RICK S. COWLE, ESQ.
THE LAW OFFICE OF RICK S. COWLE P.C.
Attorney for the Debtor
95 Gleneida Avenue
Carmel, NY 10512
(845) 225-3026

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION
---X
In Re:

JONATHAN VALLEN,

Debtor.

Chapter 7
Case No. 14-37008 (cgm)
---X
JONATHAN VALLEN,

Plaintiff,

v.

AMERICAN EDUCATION SERVICES;
NATIONAL COLLEGIATE STUDENT LOAN
TRUST 2004-2, A DELAWARE STATUTORY
TRUST; NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2006-1,

Defendants.

Adv. Pro. Case No.
---X

COMPLAINT

COMES NOW Jonathan Vallen, Debtor in the above-captioned bankruptcy case, by and through his counsel of record, The Law Office of Rick S. Cowle, P.C., to hereby file this Complaint to render student loans dischargeable pursuant to 11 U.S.C. § 523(a)(8). In support of this Complaint, Debtor alleges as follows:

INTRODUCTION

1. This adversary proceeding arises out of the Debtor's Chapter 7 voluntary petition

filed on October 3, 2014.

2. This complaint seeks to determine the dischargeability of the Debtor's private loans.

3. Debtor argues that these loans are dischargeable, notwithstanding the student loan exceptions of 11 U.S.C. § 523(8), because: (i) the loans were private (neither governmental nor non-profit loans) and therefore they fall under the ambit of § 523 (a)(8)(B); and (ii) the loans failed to meet the test of a "qualified educational loan" as required under § 523 (a)(8)(B).

4. The Debtor argues that the loans fail to meet the "qualified education loan" test because they were not solely dedicated to educational purposes, thus they were "mixed-use loans."

5. The Debtor also argues that repayment of the student loans would cause an undue hardship as he would not be able to maintain a minimum standard of living pursuant to 11 U.S.C. § 523(a)(8) and repayment would violate the fresh start doctrine.

6. Further, the Debtor contests National Collegiate Student Loan Trust 2004-2, A Delaware Statutory Trust; National Collegiate Student Loan Trust 2006's (collectively "NCSLT") and American Education Services' ("AES") right to collect on the loans.

7. Notwithstanding the foregoing, if the loans are not dischargeable *in toto*, the Debtor argues that a partial discharge be granted.

<u>JURISDICTION AND VENUE</u>

8. The Debtor resides in Putnam County, New York and filed the underlying bankruptcy petition in the Southern District of New York.

9. This is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2)(I), and the Court has jurisdiction pursuant to 28 U.S.C. § 157 (a). Venue is proper under 28 U.S.C.

§ 1409(a).This adversary complaint is brought pursuant to 11 U.S.C. § 523(a)(8).

FACTS

10. In 2006, the Debtor, unable to afford college without financing, obtained various loans to attend Hartford University to pursue a degree in communications.

11. NCSLT allegedly holds two of the Debtor's private student loans, while AES allegedly holds the remaining loan (hereinafter collectively referred to as "Private Student Loans.") Upon information and belief, NCSLT allegedly holds one loan in the amount of approximately $41,000.00 and another in the approximate amount of $27,000.00, while AES allegedly holds one loan with the approximate value of $27,000.00.

12. Upon information and belief, the Private Student Loans sum to approximately ninety-five thousand dollars ($95,000.00). *See* Debtor's Affidavit attached hereto as Exhibit A.

13. While a portion of the Private Student Loans was used specifically to finance the Debtor's education, a large percentage of the Student Loans was used to pay off credit card debt. *See* Exhibit A.

14. Unable to afford the expense of Hartford University, the Debtor was forced to prematurely drop out of college, thus never obtaining his sought after degree.

15. Having no college degree on his resume, the Debtor was unable to use the education he received in the two years he had attended Hartford University and instead became a bartender to make ends meet.

16. Further, to keep his expenses down, the Debtor moved back home with his parents where he still resides today.

FIRST CAUSE OF ACTION

THE LOANS IN QUESTION WERE NOT QUALIFIED EDUCATIONAL LOANS

17. In 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act extended non- dischargeability protection to private student loans under § 523(a)(8). Specifically, it extended the protection from governmental loans to "[a]ny other educational loan that is a qualified educational loan as defined in § 221(d)(1) of the Internal Revenue Code…." 11 U.S.C. § 523 (a)(8)(B).

18. Therefore, a private loan must "qualify" under IRC § 221 (d)(1) in order to be non-dischargeable under § 523(a)(8).

19. Internal Revenue Code § 221(d)(1) states that the loan must be: "incurred by the taxpayer ***solely*** to pay for qualified higher education expenses". *Emphasis added.*

20. A "qualified higher education expense" is defined in the IRC as "the cost of attendance…at an eligible educational institution." 26 U.S.C. § 221(d)(2).

