

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

**

In Re:)	Case No. 3-91-6659-DDO
)	Chapter 7 Case
Stuart Lee Arends,)	
a/k/a Stuart Arends,)	
and Tanya Dawn Arends,)	
a/k/a Tanya Arends,)	Adv. No. 3-92-054
)	
Debtors.)	
)	
Stuart Lee Arends,)	
a/k/a Stuart Arends)	
)	
Plaintiff.)	ORDER
)	
vs.)	
)	
Northstar Guarantee, Inc.,)	
as Assignee of Student)	
Loan Servicing Center,)	
)	
Defendant.)	

At St. Paul, Minnesota.

The matter before this Court is dischargeability of debtor's student loans pursuant to 11 U.S.C. Section 523(a)(8)(B). Appearances were as noted in the record. Based upon the testimony, exhibits received at trial, and upon all the records and files herein, the Court makes this Order pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.
FACTS

From July 1986 through October 1987, the Plaintiff obtained two educational loans which were executed by two promissory notes in the principal amount of \$5,000 payable to the order of Norwest Bank South Dakota (Norwest). The notes were serviced by EduServ Technologies, Inc., on behalf of the Student Loan Marketing Association, and subsequently endorsed and assigned to Northstar Guarantee, Inc. (Northstar) by assignment dated March 17, 1992. Both notes provided for an interest rate at 8% per annum, simple interest, accrued daily. The Plaintiff is required under the notes to pay reasonable attorneys' fees and costs of collection. The repayment schedule for monthly payments was to begin on December 25, 1988. However, Plaintiff defaulted in his obligation to repay the loans, having made some but not all of the payment due thereon, and such default is continuing. As of December 6, 1991, the aggregate unpaid principal and interest due on the loans totalled \$4,407.23.

The Debtors filed for relief under 11 U.S.C. Chapter 7 on December 6, 1991, and the Plaintiff thereafter filed this adversary

proceeding to discharge his student loans. He contends that the repayment of the loans would constitute an "undue hardship" because he cannot presently meet his monthly expenses and his wife suffers from a disability which does not allow her to seek and retain employment. Northstar disagrees and contends that the Plaintiff and his wife are young individuals who would not suffer an "undue hardship" if required to satisfy their loan obligation.

At trial, Tanya Dawn Arends testified that she is 22-years old and presently suffers from a disease referred to as "DeQuervain's Disease" which causes her extreme pain in her wrist. After completing approximately seven months of college at Mankato Technical Institute, Tanya Dawn Arends withdrew from college because of the pain in her wrist. Therefore, she was unable to complete her two-year degree in Commercial Art. Additionally, she has not been able to retain employment since most jobs required her to have full use of her hand and her wrist causes her extreme pain. However, if this problem was corrected through proper surgery and/or treatment, she testified that she would seek full-time employment to help her husband with their financial expenses. Medical evidence presented in a report by her physician indicated that her surgery is quite simple. It is performed as same-day outpatient surgery and is generally done under a local anesthetic. Generally, six weeks to two months after the surgery most of the pain in that area of the wrist would be relieved.

Plaintiff testified that even if his wife was physically able to work, he could not drive her to work due to the location of their residence and his current work schedule. They reside in Luverne, Minnesota. Plaintiff is employed at Western Commercial Printing in Sioux Falls, South Dakota, which is approximately 45 miles from his residence. Although they only have one car, Plaintiff opted to reside in Luverne, Minnesota, because he does not pay any rent, but rather takes care of the property which is owned by his father. Consequently, Plaintiff asserted that it would be very difficult for him to take his wife to work on a daily basis because of scheduling problems which would arise with their varying work schedules.

