

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
THOMAS FRANCIS BARRETT, JR., *
* CASE NUMBER 01-45444
*
Debtor. *
*

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THOMAS FRANCIS BARRETT, JR., *
*
Plaintiff, *
*
vs. * ADVERSARY NUMBER 02-4164
*
SALLIE MAE SERVICING, et al., *
*
Defendants. *
*

ORDER DENYING AMENDED MOTION OF DEFENDANT EDUCATIONAL CREDIT
MANAGEMENT CORPORATION FOR AMENDED FINDINGS AND AMENDED JUDGMENT

Debtor/Plaintiff Thomas Francis Barrett, Jr. ("Debtor")
initiated this adversary proceeding on September 27, 2002 by filing
a complaint regarding the dischargeability of certain student
loans. The summons was issued on October 9, 2002. On November 19,
2002 an order granting a motion to substitute party, Educational
Credit Management Corporation ("ECMC") for Defendant Sallie Mae/USA
Funds, was entered. Subsequently ECMC filed its answer. Trial on
this matter was held on November 23, 2004. This Court issued its
memo-randum opinion and order discharging the student loan

obligations of Debtor on December 14, 2004. On December 23, 2004, ECMC timely filed a motion for amended findings and amended judgment. On that same day, ECMC filed the amended motion for amended findings and amended judgment (correcting certain typographical errors in the previously docketed motion) (the "Amended Motion"). ECMC also filed a notice of the Amended Motion, scheduling a hearing for January 20, 2005 at 9:30 a.m.

ECMC relies on Bankruptcy Rules 7052 and 9023 in filing its Amended Motion. Rule 7052 incorporates Rule 52 of the Federal Rules of Civil Procedure. Federal Rule of Civil Procedure 52(b) states:

On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings - or make additional findings - and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

Although ECMC relies on both Bankruptcy Rules 7052 and 9023 (which incorporates by reference Federal Rule of Civil Procedure 59), ECMC has not moved the Court for a new trial, but has only moved the Court to amend its findings and judgment announced in the December 14, 2004 memorandum opinion and order.

ECMC has essentially filed an appellate brief in its Amended Motion. ECMC disagrees with the Court's application of the

so-called *Brunner* test (*Brunner v. New York State Higher Education Service Corp.*, 831 F. 2d 395 (2nd Cir. 1987)). ECMC insists that its interpretation of the *Brunner* test, in which it says that corroborating expert medical testimony is the only way that Debtor could have met the burden of the *Brunner* test, must be adopted by this Court. "That void could only be filled by testimony from expert witnesses qualified to give opinions as to Debtor's medical prognosis." See, Amended Motion, at 4. ECMC made this argument in its pretrial brief and also at trial. This Court, however, found that expert medical testimony is not necessarily a prerequisite for Debtor to meet the burden of the *Brunner* test.

As a consequence, it is not necessary to amend this Court's findings of fact or its judgment. The evidence adduced at trial supports the findings of fact and the judgment that was rendered in support of those findings. Accordingly, ECMC's Amended Motion is denied.

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 January, 2005, addressed to:

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SAUL EISEN, United States Trustee, BP America
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JOANNA M. ARMSTRONG