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Another Bankruptcy Court Rules in Favor of Discharging Student Loan Debt.

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Once again, a bankruptcy court has weighed in on the subject of discharging student loan debt in the context of a chapter 7 proceeding.

Most recently, Judge Michelle M. Harner from the bankruptcy court in the District of Maryland issued an opinion addressing the factors to consider when determining whether to discharge student loan debt. We previously discussed this topic in two prior legal alerts. [Click here to read our previous legal alerts: Student Loan Debt Discharged in Recent Bankruptcy Court Opinion - Cullen and Dykman LLP (cullenllp.com); Student Loan Debt Discharged in Recent Illinois Bankruptcy Court Opinion - Cullen and Dykman LLP (cullenllp.com)].

Also, once again, our attention is drawn to the role of the bankruptcy court as a court of equity which "offers the honest but unfortunate debtor a financial fresh start." *Randall v. Navient Sols. (In re Randall)*, AP No. 19-00368-MMH, 2021 WL 2550034 (Bankr. D. Md. June 21, 2021). Previously, we also discussed the role of equity in bankruptcy courts in a legal alert. [Click here to read our previous legal alert on equity: Recent Bankruptcy Court Decisions of Statutory Interpretation Reiterate the Importance of Equitable Consideration in Bankruptcy Cases - Cullen and Dykman LLP (cullenllp.com)]

Terry Lucille Randall ("Randall") is a 68-year-old working for minimum wage and living on a restricted budget with no excessive spending. Randall had accumulated a significant debt of roughly half a million dollars in student loans to fund her educational pursuits.

Despite holding various degrees, she was unable to find employment commensurate with her increased level of education. Over the years, Randall's hourly wage had ranged from $9 to $13 per hour. Accordingly, after paying her necessary living expenses, Randall had nothing left to give and could not repay her student loan debt.

The general rule is that a debtor cannot discharge student loan debt through bankruptcy. However, that does not preclude a debtor from taking action against the student loan provider during his or her bankruptcy case to

challenge the nondischargeability of student loan debt. Randall did just that.

As a result of her increasing financial difficulties, Randall commenced three adversary proceedings seeking to discharge her prepetition student loan debt, including one against student loan lender, Navient Solutions ("Navient"). Randall owed Navient approximately $190,000 in unsecured student loan debt. Randall asserted that she did not have the financial wherewithal to repay the student loan debt. The issue became whether Randall could repay her student loan debt without undue hardship.

While student loan debt is one of the few kinds of debt Congress has deemed automatically nondischargeable in a bankruptcy case, and courts have set the bar high to demonstrate otherwise, that is not without its limits. Student loan debt will be discharged if "excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8)(A)(i).

Many courts, including the Fourth Circuit, adopted the Second Circuit's *Brunner* test to determine whether a debtor will experience an undue hardship. As discussed in our earlier alerts, under the *Brunner* test, a debtor must establish: (1) they cannot maintain, based on current income and expenses, a "minimal" standard of living for themselves and their dependents if forced to repay the loans; (2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period for the student loans; and (3) they have made good faith efforts to repay the loans. *Randall*, 2021 WL 2550034, at *6; *see also Brunner v. N.Y. Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987). Judge Harner determined that Randall met all elements of the *Brunner* test.

First, she described Randall's monthly income and expenses as "razor-thin" and asserted that directing Randall to repay *all* her student loan debt would prevent Randall from maintaining a minimal standard of living.

Second, Judge Harner considered the fact that Randall was 68 years old and only two years away from retirement. Should Randall retire, her income would drastically decrease. Moreover, due to the COVID-19 Pandemic, hours available for Randall to work substantially increased. She was working anywhere from 40 to 80 hours of overtime due to COVID-19. However, that would eventually wane. Without this substantial amount of overtime, Randall's income would be even significantly less per month.

Finally, Judge Harner found that Randall had made good faith efforts to repay her student loan debt. Randall made payments to Navient and other lenders over the years, requested forbearances, and even contacted student loan lenders pre-petition regarding payment structures.

Ultimately, Judge Harner concluded that requiring Randall to repay Navient in full would impose an undue hardship. Judge Harner summarized that her findings were based on Randall's earning capacity, nominal assets, minimal existing expenses, limited opportunities for decreasing expenses or increasing wages, age, fluctuation in overtime hours and income generally, and past attempts to repay her debt despite her limitations.

Instead of discharging Randall's student loan debt in full, Judge Harner balanced the interests of both parties and determined that Randall may be able to pay a portion of the debt owed to Navient. In light of the above-summarized findings, Judge Harner directed Randall to repay $12,000 of the student loan debt over a 10-year

period. Although, Judge Harner left open the possibility that Randall's situation may change in a few years and that the nondischargeable portions of the student loan debt owed may have to be re-evaluated later.

Judge Harner notably opined that, "[t]he Code does not require a debtor to be left wearing nothing but the proverbial barrel in order to repay her student loans." This quote is consistent with the underlying policies of the Bankruptcy Code: to provide a debtor with a fresh start.

This decision is yet another example of how the bankruptcy court's attempt to strike a balance of what is fair to a debtor and what is fair to a creditor or other parties-in-interest. Although, Judge Harner did not provide a total windfall to the debtor, she allowed a considerable amount of debt to be discharged in the debtor's favor by deciding that Navient may only receive $12,000 of the approximate $190,000 student loan debt owed.

Our clients, debtors and creditors alike, should be aware of the law concerning student loan dischargeability. It is especially important for our bank clients to remain attentive to the law as it develops in this regard and recognize that many courts rule favorably towards debtors to discharge student loan debt that is otherwise causing undue hardship.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of bankruptcy law, please contact Michael Traison at 312.860.4230 and/or Amanda Tersigni at 516.357.3738.

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