

1 **FOR PUBLICATION**

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:)	ADV. CASE NO. 98-90017-H7
)	
Deborah A. James,)	MEMORANDUM DECISION
)	
Debtor.)	
)	
Related Bankruptcy Court)	
Case No. 97-15038-H7)	
_____)	
Deborah A. James,)	
)	
Plaintiff,)	
)	
v.)	
)	
United Student Aid Funds,)	
Inc.,)	
)	
Defendant.)	
_____)	

At issue is whether 11 U.S.C. § 523(a)(8) applies to a non-student debtor who is the sole obligor on the note evidencing an educational loan. Plaintiff Deborah A. James ("Debtor") and defendant United Student Aid Funds, Inc. ("USAF") both moved for summary judgment.

This Court has jurisdiction to determine this matter pursuant

1 to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order No. 312-D of
2 the United States District Court for the Southern District of
3 California. This is a core proceeding pursuant to 28 U.S.C.
4 § 157(b)(2)(I).

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6 FACTS

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8 The facts are undisputed. In August 1994, Debtor's daughter
9 enrolled at Manhattan College in Riverdale, New York as a first
10 year student. In September 1994, Debtor took out a \$6000 Federal
11 Plus Loan ("Plus Loan") to assist her daughter with her education.
12 In January 1996, Debtor took out a second Plus Loan in the amount
13 of \$11,450. Debtor was the sole obligor on both Plus Loans. In
14 January 1997, Debtor consolidated both Plus Loans into a Smart Loan
15 via Sallie Mae. The consolidated loan amount is to be paid back
16 through graduated payments over a period of fifteen years.

17 In October 1997, Debtor filed her bankruptcy petition. In
18 January 1998, Debtor filed this adversary complaint against Sallie
19 Mae to determine whether the educational loans were dischargeable.
20 In February 1998, Sallie Mae assigned its interest to USAF. USAF
21 responded to Debtor's complaint.

22
23 DISCUSSION

24
25 A. STANDARD FOR SUMMARY JUDGMENT.

26 Rule 56(c) of the Federal Rule Civil Procedure ("FRCP") made
27 applicable to adversary proceedings by Fed. R. Bankr. P. 7056,
28

1 provides that summary judgment:

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1 [S]hall be rendered forthwith if the pleadings,
2 deposition, answers to interrogatories, and
3 admissions on file, together with the
4 affidavits, if any, show that there is no
genuine issue as to any material fact¹ and that
the moving party is entitled to a judgment as a
matter of law.

5 FRCP 56(c).

6 Where the parties agree on all of the material facts relevant
7 to the issue raised by the motion for summary judgment, the case
8 can be resolved as a matter of law and summary judgment is the
9 proper procedural device. Ferguson v. Flying Tiger Line, Inc., 688
10 F.2d 1320 (9th Cir. 1982).

11
12 B. DISCHARGEABILITY OF EDUCATIONAL LOANS UNDER SECTION 523(a)(8).

13 Section 523(a)(8) provides:

14 (a) A discharge under section 727, 1141, 1228(a),
15 1228(b), or 1328(b) of this title does not discharge an
individual debtor from any debt --

16 (8) for an educational benefit overpayment or
17 loan made, insured, or guaranteed by a
18 governmental unit, or made under any program
19 funded in whole or in part by a governmental
unit or nonprofit institution, or an obligation
to repay funds received as an educational
benefit, scholarship, or stipend, unless --

20 (A) such loan, benefit scholarship,
21 or stipend overpayment first became
due before more than 7 years

22
23 ¹ A genuine issue of material fact exists if the evidence is such that
24 a reasonable jury could return a verdict for the non-moving party. Anderson v.
25 Liberty Lobby, Inc., 477 U.S. 242 (1986). The evidence favoring the non-moving
26 party must be more than "merely colorable." Id. When the moving party has carried
27 its burden under the rule, its opponent must do more than simply show there is some
28 metaphysical doubt as to the material facts. Matsushita Elec. Indus. Co. v. Zenith
Radio, 475 U.S. 574 (1986). Essentially, the question in ruling on a motion for
summary judgment is whether the evidence presents a sufficient disagreement to
require submission to a jury or whether it is so one-sided that one party must
prevail as a matter of law.

1 (exclusive of any applicable
2 suspension of the repayment period)
3 before the date of the filing of the
4 petition; or

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

9 Debtor contends that 11 U.S.C. § 523(a)(8) is inapplicable to
10 her because she is a third party borrower and not a beneficiary of
11 the educational loans. Debtor contends that the legislative intent
12 of § 523(a)(8) shows that it was meant to stop abuse by students
13 who have obtained the benefits of the loans, and who, shortly after
14 graduating, file bankruptcy. Debtor argues that she is not
15 committing fraud and that it would be inequitable to place the
16 burden of loan repayment on parties such as her who have received
17 no benefits from the loan. Debtor cites numerous cases in support
18 of her position. In re Kirkish, 144 B.R. 367 (Bankr. W.D. Mich.
19 1992); In re Meier, 85 B.R. 805 (Bankr. W.D. Wis. 1986); In re
20 Behr, 80 B.R. 124 (Bankr. N.D. Iowa 1987).

21 USAF contends that the plain language of § 523(a)(8) indicates
22 it is not limited to educational loans only on which the student is
23 the obligor. In addition to preventing abuse by students, USAF
24 also points out that Congress enacted this section to safeguard the
25 financial integrity of educational loan programs. Finally, USAF
26 contends that none of the exceptions to the nondischargeability of
27 the educational loans apply in this case. Under the first
28 exception, an educational loan may be dischargeable if "such loan
... first became due before more than 7 years ... before the date
of the filing of the petition." 11 U.S.C. § 523(a)(8)(A).

