

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Case No. 16-35646-cgm
ANDREW T. BIMONTE)	
)	Chapter 7
Debtor.)	
)	
)	
)	
)	
ANDREW T. BIMONTE,)	
)	
Plaintiff,)	
v.)	Adv. No. _____
)	
NAVIENT,)	
)	
)	
Defendant.)	

COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN DEBT

Andrew T. Bimonte, the debtor in the above referenced bankruptcy case and plaintiff in this adversary proceeding (“Plaintiff”), pursuant to 11 U.S.C. § 523(a)(8) and Federal Rule of Bankruptcy Procedure 7001(6), complains of the Defendants, and states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157 and 1334. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

THE PARTIES

2. Plaintiff is an individual residing at 120 Osborne Hill Road, Wappingers Falls, NY 12590.
3. Defendant Navient provides Federal Family Education Loan Program (“FFELP”) loans and servicing for FFELP loan portfolios; and servicing and asset recovery services for loans on

behalf of guarantors of FFELP loans, guaranty agencies, higher education institutions, the United States Department of Education, and other federal clients, as well as states, courts, and municipalities. Navient also acquires, finances, and services private education loans. Defendant Navient is a Delaware corporation with principal executive offices at 123 Justison Street, Wilmington, Delaware 19801.

FACTS

4. Plaintiff began his postsecondary education in 2001 at University of New Haven, where he earned a Bachelor degree in Sports Management in 2006. Plaintiff later enrolled in University of New Haven's Master of Business Education program and earned his Master degree in 2009. Plaintiff financed his education with student debt held or serviced by the Defendant in this adversary proceeding.
5. After completing his studies, Plaintiff began working part time as a substitute teacher, earning \$75 per day. Plaintiff was also employed part-time at JA Beverage company, earning \$80 per day. Plaintiff searched diligently for full-time employment as a teacher. During this time Plaintiff lived at home with his mother. The family struggled financially and the family home was under foreclosure. This continued for a period of five years.
6. Plaintiff secured full time employment as a public school teacher in 2014.
7. On the Plaintiff's sworn Schedule F, Plaintiff disclosed that he owed various debts (the "Student Loan Debts") to the Defendants.
8. Plaintiff's total outstanding balance on the Student Loan Debts is approximately one hundred nineteen thousand three hundred seventy-two dollars and eighteen cents (\$119,372.18).
9. In addition to the Student Loan Debts held by Navient, Plaintiff has approximately sixty four thousand two hundred thirty dollars and seventy five cents (\$64,230.75) of outstanding federal student loan debt. These loans are currently serviced by FedLoan Servicing, P.O. Box 60610 Harrisburg, PA 17106. Plaintiff is currently making monthly payments under a government sponsored income-driven repayment program and does NOT seek to discharge his federal student loans.
10. It is believed that the monthly payment for the Student Loan Debts is \$1,180.00.
11. Plaintiff is employed as a high school business teacher for New Milford Board of Education.
12. Plaintiff's sole source of income derives from his employment as a teacher.
13. Plaintiff's monthly household income is \$3,355.28.

14. Plaintiff's monthly household expenses are \$3,268.14.
15. Despite the foregoing, Plaintiff attempted to pay the Student Loan Debts for several years, making monthly payments of approximately five hundred dollars (\$500.00)
16. Plaintiff is 33 years old. He is not married and has no children or other dependents.
17. Plaintiff lacks sufficient present and future income to meet necessary expenses and repay the Student Loan Debts.
18. Plaintiff cannot further reduce expenses to cure his inability to pay the Student Loan Debts.
19. Plaintiff lacks assets that can be liquidated to repay the Student Loan Debts.
20. Plaintiff's living expenses can be expected to increase as he hopes to support a family in the near future.

CLAIM FOR RELIEF

UNDUE HARDSHIP

21. Plaintiff seeks relief under 11 U.S.C. 523(a)(8) stating that excepting the Student Loan Debts from discharge imposes an undue hardship.
22. Excepting student loan debt from discharge imposes an undue hardship if a debtor can demonstrate "(1) that the debtor cannot maintain, based on current income and expenses, a minimal standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans." *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).
23. The Plaintiff cannot, based on his current income and expenses, maintain a minimal standard of living for himself if forced to repay the Student Loan Debt. The monthly payment on the Student Loan Debt is \$1,118.00. Plaintiff's monthly household income is \$3,355.28 and his monthly household expenses are \$3,268.14, without the student loan payment.
24. The Plaintiff's job prospects indicate that this state of affairs is likely to persist for a significant portion of the repayment period of the Student Loan Debt. Despite having a Master Degree, Plaintiff will not be able to qualify for a better paying position as an administrator or athletic director without furthering his education which he cannot afford at this time.

25. The Plaintiff has made good faith efforts to repay his loans, requesting deferments and forbearance when he was not able to make payments and has never been delinquent on the loans.

ALTERNATIVE STANDARD

26. In the alternative, the *Brunner* Test has been superseded by subsequent changes to the Bankruptcy Code.
27. When *Brunner* was established in 1987, student loans were automatically dischargeable in bankruptcy, without the need to prove undue hardship if it had been more than five years since the loans first became due. Therefore, *Brunner* added a “good faith” element to 523(a)(8) for debtors attempting to discharge their loans before the five-year period.
28. Due to changes in the Bankruptcy Code, student loans became non-dischargeable absent an adversary proceeding to determine their dischargeability; therefore, the element of good faith under *Brunner* is no longer a necessary or needed protection against abuse, making a totality of the circumstances a more reasonable standard under the current Bankruptcy Code.
29. The totality of the circumstances test for undue hardship considers “(1) the debtor’s past, present, and reasonably reliable future financial resources; (2) a calculation of the debtor’s and her dependents’ reasonable necessary living expenses; and (3) other relevant facts and circumstances surrounding that particular bankruptcy case.” *Andrews v. S. Dakota Student Loan Assistance Corp.* 661 F.2d 702, 704 (8th Cir. 1981).
30. Under the totality of the circumstances standard, considering Plaintiff’s past, present and reasonably reliable future financial resources and his reasonable necessary living expenses, Plaintiff is unable to make payments on the Student Loan Debts and it would be an undue hardship for the Student Loan Debt to not be discharged.

WHEREFORE, Plaintiff, Andrew Bimonte, seeks judgment declaring that repayment of the Student Loan Debts owed to the named Defendant pose an undue hardship and be deemed dischargeable pursuant to 11 U.S.C. § 523(a)(8) and grant such order and further relief as this Court may deem just and proper.

Dated: July 18, 2016
Uniondale, New York

LAW OFFICE OF NATALIE JEAN-BAPTISTE, P.C.

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