

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE:)	
)	
Debtor)	
Sheldon Bert Leary,)	CASE NO. 15-11583
3410 Paul Ave. # 1R)	
Bronx, NY 10468)	
SSN XXX XX 9075)	
)	CHAPTER 7
Trustee)	
)	Hon. Martin Glenn
David R. Kittay,)	
Kittay & Gershfeld, P.C.)	Adv. Proceeding No.
100 White Plains Rd. 2 nd Fl.)	
Tarrytown, NY 10591)	
)	
Discover Student Loans,)	
)	
EDSI,)	
)	
Great Lakes,)	
)	
Navient,)	
)	
Wells Fargo Education)	

COMPLAINT FOR ADVERSARY PROCEEDINGS

Sheldon Bert Leary, debtor, pro se, does respectfully Petitions this honorable Court to grant him an adversary complaint proceeding against the named student loan creditors, seeking discharge of the student loan debt pursuant to Section 523(a)(8) of the Bankruptcy Code alleging that an "undue hardship" would result if the debtor had to repay the student loan debt.

JURISDICTION

The Debtor filed the above captioned case on or about June 17, 2015, under chapter 7 of the U.S. Bankruptcy Code. On July 23, 2015, a "341 Meeting" was held. This Court thus has jurisdiction over this action under 28 U.S.C. § 1334. This proceeding is a core proceeding.

PARTIES

1. David R. Kittay is the United States Trustee for Region 21. 28 U.S.C.

Debtor incorporates the information contained in the above captioned Chapter 7 petition.

The following unsecured debts owing by the Debtor and listed in Schedule F are Defendants;

Discover Student Loans,

EDSI

Great Lakes,

Navient, and

Wells Fargo Education (See Attachment).

FACTS

1. Debtor, after marriage, invested heavily in the education of his three children. Working a full time and part time job, Debtor was able to modestly afford sending all three children to prestigious Preparatory schools. Each child achieved academic excellence which allowed them to be selected to George Washington University, Adelphi College and the University of Virginia, respectively. To afford these institutions required Debtor to borrow a total of \$380,000.00.
2. Upon fearing the elimination of his position at SUNY/Downstate, Debtor moved to work at Montefiore Hospital.
3. During the transition to Montefiore, Debtor cashed in both 401K and 403 to make \$40,000 payment to Student Loan Creditor---Great Lakes. (Debtor sustained a corresponding Tax liability to do so).

4. After losing his Montefiore job Debtor still maintained contact with creditors and eventually found employment at the University of Maryland Hospital in Baltimore Maryland.
5. Debtor, could no longer work a full time and part time job.
6. Debtor is 58 years old and will not likely earn much more than his current salary.

7. As revealed in the attached work sheet, payment of the monthly installments as to these debts totals \$4, 415.00 per month. Combined with Debtor's reasonable living expenses, the student loan repayments would exceed income by over \$4,000.00, each month. It is abundantly clear that Debtor would be unable to support himself with food or shelter and thus could not maintain his employment. Clearly, this is prima facie, undue hardship.

CLAIMS

- I. Debtors had made good faith efforts to repay the student loans, considering the number of student loan payments made, the dollar amount of student loan payments made, and debtors' efforts to receive multiple student loan extensions, deferments, and forbearances.
- II. The repayment of the student loan debts would indeed cause debtors an "undue hardship" and thus debtor is entitled to discharge the student loan debts.
- III. Debtors' monthly expenses exceeded their monthly income by approximately \$4,500 monthly.
- IV. Debtor's living expenses including rent payment necessary for employment is a modest amount, other costs are reasonable to minimal. Other than that, debtor has lived frugally and has made reasonable choices about his expenses.



- V. Debtor asserts that he has consistently work history since completing his education. Debtor avers that at the age of fifty eight (58), he does not have opportunities to increase his income in the future.
- VI. Debtor has lived frugally and had made reasonable choices about his expenses, indulging only in the investment of his children's educational opportunity.
- VII. Debtor supports his three children and wife, all of whom have graduated and /or currently enrolled in major universities.
- VIII. Debtor's loan repayment history favors debtors' position. Debtors made as many as 72 payments on one of the loans and previously received multiple student loan extensions, deferments, and forbearances during their efforts to repay the student loan debts.