1 Debtor's loan was disbursed on January 23, 1997, and Debtor filed
2 her bankruptcy petition on October 9, 1997. Therefore, the first
3 exception to § 523(a)(8) does not apply. Under the second
4 exception, an educational loan may be dischargeable if "excepting
5 such debt from discharge ... will impose an undue hardship on the
6 debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8)(B).
7 Debtor concedes that she cannot meet the standards of undue
8 hardship. Thus, the second exception to § 523(a)(8) is
9 inapplicable as well.

10 There is no Ninth Circuit case that has decided whether an
11 educational loan signed solely by the student's parent is
12 nondischargeable pursuant to 11 U.S.C. § 523(a)(8). Nonetheless,
13 the arguments advanced by both the Debtor and USAF have been
14 analyzed by a number of courts. The majority of cases addressing
15 the dischargeability of an educational loan vis-a-vis a non-student
16 debtor have involved co-makers, accommodation makers, or guarantors
17 of student loans. Several courts have held that the exception to
18 the discharge of student loans applies to co-signers, guarantors or
19 non-students, even if they did not receive any educational
20 benefits, see In re Salter, 207 B.R. 272, 274 (Bankr. M.D. Fla.
21 1997) (citations omitted), while other courts, including those
22 cited by Debtor, have found the opposite. Id. (citations omitted).
23 However, these cases are distinguishable from the present case in
24 that they involve co-makers, accommodation makers, or guarantors.
25 Here, Debtor is the sole obligor.

26 "The starting point for interpreting a statute is the language
27 of the statute itself. Absent a clearly expressed intention to the
28

1 contrary, that language must ordinarily be regarded as conclusive."
2 Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102,
3 108 (1980). The Court finds that there is no requirement in §
4 523(a)(8) that the loans be for the direct educational benefit of
5 the borrower. In analyzing the exception to discharge under this
6 section, the focus should be on the nature of the debt and the
7 lender rather than on the status of the debtor. See In re Owens,
8 161 B.R. 829 (Bankr. D. Nebraska 1993); In re Hammarstrom, 95 B.R.
9 160 (Bankr. N.D. Cal. 1989).

10 In addition, the Court finds that the legislative history of §
11 523(a)(8) may be relevant when the statute is ambiguous. However,
12 no such ambiguity exists in this case. In re Berg, 188 B.R. 615,
13 621 (1995) aff'd 121 F.3d 535 (9th Cir. 1997) ("In interpreting
14 statutes in this [the bankruptcy] field we avoid resorting to
15 legislative history where the statute is not overtly ambiguous.");
16 In re MacIntyre, 74 F.3d 186, 188 (9th Cir. 1996)(if statute is
17 clear, resort to legislative history is inappropriate).

18 Even if this Court were to consider the legislative history,
19 it "offers no basis for not enforcing the literal language of §
20 523(a)(8) to bar the discharge of educational loans signed by a
21 student's parent." Hammarstrom, 95 B.R. at 163. The Hammarstrom
22 court noted:

23 First, there is no clear evidence in the
24 legislative history that Congress intended
25 otherwise nondischargeable educational loans to
26 be dischargeable merely because the maker of
27 the promissory note is someone other than the
28 student. Neither the floor debates nor the
legislative history contain a single word about
non-student obligors. Although there are
occasional references in the legislative
history to non-student co-makers, these

1 references state only that co-makers are
2 generally not required on educational loans.

3 Second, the legislative history reveals that a
4 major purpose of Congress in enacting section
5 523(a)(8) was to safeguard the financial
6 integrity of educational loan programs by
7 limiting the instances in which such
8 obligations can be discharged in bankruptcy.
9 This goal is served by barring discharge of
10 educational loans signed by parents. A loan
11 program is affected just as much when a parent
12 discharges a loan as when a student discharges
13 a loan.

14 Third, even if Congress' primary goal in
15 enacting section 523(a)(8) was to prevent
16 abusive discharge of educational loans by
17 students, barring discharge of educational
18 loans signed by parents does not interfere with
19 that goal. The mere fact that the statutory
20 language extends the effect of the statute
21 beyond the primary goal enunciated by Congress
22 is not a valid reason not to give the statutory
23 language full effect.

24 Id. Congress has had ample opportunity to amend the statute to
25 include new exceptions such as that urged by the Debtor here. In
26 1990, Congress amended the statute to extend the limitations period
27 set forth in § 523(a)(8)(A) from five to seven years. Although
28 Congress could have amended the statute to exclude non-student
debtor obligors at that time as well, it did not do so.

The language of § 523(a)(8) is broad in scope, and the
exceptions to it are carefully delineated in subsections (A) and
(B). A broad reading of the applicability of § 523(a)(8) is also
consistent with the extension of that provision to Chapter 13
bankruptcies filed after November 5, 1990. Accordingly, Debtor's
motion for summary judgment is denied.

Because Debtor has conceded none of the exceptions set forth
in § 523(a)(8) apply to her, USAF's motion for summary judgment is

1 **granted.**

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CONCLUSION

The Court finds that 11 U.S.C. § 523(a)(8) applies to non-student debtors who are the sole obligors on an educational loan. The Court also finds that none of the exceptions delineated in the statute apply to the Debtor. Therefore, the debt at issue is nondischargeable.

This Memorandum Decision constitutes findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052. USAF is directed to file with this Court an order in conformance with this Memorandum Decision within ten (10) days from the date of entry hereof.

Dated: October 20, 1998

JOHN J. HARGROVE
United States Bankruptcy Judge

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