

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

JUN 27 1986

CLERK  
~~U.S. BANKRUPTCY COURT~~

In re:

Case Number:

GARY R. MIZER,

EF7-85-01897

Debtor.

GARY R. MIZER,

Plaintiff,

Adversary Number:

v.

86-0085-7

WISCONSIN HIGHER EDUCATION  
CORPORATION,

Defendant.

MEMORANDUM OPINION,  
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtor proceeds pro se and has filed this complaint pursuant to 11 U.S.C. § 523(a)(8) and Bankruptcy Rule 4007 seeking to discharge his guaranteed student loan obligations. The defendant, Wisconsin Higher Education Corporation (WHEC), appears by William Olson and objects to the complaint. A hearing was held on this matter on June 12, 1986.

The amount due on the loan obligations owed by the debtor to WHEC was \$1,569.95 at the date of trial, June 12, 1986. The per diem interest on these obligations is approximately \$.24. These loans became due within the last five years. These debts fall within the classification of § 523(a)(8) of the Bankruptcy Code

and may only be discharged if excepting them from discharge would impose an undue hardship on the debtor. 11 U.S.C. § 523(a)(8)(B).

The issue presented is whether the hardship the debtor would suffer by not having these debts discharged would be undue.

"Some hardship may be expected by the statute; it is the 'undue' 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). "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 (citations omitted). The court, as a court of equity, can fashion a remedy to fit the circumstances of a case, including: extend the terms of the loan, declare only a portion of the debt dischargeable, or retain jurisdiction to ensure fairness. In re Theiss (Bankr. W.D. Wis. 83-0876, June 20, 1985). In re Morgan, (Bankr. W.D. Wis. 85-0278, May 28, 1986).

The debtor is currently unemployed. His sole source of income is temporary and is from unemployment compensation which amounts to about \$56.00 a week. The debtor is not married and does not have any dependents. The debtor has suffered physical problems with his back but presently does not suffer from any physical ailments or impairments. He has not made any payments

on these loan obligations. The debtor asserts five reasons why it would constitute an undue hardship to except these educational loan obligations from discharge.

Statement of Hardship

I am unable to repay the debt of \$1,666.87 plus current interest to the Wisconsin Higher Educational Aids Board due to the following:

1. I am presently unemployed.
2. I have had no appreciable income for the last 3 to 5 years.
3. I am currently unable to enroll in school because I am unable to obtain any type of financial assistance.
4. I have just recently filed bankruptcy because the failure of my business left me financially broken.
5. At this time in my life I need to return to work, and all that I can find is work in the minimum wage scale. I need to further my education and presently cannot due to this debt.

The debtor asserts that his monthly expenses are:

Rent	\$ 95.00
Food	75.00
Utilities	100.00
Phone	20.00
Clothing	25.00
Laundry	15.00
Medical and dental	100.00
Auto	<u>100.00</u>
	\$530.00

The testimony at trial indicated that the monthly medical and dental expense of \$100.00 might be somewhat excessive. However, it is apparent that the debtor's income is meager and is substantially exhausted after paying for his basic necessities. The debtor is 25 years old, intelligent, and of good health. He does not have sufficient income to make payments on his guaranteed student loan obligations at this time. It is the

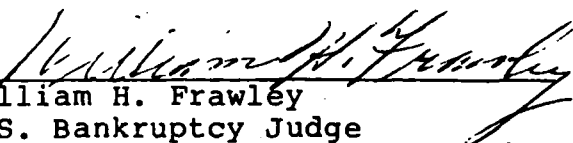
belief of the court that the debtor should be able to find gainful employment in the near future. The debtor could fully satisfy his debt to WHEC by making monthly payments of \$20.50 for 120 consecutive months with the first payment beginning June 12, 1987.

It is the conclusion of the court that the debtor has not demonstrated that he would incur undue hardship by having these debts excepted from discharge. This court, however, is a court of equity. The court notes that the debtor is presently not able to make payments on these obligations. Therefore, the date on which payments are to commence on these obligations will be postponed to June 12, 1987. This decision only affects that portion of the promissory notes that relates to the dates on which payments must commence. All other portions of said promissory notes remain in full force and effect.

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

Dated: June 27, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge

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ORDER

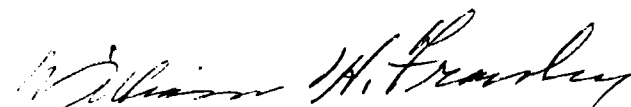
The court having this day entered its memorandum opinion,  
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the debtor's complaint  
requesting discharge of his debts to the Wisconsin Higher  
Education Corporation is hereby denied.

IT IS FURTHER ORDERED that payments with respect to the loan  
obligations owed to the Wisconsin Higher Education Corporation  
shall be postponed to commence on June 12, 1987, at which date  
the debtor shall make monthly payments on these obligations in  
the amount of \$20.54 for 120 consecutive months.

Dated: June 27, 1986.

BY THE COURT:

  
William H. Frawley  
U.S. Bankruptcy Judge

cc: Gary R. Mizer  
Attorney William Olson