

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

Chapter 7 Case

AARON VAHID SEALY and
BAHIYYIH JYOTI SEALY

Case No. 11-45065-BKC-RBR

Debtors.

AARON VAHID SEALY and
BAHIYYIH JYOTI SEALY,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,
and SLM CORPORATION, a
Delaware corporation, a/k/a SALLIE MAE

Adv. Pro. No.:

Defendants.

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

AARON VAHID SEALY and BAHIYYIH JYOTI SEALY (“Plaintiffs”), by and through undersigned attorney, hereby file this Complaint to Determine Dischargeability against the U.S. DEPARTMENT OF EDUCATION, and SLM CORPORATION, a/k/a Sallie Mae (collectively, the “Defendants”) pursuant to section 523(a)(8) of the Bankruptcy Code and Rule 7001 of the Federal Rules of Bankruptcy Procedure and state in support thereof:

Jurisdiction and Venue

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(a) and (b).
2. This is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(I).
3. Venue is proper in this Court, pursuant to 28 U.S.C. § 1409(a).

Parties

4. The Plaintiffs are residents of Florida and individual debtors having filed a voluntary petition under chapter 7 of the Bankruptcy Code.

5. Defendant SLM Corporation a/k/a Sallie Mae, a Delaware corporation, originates and services loans.

6. Defendant U.S. Department of Education, through its William D. Ford Federal Direct Loans program and a Federal Perkins Loan program, is an agency of the federal government.

General Allegations

7. Aaron Sealy and his wife Bahiyiyh Sealy struggle on a day to day basis to provide basic necessities to their three young children and themselves.

8. At the moment, the Sealy family barely survives on food stamps and other small benefits from the program called W.I.C. ("Women, Infants, and Children). The two oldest Sealy children receive free lunches at their schools and Bahiyiyh and all three children are on Medicaid.

9. The Sealy family's 2012 income has been \$2,550.60 to date and their adjusted gross income was only \$26,357 in 2011. According to the U.S. Department of Human & Health Services, the poverty line for a family of 5 in 2011 was \$26,170.

10. In addition, the Sealy family was forced to move to Florida in 2011 in order to reside with Bahiyiyh's parents because Aaron and Bahiyiyh could not afford to pay rent for their own home or small apartment.

11. However, Bahiyiyh's parents will be moving to Oklahoma sometime this summer and the Sealy family will effectively be homeless.

12. The Sealy family receives no other assistance other than the roof over their heads provided by Bahiyyih's parents and the food stamps and W.I.C. benefits previously mentioned.

13. Aaron and Bahiyyih are presently unemployed and have made heroic efforts to obtain employment, any employment, in order to try to bring in some income for their children.

14. Aaron was previously working at a call center, but his employment was terminated in February of this year.

15. Bahiyyih was previously working as a seasonal worker at Costco while she was pregnant, but she was let go in December when the season ended.

16. The youngest Sealy child is only a few months old and Bahiyyih has been forced to stay at home to care for her infant child while Aaron spends all his waking hours looking for any employment.

17. Unfortunately, Aaron suffers from a number of medical conditions that prevent him from driving a vehicle, typing, and standing for long periods of time. These conditions include, but are not limited to, various autoimmune issues and the aftereffects of a devastating car accident when Aaron was a teenager.

18. At least one of these medical conditions requires a treatment in Michigan every eight weeks that costs approximately \$16,000 per treatment. These treatments are presently covered by COBRA as a benefit through University of Michigan, but COBRA's coverage for Aaron and these absolutely necessary treatments runs out this year.

19. The dire circumstances that the Sealy family find themselves in are even more exacerbated by their collective and crippling student loan debt in the approximate amount of \$140,000.

20. Although Aaron is the named borrower with respect to the loans through the U.S. Department of Education via its William D. Ford Federal Direct Loan Program and a Federal Perkins Loan, and Bahiyyih is the named borrower with respect to the loan through Sallie Mae, the Plaintiffs submit that there may be co-obligations such that the Defendants are creditors of both Aaron and Bahiyyih Sealy.

Aaron Sealy's Student Loan Debt and Job Prospects

21. Aaron Sealy has approximately \$104,219.00 in student loan debt through the U.S. Department of Education via their Direct Loans program and via a Federal Perkins Loan in connection with Aaron's attendance at the University of Michigan.

