

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

NICOLE MARIE DeMATTEIS,

Debtor.

NICOLE MARIE DeMATTEIS,

Plaintiff,

vs.

CASE WESTERN RESERVE UNIVERSITY,
et al.,

Defendants.

CASE NUMBER 99-42427

ADVERSARY NUMBER 99-4099

O R D E R

This cause is before the Court on the remand of this adversary proceeding by the Court of Appeals of the Sixth Circuit filed on March 8, 2004 for further consideration by this Court consistent with the decisions of the Sixth Circuit Court of Appeals¹ and the remand required by the November 30, 2001 order of the Bankruptcy Appellate Panel ("BAP") of the Sixth Circuit regarding issues not further appealed.

The Sixth Circuit Court of Appeals affirmed this Court's original holding that a partial discharge was appropriate

¹The mandate for this case issued on June 23, 2004.

based on 11 U.S.C. § 105(a) equitable theory grounds.² Accordingly, the following analysis is solely pursuant to the equitable powers of § 105(a). The BAP asked this Court to address its disparate treatment of Plaintiff's three student loan creditors, Pennsylvania Higher Education Assistance Agency ("PHEAA"), The Education Resources Institute ("TERI") and Case Western Reserve University ("CWRU"), in its memorandum opinion and order entered on January 12, 2001 ("Original Opinion") and to explain this Court's choice of a 10-year plan. The issues on remand are to be considered consistent with the decisions of the Sixth Circuit Court of Appeal and the BAP.

In this Court's Original Opinion, we determined that Plaintiff is able to devote Two Hundred Dollars (\$200.00) per month towards repayment of student loan obligations. That determination was not reversed on appeal and we start at that point in consideration of the Sixth Circuit's finding that some relief is appropriate for this Plaintiff. Plaintiff's only hope of repaying this debt is in becoming a practicing attorney, an option presently foreclosed to her. Based upon Plaintiff's very low law school academic standing, her initial failure to pass the Ohio bar exam, the Supreme Court of Ohio's increase in the minimum score necessary to pass the bar exam and the Court's

²Although the BAP agreed with this Court's partial discharge determination, it found that the bankruptcy court should read § 105(a) and § 523(a)(8) together to reach that outcome.

observation of the demeanor of Plaintiff as a witness, the Court concludes it is indeed doubtful that Plaintiff will qualify to be a practicing attorney in Ohio. Indeed, that same observation moves the Court to conclude that Plaintiff will not likely achieve a significantly higher level of employment. Thus, this is indeed a case where relief is appropriate under § 105(a).

Addressing the BAP's remand to consider the disparate treatment in our Original Opinion of Plaintiff's three student loan creditors, this Court concludes on remand in light of the BAP's opinion that Plaintiff's repayment of the student loan obligations should be *pari passu*.

The BAP observed that the remedy in this Court's Original Opinion shows an "apparent conviction that paying off the entirety of her student loan debt, or even a significant portion of it, would be an undue hardship for this debtor." *In re DeMatteis*, slip op. at 9. The BAP concluded that this Court must address the designation of 10 years as a term for repayment of Plaintiff's student loan obligations. Initially, the Court is aware that that is the time period Judge William T. Bodoh³ had to repay his own student loans from former years. That is the period provided for Judge Bodoh's youngest child's student loans to be repaid.

³Judge Bodoh, who originally presided over this case, retired from the Federal Bench on January 2, 2004.

In the numerous cases involving student loan dischargeability that have come before Judge Bodoh in more than 18 years on the Bench, 10 years appears to be the typical time period for repayment. That period is two times the term provided for repayment here (see, e.g., TERI Exhibit 4, ¶ E; CWRU Exhibit 1, ¶ III(1)).⁴ Counsel for PHEAA at a status conference upon remand from the BAP suggested a 30-year term of repayment. Given Plaintiff's date of birth of July 19, 1970 (CWRU Exhibit 5), Plaintiff would be subjected to a form of peonage for the greater part of her remaining working life. This is inconsistent with the underlying public policy of bankruptcy relief (*Local Loan Co. v. Hunt*, 292 U.S. 234, 54 S. Ct. 695, 78 L. Ed. 1230 (1934)) and is the sort of treatment of debtors not intended by and consistently rejected by Congress, as recently as the current proposed bankruptcy "reform" and the sort of treatment which has consistently been criticized in academic writings. See, e.g., Vern Countryman, *Bankruptcy and the Individual Debtor - and a Modest Proposal to Return to the Seventeenth Century*, 32 CATH. U. L. REV. 809, 827 (1983).

It is this Court's conclusion that a 10-year repayment period is not inconsistent with the period of time in which student loans are expected to be repaid. Assuming Plaintiff will

⁴We cannot determine what the PHEAA term or terms may be as PHEAA Exhibit 1, page 2, as submitted into evidence, is illegible, but see Transcript, page 32 lines 6-15, showing a five year repayment term.

continue to rely on the financial assistance of her parents and assuming she does not succeed in any future effort to pass the bar exam or to obtain significantly enhanced employment, her best efforts over that period of time is consistent with the evidence in the record here, taken as a whole. The 30-year period suggested by one of the litigants is, simply stated, draconian.

In conclusion, some relief for this Plaintiff, given the factual circumstances here found, is appropriate. The evidence shows that Plaintiff could devote Two Hundred Dollars (\$200.00) per month to pay her student loan obligations. Plaintiff should make payments of Two Hundred Dollars (\$200.00) per month for a period of 120 months, *pari passu*, to the holders of the three student loan obligations. Plaintiff's obligation to PHEAA is Eighty-Three Thousand Forty-Two and 69/100 Dollars (\$83,042.69), to TERI is Twenty-Three Thousand Five Hundred Thirty-Two and 50/100 Dollars (\$23,532.50) and to CWRU is Three Thousand Eight Hundred Ninety-Four and 19/100 Dollars (\$3,894.19), for a total of One Hundred Ten Thousand Four Hundred Sixty-Nine and 38/100 Dollars (\$110,469.38). The PHEAA obligation is 75.17% of the total. The TERI obligation is 21.30% of the total obligation. The CWRU obligation is 3.53% of the total obligation. Thus, Plaintiff should pay to PHEAA One Hundred Fifty and 34/100 Dollars (\$150.34) per month, to TERI Forty-Two and 60/100 Dollars (\$42.60) per month and to CWRU Seven

and 06/100 Dollars (\$7.06) per month, all for the period of 10 years or 120 months.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was placed in the United States Mail this _____ day of July, 2004, addressed to:

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Attn: Leonard Green, Clerk, 100 East Fifth Street, Room 532, Potter Stewart U.S. Courthouse, Cincinnati, OH 45202.

NICOLE MARIE DeMATTEIS, 1504 Bellevue Drive, Niles, OH 44446.

ROGER R. BAUER, ESQ., 244 Seneca Avenue, Warren, OH 44481.

BRUCE L. WATERHOUSE, JR., ESQ. and CHRISTINE A. ALLPORT, ESQ., 3500 BP Tower, 200 Public Square, Cleveland, OH 44114.

FREDERICK S. COOMBS, III, ESQ., 26 Market Street, Suite 1200, Youngstown, OH 44503.

STEVEN SCHWARTZ, ESQ., 202 Sixth Street, N.W., Canton, OH 44702.

ELAINE B. GREAVES, ESQ., 34 Federal Plaza West, 810 Wick Building, Youngstown, OH 44503.

SAUL EISEN, United States Trustee, BP America Building, 200 Public Square, 20th Floor, Suite 3300, Cleveland, OH 44114.

JOANNA M. ARMSTRONG