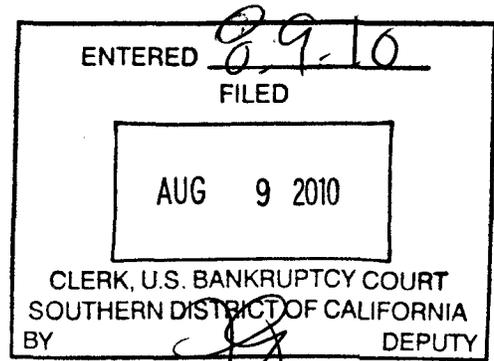


WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

11	In re)	Case No. 04-05679-LT13
12	SCOTT ALAN MOON,)	
13	Debtor.)	MEMORANDUM DECISION
14	_____)	
15	SCOTT ALAN MOON,)	
16	Movant,)	
17	v.)	
18	EDUCATIONAL CREDIT MANAGEMENT)	
19	CORPORATION,)	
20	Respondent.)	

21 Mr. Moon has asked this Court to hold Educational Credit
 22 Management Corporation (ECMC) in contempt for violating the
 23 discharge injunction of 11 U.S.C. § 524 by attempting to collect
 24 on a student loan debt which Mr. Moon contends was discharged
 25 through completion of his Chapter 13 plan and resulting
 26 discharge.

1 The Court has subject matter jurisdiction pursuant to
2 28 U.S.C. § 1334 and General Order No. 312-D of the United States
3 District Court for the Southern District of California. This
4 is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), and
5 (I).

6 Before the Court can undertake an analysis of whether
7 Mr. Moon gave ECMC constitutionally sufficient notice of his
8 intent to discharge his student loan debt, consistent with
9 United Student Aid Funds, Inc. v. Espinosa, ____ U.S. _____,
10 130 S.Ct. 1367 (2010), Mr. Moon needs to address the discharge he
11 was granted on May 5, 2009. It expressly recites, in relevant
12 part:

13 1. The Debtor is hereby discharged of all
14 debts provided for by the Plan . . . except
any debt

15 . . .

16 b. of the kind specified under 11
17 U.S.C. § 523(a)(5)(8), or (9) . . .

18 Student loan debt is generally nondischargeable under § 523(a)(8)
19 unless a separate determination is made that requiring payment of
20 the debt would impose an undue hardship on the debtor. No such
21 determination was made in Mr. Moon's case prior to discharge, and
22 the discharge itself recites that such debt is not discharged.
23 If it was not discharged, then ECMC could not have violated the
24 discharge injunction of § 524.

25 Without addressing any of the differences between this case
26 and Espinosa, the Court notes that the discharge originally

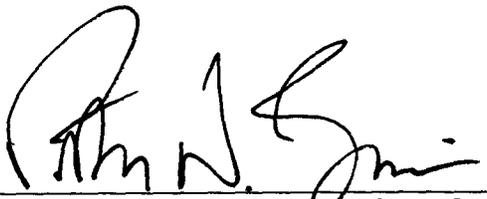
1 granted in Espinosa had similar language. The Ninth Circuit
2 Court of Appeals remanded the original appeal for the trial court
3 to determine whether the discharge order excepting student loan
4 debt from discharge was the result of a clerical error given the
5 express language contained in Espinosa's Chapter 13 plan.
6 Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1192, 1196
7 (9th Cir. 2008).

8 At this stage of the proceedings in Mr. Moon's case, the
9 discharge order which he says ECMC has violated actually says
10 such debt is excepted from discharge. So long as the discharge
11 remains as it was granted, there is no discharge of the debt owed
12 ECMC, and therefore no violation of § 524.

13 Accordingly, Mr. Moon's instant motion, seeking to hold ECMC
14 in contempt, must be denied, without prejudice.

15 IT IS SO ORDERED.

16 DATED: AUG -9 2010

17
18 
19 PETER W. BOWIE, Chief Judge
20 United States Bankruptcy Court
21
22
23
24
25
26