ARGUMENT

- A. Debtors has proved that he could not, based on his current income and expenses, maintain a "minimal" standard of living for his self and support the needs of his adult children if forced to repay the loans. Indeed Debtor has gone further to establish he could not maintain "any" standard of living if forced to repay the loans, no matter what formula or methods of savings/budgeting were adopted
- B. Debtor demonstrates his inability to pay the student loans in the present and a likely inability to pay the student loans in the future.
- C. Debtor has made good faith efforts to repay the student loans after considering the number of student loan payments made, the dollar amount of student loan payments made, and debtors' efforts to receive multiple student loan extensions, deferments, and forbearances.

WHEREFORE, Debtor request that this honorable Court, find that he has met the his burden with respect to establishing "undue burden" and,

- 1. Discharge the above mentioned Student Loan debt consistent with his Chapter 7 petition.
- 2. Grant Debtor such other and further relief as justice and the nature of his cause require.



Sheldon Bert Leary
Debtor, pro se

1. *Scott v. US Department of Education*, 417 B.R. 623 (Bankr. W.D.Wash. 2009). Chapter 7 debtors filed an adversary proceeding seeking an order determining that debtors were entitled to "undue hardship" discharge of their more than \$322,000 in student loan debt. After an evidentiary hearing, the court found that the repayment of the student loan debts would indeed cause debtors an "undue hardship" and thus debtors were entitled to discharge the student loan debts.

Debtors were married, less than 34 years of age, and were parents to two healthy young children. Both debtors worked and earned a combined annual income in excess of \$90,000. Debtors testified that both had consistent work histories since completing their education. Debtors also testified that they do not have opportunities to increase their income in the future.

Debtors' monthly expenses exceeded their monthly income by approximately \$1,000 monthly.

Debtors' rent payment was a modest amount and the day care expenses for both children were expensive. Debtors' only excessive debt related to an approximately \$500 vehicle payment. Other than that, debtors had lived frugally and had made reasonable choices about their expenses.

Debtors' loan repayment history favored debtors' position. Debtors made as many as 72 payments on one of the loans and previously received multiple student loan extensions, deferments, and forbearances during their efforts to repay the student loan debts.

The Scott court adopted the three-part dischargeability test set forth in *In re Brunner*, 46 B.R. 752 (S.D.N.Y. 1985), to determine whether excepting the student loan debts from discharge would constitute an undue hardship on debtors. The Scott court found that debtors proved that they could not, based on their current income and expenses, maintain a "minimal" standard of living for themselves and their dependents if forced to repay the loans. Next, the court found that debtors demonstrated their inability to pay the student loans in the present and a likely inability to pay the student loans in the future. Finally, the court found that debtors had made good faith efforts to repay



the student loans after considering the number of student loan payments made, the dollar amount of student loan payments made, and debtors' efforts to receive multiple student loan extensions, deferments, and forbearances

1. In re Booth, 410 B.R. 672 (Bankr. E.D. Wash 2009). A chapter 7 bankruptcy debtor brought an adversary complaint against a student loan creditor seeking discharge of the student loan debt pursuant to Section 523(a)(8) of the Bankruptcy Code alleging that an "undue hardship" would result if the debtor had to repay the student loan debt. Prior to filing bankruptcy, the debtor had participated in a student loan deferral payment program. As a result of the program and debtor's deteriorating financial position, the student loan creditor established a zero dollar per month short-term repayment plan with the balance to be paid much later. Nevertheless, debtor filed for bankruptcy and sought a complete discharge of all the student loan debt.

