

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE: \*  
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NICOLE MARIE DeMATTEIS, \*  
\* CASE NUMBER 99-42427  
\*  
Debtor. \*  
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NICOLE MARIE DeMATTEIS, \*  
\*  
Plaintiff, \*  
\*  
vs. \* ADVERSARY NUMBER 99-4099  
\*  
CASE WESTERN RESERVE UNIVERSITY, \*  
et al., \*  
Defendants. \*  
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M E M O R A N D U M O P I N I O N  
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The matter before the Court is the motion of Pennsylvania Higher Education Assistance Agency ("PHEAA")<sup>1</sup> for relief from judgment, which motion was filed November 3, 2004. On December 10, 2004, Debtor/Plaintiff, Nicole Marie DeMatteis ("Debtor"), filed a brief in opposition to the motion of PHEAA for relief from judgment. On January 13, 2005, PHEAA filed a reply brief in support of the motion for relief from judgment. A hearing was held on this matter on January 20, 2005.

By way of background, Debtor filed a voluntary Chapter

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<sup>1</sup>On September 30, 1999, PHEAA was added as a defendant to this adversary proceeding, on which date it filed an answer to the complaint.

7 petition on August 19, 1999. The first meeting of creditors was scheduled for October 12, 1999, with the last day to oppose discharge being December 13, 1999. On August 31, 1999, Debtor initiated the instant adversary proceeding by filing a complaint against Case Western Reserve University ("CWRU") and other defendants seeking a determination that certain student loans were dischargeable. On December 16, 1999, this Court entered an order discharging Debtor. On March 27, 2000, this Court conducted a trial on Debtor's complaint concerning the dischargeability of certain student loans. The facts presented at trial included that Debtor, who had received her law degree from CWRU, had failed to pass the Ohio bar exam in 1996 and that she was not likely to be able to sit for it again. At that time Debtor was not utilizing her law degree, but was employed as an office manager in a chiropractic office with take-home pay of One Thousand Thirty-Four Dollars (\$1,034.00) per month.

On January 12, 2001, this Court issued a memorandum opinion and order finding that Debtor's student loan obligations to CWRU, PHEAA and The Education Resource Institute ("TERI") were not subject to discharge pursuant to 11 U.S.C. § 523(a)(8), but concluding that circumstances existed that warranted granting Debtor a partial discharge of such student loan obligations pursuant to 11 U.S.C. § 105. On March 21, 2001, this Court issued an order granting in part and denying in part the

complaint regarding dischargeability, and ordered Debtor to pay Three Thousand Eight Hundred Ninety-Four and 19/100 Dollars (\$3,894.19) to CWRU, Fifteen Thousand Six Hundred Eighty-Two and 53/100 Dollars (\$15,682.53) to PHEAA and Four Thousand Four Hundred Twenty-Three and 28/100 Dollars (\$4,423.28) to TERI. Those amounts were deemed to be non-dischargeable; however, the remainder of the student loans were deemed to be dischargeable.

On April 2, 2001, PHEAA filed a notice of appeal. On December 3, 2001, the Bankruptcy Appellate Panel ("BAP") entered a final order remanding the case to the bankruptcy court for further consideration consistent with such final order. On January 11, 2002, this Court issued a memorandum opinion and order, upon the Court's consideration of this case upon remand from the BAP, for Debtor to pay One Hundred Fifty and 34/100 Dollars (\$150.34) per month to PHEAA, Forty-Two and 60/100 Dollars (\$42.60) per month to TERI and Seven and 06/100 Dollars (\$7.06) per month to CWRU, each for a period of one hundred twenty (120) months and any further obligation to each of these entities was determined to be a hard-ship on Debtor and discharged. On January 23, 2002, PHEAA filed a motion to stay the memorandum opinion and order of January 11, 2002 pending appeal. On February 13, 2002, this Court entered an order vacating the memorandum opinion and order signed on January 11, 2002.

On March 19, 2004, the United States Court of Appeals for the Sixth Circuit entered an order affirming the judgment of the bankruptcy court regarding the availability of partial discharge and remanding the case to the bankruptcy court for proceedings consistent with its order and consistent with the remand required by the BAP's November 30, 2001 order, which applied issues not appealed to the Sixth Circuit. On July 20, 2004, this Court issued an order upon remand of this adversary proceeding, pursuant to which Debtor is required to make payments of Two Hundred Dollars (\$200.00) per month for a period of one hundred twenty (120) months to the holders of the three student loan obligations. PHEAA's motion for relief from judgment, based on FED. R. CIV. P. 60(b)(6), followed. PHEAA asserts that, because Debtor sat for and passed the Wisconsin bar examination in 2004, "extraordinary circumstances" exist that mandate relief from judgment under Rule 60(b)(6) since the bankruptcy court originally assumed that Debtor, who had taken and failed the Ohio bar examination in 1996, would not be able to take or pass the bar examination and, thus, utilize her law degree.

This constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052. This is a core proceeding and this Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(A), (I) and (J).

The matter before this Court appears to be a novel

issue of law. Neither party could cite nor could this Court find any case that applied FED. R. CIV. P. 60(b)(6), as incorporated in FED. R. BANKR. P. 9024, to a case that seeks relief from a judgment regarding a partial (or even a complete) discharge of a debt after a Chapter 7 debtor had been granted a discharge. As set forth above, Debtor received a discharge in 1999. The Sixth Circuit Court of Appeals affirmed the bankruptcy court's partial discharge of Debtor's student loan debt in March 2004.

PHEAA seeks relief from judgment and relies solely on subsection (6) of FED. R. CIV. P. 60(b), which provides as follows:

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

PHEAA concedes that it cannot utilize subsections (1) through (5) of Rule 60(b) to obtain the relief it seeks. Subsection (2) is not applicable because the "new evidence" - Debtor's admission to the bar in Wisconsin in 2004 - did not exist at the time of trial. Similarly, PHEAA is not asserting that any sort of fraud or misrepresentation (subsection (3)) was made to this Court by Debtor or her counsel, again because Debtor was not, apparently, a candidate for admission to the bar at the time of trial in March 2000. See, PHEAA's Mot. for Relief from J., 3.

Although PHEAA's motion is based on Rule 60(b)(6), what PHEAA is, in reality, attempting to do is revoke the partial discharge that Debtor received with respect to her student loan debt. 11 U.S.C. § 727(d) provides as follows:

On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if --

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

PHEAA has specifically and unequivocally acknowledged that Debtor has not committed fraud and, thus, PHEAA is not entitled to use § 727(d) to seek a revocation of the discharge. It is also clear that Debtor received a discharge in 1999 and that the partial discharge of this particular debt was affirmed by the Sixth Circuit Court of Appeals. Indeed, because Debtor received a Chapter 7 discharge in 1999, she would be permitted, pursuant to 11 U.S.C. § 727(a)(8), to commence another Chapter 7 case as early as December of this year. If such subsequent Chapter 7 case were to be filed, Debtor's liability and responsibility to schedule the student loan debt would only be the Twenty-Four Thousand Dollars (\$24,000.00) (or whatever balance remains thereof) that was not excepted from discharge by the prior court order. As a consequence, it is clear that Debtor received a discharge with respect to all but Twenty-Four Thousand Dollars (\$24,000.00) of her student loan debt. The motion of PHEAA, in effect, is seeking a revocation of that partial discharge, but is not styled as such because PHEAA acknowledges that it does not have grounds to seek revocation of discharge.

Time moves on. Debtor sat for and passed the Wisconsin bar examination in 2004, which clearly was not contemplated when the original trial occurred in March 2000; however, this fact does not constitute "extraordinary circumstances." The Sixth Circuit Court of Appeals has held in *Olle v. Henry & Wright*

Corp., 910 F. 2d 357, 365 (6th Cir. 1990), as follows:

The difficulty in interpreting subsection (b)(6), and perhaps the reason for the paucity of decisions in this area, arises from the fact that almost every conceivable ground for relief is covered under the first three subsections of Rule 60(b). The "something more," then, must include unusual and extreme situations where principles of equity *mandate* relief.

(Emphasis in original.) The facts in this case are not "unusual and extreme." They clearly do not mandate that PHEAA be given a second chance to attempt to saddle Debtor with debt that has been dis-charged, in part.

For the reasons set forth above, the motion of PHEAA for relief from judgment is denied.

An appropriate order shall enter.

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**HONORABLE KAY WOODS  
UNITED STATES BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

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O R D E R

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For the reasons set forth in this Court's memorandum opinion entered this date, the motion of Pennsylvania Higher Education Assistance Agency ("PHEAA") for relief from judgment is hereby denied.

IT IS SO ORDERED.

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HONORABLE KAY WOODS  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Opinion and Order were placed in the United States

Mail this \_\_\_\_\_ day of February, 2005, addressed to:

NICOLE MARIE DeMATTEIS, 5922 West Wells Street, Milwaukee, WI 53213.

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

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JOANNA M. ARMSTRONG