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2:11-23974 Tamara Lynn Schwartz **Chapter 7**
Adv#: 2:14-01722 Schwartz v. National Collegiate Student Loan Trust 2007-1

#2.00 Motion For Summary Judgment

Docket 16

Tentative Ruling:

7/6/2015

Based on the evidence submitted, which shows that YouthCare is primarily a medical treatment facility and not an educational benefit provider, the Court will grant Tamara Lynn Schwartz's ("Plaintiff") motion for summary judgment ("Motion") that her debt to National Collegiate Student Loan Trust 2007-1 ("Defendant") is dischargeable pursuant to 11 U.S.C. § 523(a)(8).

Rule 7056 states that Civil Rule 56 applies in adversary proceedings. Civil Rule 56(c) states that summary judgment is warranted where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

To prevail on a summary judgment motion, the moving party must show that there are no triable issues of material fact as to matters in which it has the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). On issues where the moving party does not have the burden of proof at trial, the moving party is required to show only that there is an absence of evidence to support the non-moving party's case. See id.

To establish a genuine dispute of material facts, a party opposing summary judgment must either:

- cite to particular materials in the record that show such dispute (FRCP 56(c)(1)(A));
- show the moving party's materials fail to establish absence of a genuine dispute (FRCP 56(c)(1)(B);
- show the moving party cannot produce admissible evidence to support its

factual position (FRCP 56(c)(1)(B)); or

- object to the moving party's materials on the ground that they cannot be presented in a form that would be admissible in evidence (FRCP 56(c)(2)).

A. Uncontroverted Facts

Plaintiff is the mother of Matthew Schwartz ("Matthew"). (Schwartz Decl., ¶ 1.) In 2006, Matthew had attempted suicide and was placed in a psychiatric hospital for three days. During his stay, he was assessed and it was determined he needed residential treatment. He was taken directly to YouthCare in Utah. (Schwartz Decl., ¶ 2; Exh. A.) YouthCare is a residential treatment facility for students ages 11–18. (Kingston Decl., ¶ 3; Exh. E.) Matthew was admitted to YouthCare on September 15, 2006. (Schwartz Decl., ¶ 3; Exh. B.) Matthew was under the age of 18 at the time he was admitted to YouthCare. (Schwartz Decl., ¶ 7.)

Upon admission to YouthCare, Matthew was given a psychiatric evaluation and Intake Assessment. (Schwartz Decl., ¶ 5; Exh. D.) From that time until some 11 months later, Matthew resided at Youth Care. After 11 months, Matthew left YouthCare. (Schwartz Decl., ¶ 6.) At the time Matthew was admitted to YouthCare he had no high school diploma. Plaintiff understood that as part of his treatment, he would receive education classes toward his General Education Diploma. (Schwartz Decl., ¶ 8; Kingston Decl., ¶ 3, Exh. E.) Matthew Schwartz passed away on October 16, 2009. (Schwartz Decl., ¶ 9.)

To pay for his YouthCare treatment, on or about September 13, 2006, Tammy Lynn Schwartz executed a loan agreement through Bank of America, N.A. as Lender. The type of loan taken pursuant to the loan agreement was a "TERI K-12 loan." (Schwartz Decl., ¶ 4; Exhs. C, G, H; Kingston Decl., ¶ 5.) The "TERI K-12" loan program is for kindergarten through 12th grade education loans. (Kingston Decl., ¶¶ 3, 5, 6; Exhs. E, G, H.) Plaintiff never personally received any of the loan proceeds of the loan that is the subject of these proceedings. (Schwartz Decl., ¶ 11.)

B. Plaintiff's Request for Admissions

As a threshold matter, the Court declines to find that Defendant has admitted Plaintiff's contention that "the loan that is subject to these proceedings is a dischargeable loan." Such an admission is a conclusion of law, and requests for

admissions cannot be used to compel admission of a conclusion of law. See Playboy Enterprises, Inc. v. Welles, 60 F. Supp. 2d 1050, 1057 (S.D. Cal. 1999); Fed. R. Civ. P. 36(a)(1)(A). Thus, only factual admissions were deemed admitted by the Court's Order entered on 05/08/2015, compelling Defendant's discovery responses and establishing admissions. Docket No. 14.

C. Section 523(a)(8)

Student loans and educational debts are not dischargeable in bankruptcy unless nondischargeability would impose "an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8).

1. Section 523(a)(8)(B)

In her Complaint, Plaintiff's sole claim for relief invokes § 523(a)(8)(B). In her Motion, Plaintiff argues that because the loan at issue is not a "qualified education loan" under § 523(a)(8)(B), the loan is therefore dischargeable. Defendant does not dispute that the loan at issue is not a qualified education loan under § 523(a)(8)(B). Thus, the Court finds that § 523(a)(8)(B) does not apply to the loan at issue and that summary judgment in favor of Plaintiff is warranted as to § 523(a)(8)(B).

