

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 94-11257
Chapter 7

LISA GAIL JONES,
a/k/a Lisa Gale Kennedy

Debtor

LISA GALE JONES,
a/k/a Lisa Gale Kennedy

Plaintiff

v.

Adversary Proceeding
No. 94-1132

CHEMICAL BANK and USA FUNDS

Defendants

MEMORANDUM

Appearances: Michael E. Brush, Frank B. Perry & Associates, Ringgold, Georgia,
Attorneys for Plaintiff

David J. Hill, Randall L. Gibson and Stephen L. Page, Baker,
Donelson, Bearman & Caldwell, Nashville and Chattanooga,
Tennessee, Attorneys for USA Funds, Inc.

R. THOMAS STINNETT, UNITED STATES BANKRUPTCY JUDGE

When the Debtor, Lisa Gale Jones, filed her bankruptcy case, she scheduled a student loan debt to the defendant, Chemical Bank. Ms. Jones brought this suit to determine whether the debt can be discharged in her bankruptcy case.

Before Chemical Bank answered the complaint, USA Funds filed a motion to be included as a defendant since it had guaranteed the loans. USA Funds filed an answer and counterclaim. Chemical Bank has not filed any pleadings in this adversary proceeding, but Debtor has asked no further relief as to Chemical Bank.

Ms. Jones relies on Bankruptcy Code § 523(a)(8)(B). 11 U.S.C. §523(a)(8)(B). It provides that a student loan debt can be discharged if excepting it from discharge will impose an undue hardship on the debtor or the debtor's dependents. The defendant asserts that refusal to discharge the debt will not impose an undue hardship on Ms. Jones or her dependents. The court finds the facts as follows.

Ms. Jones filed her Chapter 7 bankruptcy case in April, 1994. She listed no secured debts and no priority unsecured debts. She scheduled general unsecured debts as follows (approximate amounts):

Student Loans	\$ 7,600
Deficiency on repossessed car	3,700
Telephone, dental, medical, and charge accounts	<u>2,600</u>
Total	<u>\$13,900</u>

The schedules include a student loan debt of about \$1,000 to City Bank (or Citibank). It was the subject of a separate adversary proceeding. The debt to Chemical Bank is scheduled in care of USA Funds. The exhibits reveal and the parties have stipulated that the debts are evidenced by two promissory notes to Manufacturers Hanover Trust.

In the schedules of property, Ms. Jones listed used furniture worth \$500 and used clothing worth \$1,000. She claimed all of this as exempt.

Ms. Jones testified that she is 31 years old and divorced. Her daughter, who is three and a half years old, lives at home with her. Ms. Jones receives \$235 per month in child support and \$198 per month in food stamps. Her daughter's medical bills are covered by TennCare and her father's health insurance. Ms. Jones has no medical insurance. Her monthly expenses are \$300 for rent, \$198 for food, \$25 to \$30 for clothing, \$10 to \$20 for medical expenses, \$50 to \$75 for other non-food items, and \$25 to \$30 for telephone expenses. Her parents help her make up the cash shortfall. Ms. Jones does not own a car. She had one, but it was repossessed.

She graduated from high school in 1981. She obtained the student loans in question in 1989 and 1990. She used the loans to pay the cost of obtaining an Associate of Science degree in computer programming. She learned the programming languages RPG, Basic, and Cobol. She also knows word processing. She can still operate a computer, but her programming skills are out of date.

Her last job was making deliveries for a florist. She was paid \$5 per hour. She lost that job because her babysitter quit, she had medical problems, and she did not have the use of a car. As to the medical problem, she testified she cannot lift heavy objects. Ms. Jones did not offer any medical evidence other than her own testimony. The only other restriction on her ability to work is the lack of a car. She had used her sister's car, but her sister is a home health nurse and works long hours. Public transportation stops 3 to 4 miles from her home. In the last year, she filed 5 or 6 job applications, but the only interviews she had were done by telephone.

She has not made any payments on the student loan. She talked to someone named Wayne, who worked with a company in Texas, about refinancing but never did. She did not file the bankruptcy solely to discharge the student loans.

LEGAL DISCUSSION

The issue under § 523(a)(8) is whether the Debtor will be able to maintain a minimal standard of living for herself and her dependents, a standard of living above poverty, and also pay the student loan debt. *Cheesman v. Tennessee Student Assistance Corp. (In re Cheesman)*, 25 F.3d 356, 31 Collier Bankr. Cas. 2d 140 (6th Cir. 1994); *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395 (2nd Cir. 1987); *In re Roberson*, 999 F.2d 1132 (7th Cir. 1993); *Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews)*, 661 F.2d 702 (8th Cir. 1981).

The debtor has the burden of proving undue hardship by a preponderance of the evidence. *Daugherty v. First Tennessee Bank (In re Daugherty)*, 175 B.R. 953 (Bankr. E. D. Tenn. 1994)(Judge Stair).

The courts have focused on the debtor's ability to pay the debt after bankruptcy. Of course, this requires the court to consider the debtor's employment prospects. The debtor may attempt to prove that she cannot work for various reasons. Or, the debtor may try to prove that she will be unable to pay the debt without undue hardship because she can only get low paying jobs. The creditor may counter by showing that the debtor has job skills for higher paying jobs.

This involves the court in appraising the Debtor's decisions about how she should order her life. This is unavoidable under § 523(a)(8)(B) as it is under other bankruptcy statutes. *See, e.g.*, 11 U.S.C. § 1325(b).

The Debtor has not carried her burden of proof in this case. In fact, the Debtor's testimony and demeanor indicate she is satisfied with her station in life as it now exists. The Debtor is not presently employed and has not been regularly employed for several years. Her last jobs did not utilize her computer skills, including word processing. With the skills she acquired with these student loans, the Debtor should be able to obtain a better paying job. The court realizes that a job has its monetary costs — clothes, food, transportation, child care. The Debtor has not shown that these costs of working are likely to take so much of her earnings that she will still be unable to make payments on the student loan debt.

The court concludes that the student loan debt should be excepted from discharge. See *Daugherty v. First Tennessee Bank (In re Daugherty)*, 175 B.R. 953 (Bankr. E. D. Tenn. 1994); *McLeod v. Diversified Collection Services (In re McLeod)*, 176 B.R. 455 (Bankr. N. D. Ohio 1994); *Gammoh v. Ohio Student Loan Commission (In re Gammoh)*, 174 B.R. 707 (Bankr. N. D. Ohio 1994).

The court will enter an order excepting from discharge the student loan debts evidenced by the two notes to Manufacturers Hanover. This will leave no doubt that the debts are excepted from discharge as to any holder or assignee of the two notes. It will also allow the court to dismiss the complaint without prejudice as to Chemical Bank. The dismissal should not affect anyone's rights with regard to discharge of the debts in question.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052. An appropriate order shall be entered.

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

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CHEMICAL BANK and USA FUNDS

Defendants

ORDER

In accordance with the Memorandum entered this date,

It is ORDERED that the complaint is dismissed without prejudice as to Defendant Chemical Bank; and

It is further ORDERED that the debts of Lisa Gale Jones, a/k/a Lisa Gale Kennedy, as evidenced by two promissory notes to Manufacturers Hanover Trust Company signed by her on October 17, 1989, and June 20, 1990, are excepted from the discharge in Plaintiff's bankruptcy case in accordance with 11 U.S.C. § 523(a)(8).

ENTER:

BY THE COURT

R. THOMAS STINNETT
U.S. BANKRUPTCY JUDGE

[entered June 14, 1995]