UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

LAURIE WOZNIAK — Case No. 91-12603 K

Debtor

LAURIE WOZNIAK

Plaintiff

-vs- — AP 91-1311 K

NORSTAR BANK, N.A.
c/o AFSA DATA CORPORATION

D'YOUVILLE COLLEGE

STATE UNIVERSITY OF NEW YORK
AT BUFFALO

NEW YORK STATE HIGHER EDUCATION
SERVICES CORPORATION

Defendants

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DECISION AND ORDER

Introduction

In this adversary proceeding, the debtor seeks to discharge two of her student loans. The New York State Higher Education Services Corporation has moved for summary judgment declaring one

of these loans to be non-dischargeable. The debtor opposes the State's motion, and in turn has filed a cross-motion for summary judgment to discharge the loan. The Court finds that, as a matter of law, the debtor does not meet the third prong of the three prong test set out by the Second Circuit under *Brunner v. New York State Higher Educ. Services Corp.*, 831 F.2d 395 (2d Cir. 1987). By seeking to discharge, rather than to defer payment of, her student loans, she has failed to make a good faith effort to repay them. Accordingly, the State's motion for summary judgment is granted, and the debtor's cross motion is denied.

Facts

The debtor is 24 years old, in good health, and is the single parent of a two-year old healthy daughter. During 1986 and 1987, she attended D'Youville College and Bryant and Stratton Business Institute respectively. She financed her studies in part with $5,125 in student loans through Norstar (now Fleet) Bank that were guaranteed by New York State. The debtor has dropped her action against D'Youville College so that she can continue her studies there. She is enrolled at that school on a full-time basis and is working toward a Masters degree in architecture and interior design.

The debtor receives public assistance in the form of food

stamps, a housing subsidy and welfare payments, as well as financial support from her family. As a result, her total monthly budget (excluding her housing subsidy) is $390. The State admits that she is eligible to defer her student loans because she attends school full-time, but she states that she "wants to discharge her loans and not defer them." Plaintiff's Memorandum at 1.

Analysis

Under the Federal Rules of Civil Procedure, summary judgment may be granted in favor of the moving party when there are no disputed issues of fact and "if appropriate." Fed.R.Civ.P. 56. In deciding the motion, all inferences must be drawn against the moving party. *Burke v. Bevona*, 931 F.2d 998, 1001 (2d Cir. 1991). In the case at bar, there are no disputed issues of fact.

Section 523(a)(8) of the Bankruptcy Code guides those debtors seeking to discharge their student loans. The Code requires that either 7 years have passed since the loans first became due or that repayment presents an "undue hardship to the debtor and the debtor's dependents". 11 U.S.C. § 523(a)(8) (1992). The debtor argues that her circumstances fall under the "undue hardship" provision.

In this Circuit, the standard for undue hardship is that articulated in the *Brunner* case. A three prong test must be

satisfied before a debtor's student loans may be discharged because of undue hardship. First, the debtor must be unable to maintain a minimal standard of living (based on her current income) if forced to repay the loans. Second, additional circumstances must exist indicating that the debtor's current situation is likely to persist for a significant portion of the repayment period. Finally, the debtor must have shown a good faith effort to repay the loans.

This Court concludes that as a matter of law the debtor fails at least the third prong of the *Brunner* test.[1] The debtor has not shown good faith in attempting to repay her loans. The student loans constitute the bulk of her debt and although she is a full-time student and accordingly is entitled to deferment until her status changes, she seeks to discharge these obligations rather

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[1]It is undisputed that the debtor meets the first prong of *Brunner*, for the debtor receives public assistance along with gifts from her family in order to meet her monthly expenses, and there is no doubt that the addition of her student loan payment will detract from a standard of living that is already minimal.

The second prong of *Brunner* focuses on the repayment potential of the debtor. This prong is satisfied on a showing that the debtor has no long term prospects for significant employment or that physical or emotional factors exist precluding the debtor from future success. *Brunner* at 396. In this case, the debtor is pursuing a Masters degree program in architecture and interior design. The debtor argues that this degree and future employment are not a foregone conclusion. The potential, however, does exist that the debtor will be able to find employment in her chosen field and repay her loans with the repayment period. In addition, she is healthy and has no obvious physical or emotional impediments to hinder her. The Court need not decide, however, whether or not the debtor meets the second prong of *Brunner*.

than defer them. It has been held by this Court that a debtor's failure to diligently seek a deferment may constitute a lack of good faith under *Brunner,* absent unusual circumstances. *In re Garneau,* 122 B.R. 178 (Bankr. W.D.N.Y. 1990).[2] The debtor argues that she contacted the State for a deferment, but was never sent the paperwork. Although the Court does not condone any possible failing of the State in this regard, the debtor did not pursue deferment with sufficient diligence to here assert "good faith."

The State's motion for summary judgment is granted. The Clerk shall enter judgment dismissing the plaintiff's complaint as against the State and its assignor, AFSA, on the merits.

This Adversary Proceeding having been previously withdrawn as to D'Youville College and Default Judgment having been entered in the Plaintiff's favor as to the State University of New York at Buffalo, the Adversary Proceeding will be closed upon entry of this Judgment.

SO ORDERED.

Dated: Buffalo, New York
November 30, 1992

U.S.B.J.

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[2]The Court also finds the decision of the Bankruptcy Court of the Northern District of New York to be compelling in this regard: *In re Cahill,* 93 B.R. 8 (Bankr. N.D.N.Y. 1988).