

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re:
Linda Renee Kloos,
f/k/a Linda Renee DeJonge,
Debtor.

Bky. No. 96-31112

Chapter 7 Case

Linda Renee Kloos,
Plaintiff,

Adv. No. 99-3007

v.

Midland Lutheran College,
Credit World,
U.S. Department of Education,
AEL MAC/Southwest Student Services,
U.S.A. Services, Inc.,
United Student Aid Funds, Inc.,
Educational Credit Management Corporation,
USA Group, Inc.,
Payco General America Credits, Inc.,
Luther Seminary,
Academic Financial Services Association,
Transworld Systems, Inc.,
Defendants.

In re:
David Raymond Kloos,
Debtor.

Bky. No. 97-35754

Chapter 7 Case

David Raymond Kloos,
Plaintiff,

Adv. No. 99-3006

v.

Concordia College,
University Accounting Services, Inc.,
Sallie Mae,
Bethel College and Seminary,
Northwest Student Loan Center,
Northstar Guarantee, Inc.,
Eduserv Technologies, Inc.,
The Complete Source,
Apple Computer Loan,
Texas Guaranteed Student Loan Corporation,

Defendants.

I. Background

This matter came before the Court on October 19, 1999 to consider the above captioned Debtors' complaints for hardship discharge of various student loans. Appearances are noted in the record. Based on the files, arguments of counsel, and the testimony at trial, the court now makes the following **ORDER** pursuant to the Federal and Local Rules of Bankruptcy Procedure:

Husband and wife David Raymond Kloos (Mr. Kloos) and Linda Renee Kloos (Ms. Kloos)¹ filed individual Chapter 7 Bankruptcies on August 27, 1997 and February 29, 1996, respectively². Mr. Kloos received his discharge on December 2, 1997, Mrs Kloos on May 29, 1996. The present actions to determine the dischargeability of student loans were both brought on January 11, 1999. Through assignments of the notes, Educational Credit Management Corporation (ECMC) now holds the rights to sixteen of Mr. Kloos' remaining student loans totaling \$50,282.80. An additional loan is held by the Texas Guaranteed Student Loan Corporation (TGS LC) in the amount of \$4,738.23. ECMC holds the four remaining notes outstanding on Ms. Kloos' student loan debt totaling \$36,994.31.

As evidenced by their petitions, the Debtors lead a simple life with few possessions. They own a modest home in Saint Paul, Minnesota, and a 1993 Dodge Caravan, apparently donated to them by

¹At the time the Debtors filed their respective Chapter 7 cases the parties were not married. Ms. Kloos' case was brought under her maiden name, Linda Renee DeJonge.

neighbors and friends to further their missionary church work.

Both Debtors have attended a number of educational institutions in pursuit of a variety of degrees over the past twenty years. Mr. Kloos has attended Dunwoody Institute in Minneapolis, Lakewood Community College, Indiana State University, Concordia College, University of St. Thomas, and the American Lutheran Seminary. While in and out of various higher educational institutions since 1972 he managed to earn an associate degree in Liberal Arts as well as a B.A. in Education and History from Concordia College in 1994.

Mr. Kloos's educational history is best understood in the context of head injuries he suffered while working as a prison guard in 1979. Mr. Kloos has received various disability payments since recovering from a beating which initially left him in a coma. As a result of the injuries he sustained, he has been unable to complete a variety of degree programs which might have helped him achieve his goal of earning a better living. Mr. Kloos currently works as a part-time security guard earning \$7.50 an hour. He testified about his optimism and belief that he can complete the job training necessary to operate heavy equipment at the Debtors' new home in Nebraska. While Mr. Kloos' spirit and desire to improve his financial situation may well help him complete this latest educational endeavor, the Court is doubtful that it will allow Mr. Kloos to improve his employment prospects or income in a significant way.

Ms. Kloos has completed two degrees, a Bachelors degree in English from Midland Lutheran College, and a Masters in Christian Education from Luther Seminary. Although unsuccessful in finding work in her chosen field of Christian Education, she has in the past held full-time employment for a related Christian enterprise. She currently works approximately 32 hours a week for the same

employer. There are no limitations on Ms. Kloos' ability to work full-time.