22. Aaron often paid interest on his loan payments, to the extent possible, while he was in graduate school.

23. At present, Aaron's loans are in deferment as he struggles to find a job that will not only support him but allow him to make payments on his student loan debt.

24. Aaron obtained a Ph.D. in history from the University of Michigan and is qualified for a position teaching history, but he has applied to every advertised position in his field in the nation without any success.

25. Unfortunately, he is not qualified to teach in elementary and secondary schools without first taking additional courses and taking part in additional training to obtain the mandatory state certification, but he is unable to pay for further education in order to qualify himself for other teaching positions. Aaron hesitates to incur further student loan debt that he does not know how he will ever be able to pay back.

26. College teaching positions are advertised in fall for positions that begin fall of the following year.

27. Thus, even if Aaron is hired for one of the positions that will be advertised in fall 2012, this position would not begin until fall of 2013.

28. In addition to positions in his field, he has also applied to hundreds of jobs online through CareerBuilder, Craigslist, and governmental job websites (such as usajobs.gov) without any success.

29. As previously mentioned, his numerous health problems make most advertised positions extremely difficult, if not impossible.

Bahiyih's Student Loan Debt and Job Prospects

30. Bahiyih has approximately \$35,645 in student loan debt through Sallie Mae.

31. Bahiyih and Aaron have made a number of payments on Bahiyih's student loan debt, but they have been unable to do so since late 2010 because of her family's economic struggles.

32. Bahiyih's loan is presently in its first year of deferment. Her loan may only be in three years of deferment in total before it goes into default.

33. As discussed above, Bahiyih recently gave birth to a son who is fully dependent on her.

34. Bahiyih and Aaron are unable to afford daycare for their infant son in order for Bahiyih to obtain another job to try and earn income for the Sealy family.

35. In addition, Bahiyih's Associate of Science degree in Occupational Studies (i.e. general studies) does not offer her the potential for a salary that would be able to save her and her family from the overwhelming financial obstacles, exacerbated by the looming student loan debt that her family presently faces.

Count I

Dischargeability of Student Debt

36. The Plaintiffs incorporate by reference paragraphs 1 through 34 above in their entirety, as if fully set forth herein.

37. Based on current income and circumstances, the Plaintiffs cannot maintain a minimal standard of living if forced to repay the various loans.

38. Additional circumstances exist that demonstrate the Plaintiffs' inability to earn more than nominal income to repay the Loans while maintaining a minimal standard of living for a family of five are likely to persist for a significant portion of the repayment period.

39. These circumstances include the following:

- a. Aaron's health conditions severely affect his ability to obtain a job that will support his three small children and wife;
- b. Aaron's field only hires once a year for the following year;
- c. Even if Aaron was hired for a faculty position in the fall of 2012, he would not begin employment until the fall of 2013, and his salary would be low in comparison to the support obligations he faces;
- d. Aaron has still diligently and tirelessly sought employment in areas outside the subject matter of his graduate degree; and
- e. Bahiyyih and Aaron will be homeless very soon because Bahiyyih's parents will move away and the Plaintiffs cannot afford rent.

40. The Plaintiffs have made efforts to repay their Loans including, without limitation, the following:

- a. Aaron and Bahiyyih have both obtained deferments in order to avoid going into default on their collective student loans;
- b. Aaron made a number of interest payments on his loans while in graduate school in a good faith effort to pay at least a portion of his loans; and
- c. Bahiyyih and Aaron have made a number of payments on Bahiyyih's loans.

41. Based on the foregoing, the Plaintiffs submit that sufficient facts exist warranting the discharge of their student loan obligations under Section 523(a)(8) of the Bankruptcy Code.

WHEREFORE, Aaron and Bahiyyih Sealy respectfully request that this Court enter judgment in their favor and against the Defendants, declaring that excepting the student loan debt from discharge would impose an undue hardship, directing that the Sealys' discharge, when granted, include discharge of the student loan debt, and granting such other and further relief as this Court deems just and proper.

Dated: March 13, 2012

BERGER SINGERMAN LLP
Counsel to the Plaintiffs
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Alisa Paige Mason

Alisa Paige Mason
Florida Bar No. 084461
pmason@bergersingerman.com