The Plaintiff is 24-years old and is presently in good health. He is a high school graduate and earned a two-year degree from Mankato Technical College in Graphic Arts. He has been employed for over a year and utilizes his skills learned in college. Presently, he is not seeking a better paying position because he has had "bad experiences" which eventually led him to bankruptcy. Plaintiff discloses his net monthly income as \$944.52; and his monthly expenses as \$1,228 as follows:

Payment for mobile home (excluding real estate taxes and property insurance)	\$ 100.37
Utilities: Electricity and heating fuel	110.00
Telephone	45.00
Home Maintenance (repairs and upkeep)	52.00
Food	220.00
Clothing	45.00
Laundry and Dry Cleaning	10.00
Medical Expenses (not including ones still paying off)	150.30
Transportation (not including car payment)	200.00
Insurance:	
Homeowners	24.00
Automobiles	85.00
Taxes (not deducted from wages)	60.00

Installment Payment: Automobile	97.00
Entertainment: Magazines, etc.	20.00

TOTAL \$ 1228.67

At trial, Plaintiff testified that his monthly expenses are not totally accurate. First, although Plaintiff has also received medical assistance from the state, this assistance has not covered his wife's medical expenses. He presently owes a total of \$750 not covered by the state or his insurance. Second, his monthly medical expenses of \$150 are deducted by his employer and do not represent a monthly expense. Third, he only pays \$60 for automobile insurance since his father-in-law pays the remainder. In addition, Plaintiff would fulfill the monthly mobile home obligation of \$110 in 1998. Also, he will payoff the automobile obligation of \$97 in approximately six months. Plaintiff seeks to discharge his student loan obligations pursuant to 11 U.S.C Section 523(a)(8)(B) of the Bankruptcy Code, alleging that the repayment of the loans would cause an "undue hardship" to him and his wife. Northstar disagrees and objects to a finding that the loans are dischargeable.

II.

ANALYSIS

11 U.S.C. Section 523(a)(8)(B) provides:

(a) A discharge under section 727 ... of this title does not discharge an individual debtor from any debt--

(8) 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, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless--

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents.

In order for the Plaintiff to prevail in this action, the Court must find that the repayment of the student loan constitutes an "undue hardship" to the Plaintiff and his family in order to excuse his debt. See *In re Frech*, 62 B.R. 235 (Bankr. D. Minn. 1986); See also *Cossette v. Higher Educ. Assistance Found.*, 41 B.R. 684 (Bankr. D. Minn. 1984). The Court must also take into consideration the strong judicial policy which opposes the notion that a bankruptcy filing should be used as a means to discharge student loans. *In re Conner*, 89 B.R. 744, 747 (Bankr. N.D. Ill. 1988).

The Bankruptcy Code and its legislative history do not provide guidelines or a definition of what constitutes an "undue hardship." *Id.* However, the term "undue hardship" means more than an inconvenience. *Id.* Courts have developed a three-prong "progressive" test referred as the mechanical, good faith, and policy tests to properly evaluate the facts and circumstances in a case by case basis. *In re Johnson*, 5 B.R. 256 (Bankr. E. D. Pa. 1979); See also *In re Frech*, at 240. *Shoberg v. Higher Educ. Assistance Found.*, 41 B.R. 684 (Bankr. D. Minn. 1984); *In re Erickson*, 52 B.R. 154 (Bankr. D. N.D. 1985). Although some Courts have focused on only one of the three tests, Judge Kishel of this District considers the use of all three tests as a better approach

to make a determination. Frech, at 240. The Plaintiff bears the burden of proof and must satisfy each part of the test in order to have his student loans discharged. Id. citing Erickson, at 157. If the Plaintiff fails any one of these tests, the repayment of student loans cannot be dischargeable in bankruptcy. Id.

Under the "mechanical" test, the Court considers the Plaintiff's current employment and income, future employment and income prospects, educational level and work skills, health, family support responsibilities, and the practical marketability of the Plaintiff's work skills. Frech, at 240.