II. Analysis

The Debtors in these cases seek a discharge of their defaulted student loans under the “undue hardship” provision of 11 U. S. C. § 523(a)(8) which excepts from discharge any debt:

for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or part by a government unit or non-profit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents[.] 11 U.S.C. § 523(a)(8).

The standard for determining undue hardship discharge in the Eighth Circuit is the “totality of the circumstances test” most recently articulated by the Bankruptcy Appellate Panel in In re Andresen, 232 B.R. 127, 139-141 (B.A.P. 8th Cir. 1999) citing In re Andrews, 661 F.2d 702 (1981). The test articulated “requires an analysis of (1) the debtor's past, present, and reasonably reliable future financial resources; (2) calculation of the debtor's and his dependents' reasonable necessary living expenses; and (3) any other relevant facts and circumstances surrounding that particular bankruptcy case. In re Andresen at 139.

In assessing the separate student loans of this couple it is appropriate to consider the relative contributions that each can make to the support of their household, and therefore, the potential hardship each faces in attempting to pay off their student loans.³ Even so, the testimony at trial was not

³The Court need not address the issue of discharging some, but not all, of the loans of either Debtor. See In re Andresen, 232 B.R. 127 (B.A.P. 8th Cir. 1999). Here, the stark differences in the relative abilities of these individual Debtors makes the complete discharge of Mr. Kloos' debt, and the

promising on the Debtors' ability to repay their student loan obligations. According to the testimony and trial exhibits, the Debtors' currently have \$1650 in net monthly income but \$1703 in monthly expenses.⁴ Mr. Kloos' mental and physical impairments that resulted from his 1979 attack also present special circumstances that mitigate against his ability to repay his loans. Whether or not these Debtors are both entitled to a discharge of these debts must finally rest on an analysis of their future earning potential.

The "totality of the circumstances" standard places a heavy emphasis on future earning potential to prevent debtors from discharging student loan debts before future earnings from educational advancement is realized:

The Eighth Circuit relied on the Commission's recommendation that student loans "should not as a matter of policy be discharged before (the debtor) has demonstrated that for any reason he (or she) is unable to earn sufficient income to maintain himself (or herself) . . . and to repay the educational debt." *Id.*, FN12, citing *In re Andrews* at 704.

Despite the claims for improved job prospects after further education, Mr. Kloos is unlikely to increase his income. He has tried before to gain better employment through education, only to discover that his disability created non-educational barriers to moving forward. The Court will not penalize Mr. Kloos for his optimism. He believes his employment prospects will improve and this Court certainly hopes that he is right. But since he was savagely beaten in 1979 there is nothing in his employment or

complete nondischargeability of Ms. Kloos' debt, appropriate.

⁴Although the Debtors testified about their desire to move to Nebraska where their monthly expenses might be reduced by \$100 to \$150 per month, Ms. Kloos's lack of job prospects, and Mr. Kloos's highly speculative job prospects, suggest that additional surplus income to pay student loan obligations is not likely to be generated as a result of the planned move.

educational history to suggest that his income will improve in any significant way. It is clear to the Court that without the loving and supporting relationship he shares with his wife, it would be impossible for Mr. Kloos to independently provide any reasonable means of personal support. While he can contribute something to paying the household expenses, it would provide a insurmountable hardship if he emerged from bankruptcy with his student loan debt. Accordingly, his loans should be discharged under the provisions for undue hardship under 11 U.S.C. § 523(a)(8).

Ms. Kloos, however, is still able at the age of 35 to improve her employment situation and income sufficiently to pay her student loans. She will also have the help and support of her husband in accomplishing this task. She has succeeded in completing both undergraduate and graduate degrees, she now needs to apply the same energy and determination to improving her financial situation.

III. Disposition

Based on the foregoing, IT IS HEREBY ORDERED THAT:

- 1) The educational loans owed by Mr. Kloos to the above captioned creditors, and those assigned to the Educational Credit management Corporation (ECMC), as well as the Texas Guaranteed Student Loan Corporation (TGSLC), are discharged for undue hardship;
- 2) The educational loans owed by Ms. Kloos to the above captioned creditors, and those assigned to the Educational Credit management Corporation (ECMC), are nondischargeable under 11 U.S.C. § 523(a).

Dated: December 29, 1999

By the Court:

/e/ Dennis D. O'Brien
Dennis D. O'Brien
Chief U.S. Bankruptcy Judge