11 USC §1328(a)(2)
11 USC §523(a)(8)

In re Koeppen

Case No. 391-32208-H13 10-29-91

The court held that a co-maker's obligation for a student loan, where the co-maker was not the student and received no direct benefit from the loan, was not dischargeable under the plain language of §1328(a)(2) which incorporates §523(a)(8)'s student loan discharge exception.

P91-30(5)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re	)	
	)	Case No. 391-32208-H13
GAYLEEN LESLIE KOEPPEN	)	
	)	OPINION
Debtor.	)	

This matter came before the court upon the Oregon State Scholarship Commission's ("OSSC") objection to confirmation of the debtor's proposed plan. The debtor is represented by Wayne Godare of Snyder & Associates and the OSSC is represented by Mary Lou Haas of the Department of Justice, both from Portland, Oregon.

The following facts are apparently not disputed. The debtor/wife co-signed her husband's educational loan. She has filed a chapter 13 petition and seeks to discharge her debt to OSSC pursuant to ¶8 of her chapter 13 plan without paying the debt in full.

The court frames the issue as follows: Is a co-maker's

obligation under a note for an educational loan excepted from discharge pursuant to §1328(a)(2) which incorporates by reference §523(a)(8)?

While the amendment to §1328(a) is too new to have developed any case law on this issue, courts have split on the answer to this question in chapter 7 cases. Some courts have held that non-student debtors may not discharge these obligations: In re Hammarstrom, 95 B.R. 160 (Bankr. N.D. Cal. 1989); Education Resources Institute, Inc. v. Selmonosky, 93 B.R. 785 (Bankr. N.D. Ga. 1988); In re Barth, 86 B.R. 146 (Bankr. W.D. Wis. 1988); In re Wilson, 76 B.R. 19 (Bankr. D. R.I. 1987); In re Feenstra, 51 B.R. 107 (Bankr. W.D. N.Y. 1985). Others have reached the opposite conclusion: In re Meier, 85 B.R. 805 (Bankr. W.D. Wis. 1986); In re Behr, 80 B.R. 124 (Bankr. N.D. Iowa, 1986); In re Bawden, 55 B.R. 459 (Bankr. M.D. Ala. 1985); In re Washington, 41 B.R. 211 (Bankr. E.D. Va. 1984); In re Boylen, 29 B.R. 924 (Bankr. N.D. Ohio 1983).

11 U.S.C. §523(a)(8) excepts from discharge any debt:

> [F]or an educational loan ... made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, ... unless -
>
> (A) such loan ... first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or
>
> (B) excepting such debt from discharge under this

paragraph will impose an undue hardship on the debtor and the debtor's dependents.

The debtor's argument can be summarized as follows. The statute is ambiguous in that the word "educational" may have been used as an adverb modifying the verb "loan" and thereby meaning that the effect of the loan on the debtor must be educational. Since the statute is ambiguous, resort to legislative history is appropriate to determine the statute's meaning. Legislative history reveals that the statute was directed at students who fail to pay guaranteed student loans after graduation. The statute was not intended to prohibit discharge of educational loans where the debtor was not the student and received no direct benefit. Since this debtor was not the student and she received no benefit, the loan should not be considered an "educational loan" and the debt should be dischargeable.

The creditor's arguments can be summarized as follows:

1. The statute is plain on its face and resort to legislative history is improper. The word "educational" is an adjective modifying the noun "loan." This is a debt for an educational loan and is excepted from discharge unless the debtor meets the criteria for discharge specifically enumerated in §523(a)(8).

2. Even if one refers to legislative history, this reveals that Congress was concerned about the financial integrity and

continued existence of the entire student loan program. This indicates that Congress was more concerned about the nature of the loan than the nature of the debtor in order to increase the likelihood of collection.

3. Even if the statute is directed only at those who benefit from the loan, the debtor in this case, as the student's wife, benefits from the enhanced earning power of her spouse.

The court reaches the following conclusions of law. The plain meaning of §1328(a)(2) and §523(a)(8) is that if a debtor is liable on an educational loan, the debt shall not be dischargeable unless certain exceptions are applicable.

Under the statute, the general rule is that educational loans are not dischargeable. Two exceptions are provided. One, if the loan first became due more than seven years before the bankruptcy petition was filed and two, if enforcement would result in undue hardship. That the debtor was not the recipient of the funds or was not the student are not stated as exceptions. This is strong evidence that Congress was not concerned with the nature of the debtor but, rather, was concerned with the nature of the debt. In other words, Congress determined that certain exceptions to the non-dischargeability of educational loans were appropriate but chose not to include the one suggested by the debtor.

The debtor's characterization of the word "educational" as an adverb is untenable. An adverb modifies a verb. The verb in the

relevant sentence is the second use of the word "discharge" in the phrase: "A discharge under section ... 1328(b) of this title does not discharge an individual debtor from any debt ... ." (The word "does" in the phrase "does not" from above is an auxiliary verb that helps clarify the tense of the word "discharge." The word "not" is an adverb that modifies the auxiliary verb "does" by negating it.) The word "loan" in the subject sentence is not a verb. In this context, it is clearly a noun.[1]

The language of the statute in question is not ambiguous. Since a literal application of the statute does not lead to an absurd result, the statute must be applied as written so as to preclude discharge of this debt unless the debtor meets the other criteria established by Congress to discharge educational loans. Whether the debtor meets those criteria can be established in a separate proceeding in this case.

Accordingly, the objection will be sustained and the court will enter an order denying confirmation and granting the debtor 28 days to file a modified plan.

DATED this _____ day of October, 1991.

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[1] The word "loan" could be a verb, as in the following hypothetical sentence: "Banks loan money." The relevant sentence from §523(a)(8) is not similar to the hypothetical sentence concerning the use of the word "loan." Rather, the sentence from §523(a)(8) is similar to the following sentence: "Banks grant unsecured loans." In the immediately preceding sentence, the word "loans" is used as a noun and the word "unsecured" is an adjective which modifies "loans" just as the word "educational" in the sentence from §523(a)(8) modifies the word "loan."

_____
Henry L. Hess, Jr.
Bankruptcy Judge

cc: Wayne Godare
Mary Lou Haas
Robert W. Myers, Trustee