The Plaintiff has not met all the requirements of the "mechanical" test. The Plaintiff and his wife are both young, healthy individuals. Plaintiff's purported monthly expenses exceed his monthly net income by \$285.00, or 30%. That is not likely. More likely, Plaintiff's modest monthly net income covers the Debtors' monthly expenses. While his present employment and income is modest, Plaintiff is gaining valuable experience which could allow him in the future to obtain a better paying position or eventually obtain a significant promotion in his current position. In addition, Plaintiff will complete his monthly automobile obligation of \$97 in approximately six months, which should allow for some payment on his student loan obligation.

Although his wife suffers from "DeQuervain's Disease," this could be corrected by surgical treatment. Plaintiff claims that this consideration is unfair because the surgery is expensive and there is no guarantee that the surgery would correct the condition in her wrist. According to the medical evidence presented, this surgery appears to be rather simple. It is performed as same-day outpatient surgery and is generally done under a local anesthetic, with complete recovery in six weeks to two months after the surgery. The expense of the surgery is a necessary expense in order for Plaintiff's wife to enjoy better health and financial relief. Presumably, this young woman, who is under no other disability, intends to remedy this problem in the foreseeable future. She testified at trial that if her wrist problem was corrected, she would obtain full-time employment. Finally, Plaintiff and his wife do not have any children to burden their present finances. Thus, they are in a better position to satisfy their financial obligations and responsibilities.

Under the "good faith" test, the Court considers whether the Plaintiff is actively minimizing his current living expenses while maximizing his earning potential. Frech, at 241. Plaintiff has not met the "good faith" test. At trial, the Plaintiff testified that he was not looking for a better position because he has had "bad experiences" with new employment opportunities which eventually lead him to bankruptcy. Moreover, Plaintiff did not indicate that he has attempted or will attempt to obtain a part-time position in order to improve his financial situation. Plaintiff's wife indicated that she could not find any suitable employment in the area where the Debtors reside. The Plaintiff testified that even if his wife could obtain a part-time or full-time job elsewhere, he could not drive her to work because of his schedule. Although the Plaintiff and his wife decided to reside in Luverne to save expenses, realistically, they may be in a better financial position if they were to relocate to Sioux Falls. First, they would be able to save at least \$150 in gasoline expense. Second, Plaintiff's wife could likely obtain part-time or full-time employment and rely on public transportation. Thus, the Plaintiff and his wife would be maximizing their earning potential as well as minimizing their expenses.

Under the "policy" test, the Court must determine whether allowing discharge of a given student loan would constitute abuse of the bankruptcy process. Frech, at 241. The "policy test" instructs the court to determine (1) the relative magnitude of the debtor's educational loan obligations as a component of his or her total debt structure; (2) the personal, professional, and financial benefit which the debtor has derived or will derived from the Education financed by the loans in question. Id.

The Plaintiff has not met the "policy" test. First, the Plaintiff's student loans represent approximately 20% of his total indebtedness but approximately 60% of the unsecured debt. Moreover, Plaintiff made no attempts whatsoever to reschedule or restructure and lower the loan payments through negotiations with his lender. Rather, Plaintiff's alternative was to seek discharge his student loans. Thus, the Plaintiff's dominant purpose in bankruptcy appears to be the discharge of the student debt. Second, the Plaintiff obtained student loans to earn a degree in Graphic Arts. He currently enjoys the fruits of his degree by being employed in the area that he studied. Thus, the Plaintiff has definitely benefitted financially from the education which the loan helped to finance.

Plaintiff has failed to carry his burden of showing that the repayment of his student loans would create an "undue hardship" against him or his wife. Accordingly, the foregoing student loan debts are not dischargeable under 11 U.S.C. Section 523(a)(8)(B).

THEREFORE, IT IS HEREBY ORDERED: Plaintiff's student loans owing to Defendant Northstar are nondischargeable in Plaintiff's Bankruptcy No. 3-91-6659, and such amount is not discharge pursuant to any discharge that has been or will be granted herein.

Let Judgment Be Entered Accordingly.
Dated this _____ day of November, 1992.

BY THE COURT:

DENNIS D. O'BRIEN
U.S. Bankruptcy Judge