2. Section 523(a)(8)(A)

Despite the foregoing, Defendant argues that the loan remains nondischargeable under § 523(a)(8)(A)(i) and (A)(ii) because the loan provided an "educational benefit." However, Defendant has not proffered sufficient evidence of "educational benefit" to create a triable issue of material fact.

Absent a showing of undue hardship, a debt is not dischargeable if it is:

- "for . . . an **educational benefit** 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" [11 U.S.C. § 523(a)(8)(A)(i) (emphasis added)]; or
- "for . . . an obligation to repay funds received as an **educational benefit**, scholarship, or stipend" [11 U.S.C. § 523(a)(8)(A)(ii)

(emphasis added)].

Here, Plaintiff admits that the loan at issue was a "TERI K-12 loan" issued by Bank of America, N.A. (Schwarz Decl., ¶¶ 3, 4.) Moreover, the loan agreement that Plaintiff signed states:

> I understand and agree that this loan is an education loan and certify that it will be used only for costs of attendance at the School. I acknowledge that the requested loan is subject to the limitations on dischargeability in bankruptcy contained in Section 523(a)(8) of the United States Bankruptcy Code because either or both of the following apply: (a) this loan was made pursuant to a program funded in whole or in part by The Education Resources Institute, Inc. ("TERI"), a non-profit institution, or (b) this is a qualified education loan as defined in the Internal Revenue Code. This means that if, in the event of bankruptcy, my other debts are discharged, I will probably have to pay this loan in full.

(Schwartz Decl., Exh. C at p. 5, section L, ¶ 12.) Notwithstanding this acknowledgement, Plaintiff in her Declaration stated under oath that her son was admitted to YouthCare, a "lockdown treatment facility," for a drug addiction, not for education. (Schwartz Decl., ¶¶ 6, 10.)

Bankruptcy courts have held that such loans made by commercial lenders under the TERI program may be nondischargeable pursuant to § 523(a)(8)(A)(i). See, e.g., Educ. Res. Inst., Inc. v. Hammarstrom (In re Hammarstrom), 95 B.R. 160, 165 (Bankr. N.D. Cal. 1989); McClain v. Am. Student Assistance (ASA) (In re McClain), 272 B.R. 42, 46 (Bankr. D.N.H. 2002). However, it is unclear whether Plaintiff's TERI loan was for an "educational benefit" as contemplated by both §§ 523(a)(8)(A)(i) and (A)(ii). The Parties dispute whether Plaintiff's son actually received "educational benefit" from his stay at the YouthCare treatment facility. Plaintiff's statements on this issue are contradictory. (Compare Schwarz Decl., ¶ 8 (". . . I understood that as a part of his treatment, he would receive education classes toward his General Education Diploma ('GED')[.]") with ¶ 10 ("My son was admitted to YouthCare for a drug addiction, not for education.").)

Despite Plaintiff's contradictory statements, Defendant has not met its burden

of establishing a genuine dispute of material fact as to whether Plaintiff's son received an "educational benefit." Defendant has failed to (i) cite to particular materials in the record that show that YouthCare was an educational provider rather than a medical treatment facility for children ages 11 to 18; (ii) show that Plaintiff's evidence fails to establish the absence of a genuine dispute as to "educational benefit"; or (iii) object to Plaintiff's evidence. Fed. R. Civ. P. 56(c)(1)(A), (c)(1)(B), (c)(2). In its Opposition, Defendant makes a conclusory assertion that "Plaintiff's son received an educational benefit from his attendance at YouthCare" without proffering any supporting evidence therefor. Moreover, the authorities Defendant cites are inapposite to the case at hand. Defendant's cases address private tutoring, a private day school, a plumbing apprenticeship, and a sheet metal worker's apprenticeship. Each of these cases discuss payment for an education or apprenticeship that would enable the student or apprentice to earn a living. In the instant case, Plaintiff's son was provided with medical care for his drug addiction, not with education or skills linked to his future employment. None of Defendant's cases is relevant to YouthCare, which appears to be primarily a medical treatment facility. Defendant has provided no evidence that Plaintiff's son received an educational benefit during his time at YouthCare.

D. Conclusion

Because Defendant has not shown an "educational benefit" as required by §§ 523(a)(8)(A)(i) or (A)(ii), Defendant has not established a genuine dispute of material fact that would preclude summary judgment in favor of Plaintiff. Accordingly, the Court will grant summary judgment in favor of Plaintiff that her debt is dischargeable pursuant to §§ 523(a)(8)(A) and (B). However, if Defendant can convince the Court of an "educational benefit," then the burden would shift to Plaintiff to demonstrate an "undue hardship" justifying discharge under § 523(a)(8) by showing that:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

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Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2nd Cir. 1987).

Party Information

Debtor(s):

Tamara Lynn Schwartz	Represented By Nicholas W Gebelt Christine A Kingston

Defendant(s):

National Collegiate Student Loan	Represented By Raymond F Moats III

Plaintiff(s):

Tamara Lynn Schwartz	Represented By Christine A Kingston

Trustee(s):

Richard K Diamond (TR)	Pro Se

U.S. Trustee(s):

United States Trustee (LA)	Pro Se