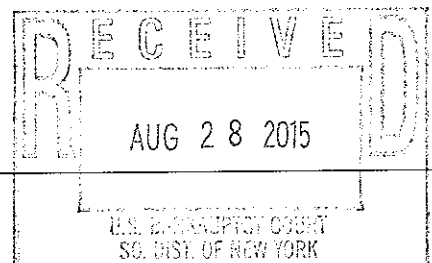
The student loan creditor opposed the complete discharge of the student loan debt. In fact, the creditor filed a motion for summary judgment seeking an order finding the student loan debtor NOT eligible for a bankruptcy discharge AS A MATTER OF LAW because the deferral payment program had granted debtor a zero dollar per month short-term repayment plan. In short, the student loan creditor believed that the debtor could not establish "undue hardship" as a matter of law since debtor had agreed to a zero dollar short-term repayment plan and therefore no hardship existed, much less "undue" hardship.

The Court rejected the student loan creditor's argument and denied the motion for summary judgment. The court noted the difference in relief granted by both options: (a) the bankruptcy discharge offered permanent relief by eliminating the student loan debt forever, whereas (b) the deferral payment program only offered short-term relief with the balance coming due later. Next, the court focused on the factual review given by both options: (a) the bankruptcy court would review the facts of each case on a case-by-case basis to determine if the repayment of the student loan debt would result in an undue hardship upon the debtor, whereas, (b) the deferral payment program gave no individual review, instead relying upon a formula to determine loan payments.

STUDENT LOAN CREDITORS

<u>Creditors Name</u>	<u>Acct #</u>	<u>Amt. Borrowed</u>	<u>Proposed Monthly Payment</u>
Discover Student Loans	1123	45,149	371.87
PO Box 6107	1124	6,173	57.72
Carol Stream, IL 60197-6107	1125	23,750	240.86
EDSI	0376	4,614	40.00
PO Box 815459			
Dallas, TX 75381-5459			
Great Lakes	8541	169,365	2074.00
PO Box 3059	7581	22,774	306.00
Milwaukee, WI 53201-3059	7577	50,330	650.00
	8581	17,272	233.00
Navient	8241	28,649	264.28
PO Box 9555			
Wilkes Barre, PA 18773-9555			
Navient	9617	4,971	119.19
PO Box 9500			
Wilkes Barre, PA 18773-9500			
Wells Fargo Ed	4605	7,000	58.00
PO Box 5185			
Sioux Falls, SD 57117-5185			
Totals		380,047	4,414.92

ADVERSARY PROCEEDING COVER SHEET <small>(Instructions on Reverse)</small>		ADVERSARY PROCEEDING NUMBER <small>(Court Use Only)</small>
PLAINTIFFS (Names and Addresses) <p style="font-size: 1.2em; margin: 0;">SHELDON BERT LEARY 3410 PAUL AVE #1R BRONX, NY 10468</p>	DEFENDANTS (Names and Addresses) <p style="font-size: 1.2em; margin: 0;">SEE ATTACHMENT "STUDENT LOAN CREDITORS" #5</p>	
ATTORNEYS (Firm Name, Address, and Telephone No.) <p style="font-size: 1.2em; margin: 0;">PRO SE</p>	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) <p style="font-size: 1.2em; margin: 0;">DISCHARGE OF STUDENT LOAN DEBT PURSUANT TO SECTION 523(a)(8) OF THE BANKRUPTCY CODE ALLEGING THAT AN "UNDUE HARDSHIP" WOULD RESULT IF DEBTOR HAD TO REPAY STUDENT LOAN DEBT</p>		
NATURE OF SUIT <small>(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)</small>		
FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) - Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <p style="text-align: center; font-size: 0.8em;">(continued next column)</p>	FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input checked="" type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) - Injunctive Relief <input type="checkbox"/> 71-Injunctive relief - imposition of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa et seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$	
Other Relief Sought		



BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <i>SHELDON BERT LEARY</i>		BANKRUPTCY CASE NO. <i>15-11583</i>
DISTRICT IN WHICH CASE IS PENDING <i>SOUTHERN DISTRICT OF N.Y.</i>	DIVISIONAL OFFICE	NAME OF JUDGE <i>MARTIN GLENN</i>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>Sheldon Bert Leary</i>		
DATE <i>8/26/2015</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <i>SHELDON BERT LEARY</i>	

Print Form

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint. Addresses should be listed for all Plaintiffs and Defendants.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.