

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:
Debtor
JENNIFER LYNN DAVIDSON
Movant,

v.

SALLIE MAE BANK (UT).
Respondent.

Case No. 12-33122-tmb7

(Chapter 7)

Adv. Proc. No. _____

COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN

1.

The Debtor filed this case under chapter 7 of the Bankruptcy Code on April 24, 2012. This Court thus has jurisdiction over this action under 28 USC §1334. This proceeding is a core proceeding.

2.

One of the unsecured debts owing by the Debtor and listed in Schedule F is a loan owing to Defendant Sallie Mae Bank.

3.

This loan was incurred to pay tuition and expenses for the Debtor's participation in Co-Active Coach Training Program and Co-Active Leader Program at the Coaches Training Institute (hereinafter "CTI").

4.

After completing CTI's Co-Active Coach Training Program Debtor had her doubts about the quality of the program because a large portion of each seminar was devoted to selling the "students" attending the "class" on purchasing additional classes from the "school", which is how Debtor ended up purchasing her second program from CTI, the Co-Active Leader Program.

5.

Debtor ultimately withdrew from the Co-Active Leader Program due to what she felt was a completely unprofessional atmosphere at the first retreat of the program she attended.

6.

While attending the first retreat of the Co-Active Leader Program, Debtor was berated and insulted by the “instructor” who got in the Debtor’s face and swore at her as part of the “training.” The final straw for the Debtor was after the first day’s session the instructor told all of the students attending the program that there would be a clothing optional pool party for the attendees of the conference.

7.

Debtor decided that she had to leave the program and made arrangements to return home the next day. She immediately contacted CTI notified them of her withdrawal from the program and requested a refund of the unused portion of her fees.

8.

Debtor’s participation in the program was officially terminated on or about February 27, 2009, and confirmed in writing by a letter to CTI.

9.

COUNT 1.

Defendant’s Claim Does Not Meet Definition for Exemption Under §523(a)(8)

10.

Despite having paid \$941.26 in interest on the Defendant’s loans in 2009, \$769.20 in 2010, and \$1084.84 in 2011. Defendant’s loan servicer has informed Debtor that her loans were “ineligible for a tax deduction” see EXHIBIT A, attached hereto.

11.

Upon further investigation by Debtor’s attorney, Debtor does not believe her loan to the Defendant meets requirements for the exemption from discharge provided under §523(a)(8) of the Bankruptcy Code.

12.

Specifically, Debtor does not believe that her loan meets the definitional requirements for exemption because she does not believe the loan was made for “qualified higher education expenses”, that CTI was an “eligible educational institution,” and does not believe that she was an “eligible student” as those terms are defined by 26 USC 221(d) which is referred in §523(a)(8)(B) for the discharge of “qualified educational loans.”

13.

Nor is Defendant’s loan an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or any program funded by a governmental unit or nonprofit institution. And Defendant’s claim does not stem from an obligation to repay funds received as an educational benefit, scholarship, or stipend.

14.

Since it is the Creditor’s burden to establish that its claim qualifies for the exemption under §523(a)(8), Debtor requests that the Defendant do so.

15.

COUNT 2.

Undue Hardship

16.

Despite having received no real benefit from the CTI programs, Debtor made regular payments on the Defendant’s loans from April 17, 2009 to November 8, 2011, while she was employed and had sufficient income to pay her obligations. Debtor has made payments to Defendant totaling \$5,345.44.

17.

In November 2011, Debtor’s employment contract with Kelly Services ended and was not renewed, since that time Debtor has been unemployed and is looking for work in Oregon and elsewhere.

18.

Prior to the termination of Debtor’s employment contract with Kelly Services, Debtor was suffering from panic attacks and anxiety brought on by the stress of her financial situation and heavy

work load. Debtor attempted to alleviate these conditions by seeking therapy and medical treatment but was advised by her doctors that she needed to reduce her stress level significantly. Debtor's elevated stress level eventually physically manifested itself in the form of an ovarian cyst, which forced the Debtor into the emergency room, where she was diagnosed with the condition. Upon consultation with her medical doctor Debtor was informed that the condition would require surgery if she was not able to reduce her stress level. These events occurred round the same time Debtor was in talks with Kelly Services to renew her employment contract. Due to her condition and the threat to her health, Debtor was prepared to turn down the renewal of her contract had it been picked-up again.

19.

Currently, Debtor's sole source of income, since becoming unemployed, is borrowing money from her stepmother and relying on public assistance in the form of food stamps; as stated in Debtor's Schedule I, her present income is \$700 a month, which is barely sufficient for her to meet the necessities of life.

20.

Despite living at a subsistence level, Debtor's stress has decreased significantly and her panic attacks have subsided along with the symptoms from her ovarian cyst. Debtor no longer believes she will need surgery to care for the problem.

21.

For the reasons stated above Debtor does not expect to be able to return to the same level of employment and earning power she enjoyed prior to her bankruptcy. Nor does Debtor anticipate ever being able to benefit in any material way from the CTI programs she purchased with the Defendant's loan.

22.

Debtor has no current or anticipated income or resources available with which to pay the aforementioned loan and based on Debtor's current physical condition she does not expect to be

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able to make payments on said loan in the future as any payments on that loan could be made only at a great hardship to the Debtor.

23.

In the event that the Defendant is able to establish to the Court's satisfaction that its claim, which is the subject of this litigation, is a "qualified educational loan" as that term is defined by the Bankruptcy Code and is, therefore, exempt from discharge under the Code. The Debtor asks the Court to find that forcing the Debtor to pay for the claim post-discharge would constitute an undue hardship on the Debtor, thus impeding her fresh start; and ordering that the claim discharged under the Court's authority, upon such a finding of undue hardship pursuant to 11 USC §523(a)(8).

WHEREFORE, the Plaintiff-Debtor requests the Court to:

- (1) Assume jurisdiction of this case;
- (2) Declare that the subject loan does not meet the statutory definitions provided in 18 USC §523(a)(8) for exception from discharge and is therefore dischargeable under 11 USC §727;
- (3) Alternatively, in the event the Court does determines the loan is excepted from discharge as an educational loan, Debtors prays for an order from the Court declaring the loan dischargeable under 11 USC §523(a)(8) as an undue hardship to the Debtor.

DATED: July 12th, 2012

/s/ William Tyler Griffith
William Griffith OSB#081861
Attorney for Debtor:
Jennifer L. Davidson

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Portland, OR 97214
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CERTIFICATE OF SERVICE

On the date above my signature, I served the foregoing **COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN** by Certified Mail, postage prepaid to the following:

Sallie Mae Bank
c/o Laurent Lutz, Exe. VP & General Counsel
5217 S State St, #210
Murray, UT 84107.

Additional Copies were sent via First Class Mail, postage prepaid to the following:

Sallie Mae Bank
c/o Office of Consumer Advocate
PO Box 4200
Wilkes-Barre, PA 18773-4200

DATED: July 12th, 2012

/s/ William Tyler Griffith

William Griffith OSB#081861

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