DISCHARGE OF STUDENT LOAN OBLIGATION

Debtor Keith Shoemaker has filed a complaint seeking the discharge of his student loan obligations. The Wisconsin Higher Educational Aids Board is in opposition to any discharge. A trial of this matter was held on June 25, 1985. The plaintiff was represented by Attorney James A. Wendland, the board appeared by Attorney William Olson. At that time the matter was taken under advisement.

The parties to this action have stipulated to the fact that as of June 25, 1985, plaintiff's student loan balance was \$10,268.95. Monthly payments of \$73.93 would be necessary to retire the debt over 180 months. Plaintiff is 25 years old, married and has no children. He testified that he and his wife have monthly expenses of \$752. From the evidence introduced at trial it appears that their net monthly income is approximately \$1220. Plaintiff is currently employed as a restaurant kitchen manager. He is 18 credits shy of obtaining a college degree in hotel and restaurant management. Tamara Shoemaker, his wife, works as a waitress.

Were this the only evidence in this case the court would summarily dismiss plaintiff's discharge complaint. However, other circumstances are present which make plaintiff's situation considerably worse. Plaintiff owes approximately \$16,700 in delinquent taxes. These debts are nondischargeable under 11 U.S.C. § 523. This liability was incurred while plaintiff was managing a restaurant. The present monthly accumulation of interest and penalties on these federal and state tax debts is approximately \$230. This compares with a monthly accumulation of interest on plaintiff's student loans of \$46.80.

Since plaintiff's student loans became due within five years of his bankruptcy filing they cannot be discharged unless they will impose an undue hardship on the debtor and the debtor's dependents. 11 U.S.C. § 523(a)(8). The debtor is expected to bear some hardship but not unreasonable or unconscionable hard-

ship. In re Tobin, 18 B.R. 560, at 562 (Bankr.W.D.Wis. 1982).

The court in Tobin noted that:

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.

From the evidence discussed earlier it can be concluded that debtor and his wife take home on a monthly basis \$468 more than their monthly expenses. Because of the massive penalty and interest costs of plaintiff's delinquent tax liability, the only way that plaintiff will have any possibility of paying all his nondischargeable debts and gaining a fresh start from bankruptcy is if this court utilizes its equitable powers to fashion a repayment plan fair to both the plaintiff and his creditors. As a court of equity this court may formulate such a plan and retain jurisdiction to ensure fairness. Annot., 63 A.L.R.Fed. 570, sec. 5[c] (1983).

Based on the circumstances of this case the court concludes that plaintiff is able to pay \$50 a month on his student loan obligations without undue hardship within the meaning of sec. 523(a)(8). This will allow full payment of accruing interest and some payment of principal. At the same time it will allow plaintiff to devote the vast majority of his available income to payment of delinquent taxes.

The court shall retain jurisdiction of this matter. Either

party may petition this court for an amendment of its order if changing circumstances warrant such action. It should be noted that an important premise of the court's decision is that plaintiff will use the full remaining amount of his available income, after his student loan payment, to pay his delinquent taxes. If the court determines, upon appropriate motion, that this is not occurring it will accordingly amend the present order. It also should be noted that this decision assumes that upon retirement of his delinquent tax debt plaintiff will begin making larger payments of his student loan debt. If the parties are not able to mutually arrange these payments an appropriate motion may be made to this court.

ORDER

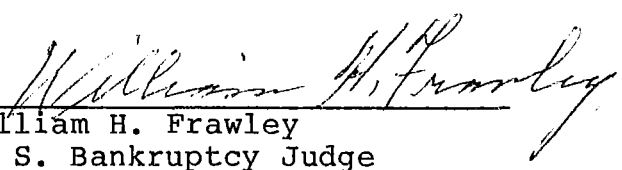
IT IS ORDERED THAT plaintiff's student loan obligation to the Wisconsin Higher Education Aids Board is not discharged.

IT IS FURTHER ORDERED THAT plaintiff shall pay \$50 a month on his student loan obligation beginning in August, 1985.

IT IS FINALLY ORDERED THAT this court shall maintain jurisdiction over this matter to hear appropriate motions and otherwise in accordance with the court's opinion.

Dated: July 30, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney James A. Wendland
Attorney William Olson