21. Further, the "cost of attendance" is defined, in essence, as tuition, fees, books, equipment, room & board, and miscellaneous personal expenses as determined by the school. *See* 20 U.S.C. § 108711.

22. Based on the foregoing, it follows that loans which are not used solely for "qualified higher education expenses," as defined above, do not qualify under IRC § 221(d)(1).

23. Such "mixed-use loans" are excluded in their entirety from § 523(a)(8) . 26 CFR § 1.221-1(e)(4) Ex. 6 illustrates that a loan used partly for home improvements and partly to pay qualified higher education expenses, is not a qualified education loan as it is not ***solely*** used to pay for qualified higher education expenses. Therefore, this loan would be subject to discharge.

24. Here, the Debtor used a substantial portion of his loans to pay down credit cards, thus, the loans were "mixed-use loans" as they was not used ***solely*** to pay for qualified higher education expenses.

25. Therefore, the Debtor's student loans were not "qualified educational loans" as defined in IRC § 221(d)(1) and thus are not protected from discharge under 11 U.S.C. § 523 (a)(8)(B).

26. For these reasons, the loans should be deemed dischargeable private loans unprotected by § 523 (a)(8)(B).

SECOND CAUSE OF ACTION

UNDUE HARDSHIP AND VIOLATION OF THE FRESH START DOCTRINE

27. Plaintiff reiterates the allegations contained in paragraphs 1-24.

28. Notwithstanding the foregoing, if the above loans are found to be qualified educational loans, it would be an undue hardship on the Debtor to repay the outstanding loans.

29. 11 U.S.C. § 523(a)(8), provides, in pertinent part, that a discharge under § 727 does not discharge an individual debtor from any debt for student loans, "unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents[.]"

30. The Debtor is indebted to the Defendants in the approximate sum of ninety-five thousand dollars ($95,000.00) for loans allegedly made by the Defendants to the Debtor.

31. Requiring the Debtor to repay these debts will impose an undue hardship on the him as contemplated under 11 U.S.C. § 523(a)(8).

32. The Debtor has been working as a bartender since the cost of college forced him

to drop out after only attending the University for two years. Further, the Debtor moved back home with his parents, where he currently resides, in an effort to keep his expenses to a minimum.

33. Having received no benefit from the private student loans and carrying insurmountable student loan debt, the Debtor has been unable to procure a job that would enable him to afford his loan payments.

34. According to Debtor's schedules, the Debtor's current monthly net income of approximately $2,667.29 and expenses of $3,525.00 leaves him with a disposable income that is negative by roughly $857.71 per month.

35. Based upon the Debtor's current income and expenses, he cannot maintain a minimum standard of living or obtain a fresh start.

36. Further, the Debtor believes that his economic state of affairs is likely to persist for a significant portion of the repayment period and has made good faith efforts to repay the loans.

THIRD CAUSE OF ACTION

STANDING

37. Plaintiff reiterates the allegations contained in paragraphs 1-36.

38. Upon information and belief, as the Debtor initially obtained his loans from large financial institutions, he has no record that either NCSLT or AES are indeed the holder of his loans.

39. Further, the Debtor does not have a complete and accurate accounting of how much he owes to the lenders, if any, and finally, the Debtor has no knowledge that the loans went from the original lenders to the Depositors to NCSLT or AES.

PARTIAL DISCHARGEABILITY

40. Plaintiff reiterates the allegations contained in paragraphs 1-39.

41. While other jurisdictions have granted a partial discharge of the student loan debt, the Second Circuit is not yet decided on the issue.

42. If a discharge *in toto* is not granted, the Court is respectfully requested to grant a partial discharge to the Debtor under the circumstances of this case.

43. The "all or nothing" approach is a hardship on Debtors, and denies the Court an opportunity to equitably incorporate many of the circumstantial hardship factors envisioned by § 523(a)(8).

WHEREFORE, the Court is respectfully requested to order that the student loans of the Debtor are dischargeable in this case, in whole or in part, on the grounds that they are not protected by the discharge exception of 11 U.S.C. § 523 (a)(8), or to order such other relief as the Court deems just in the circumstances.

Dated: Carmel, New York
November 4, 2014

THE LAW OFFICE OF RICK S. COWLE P.C.

By: /s/ Rick S. Cowle________________
Rick S. Cowle, Esq.
Attorney for the Debtor
95 Gleneida Avenue
Carmel, NY 10512
(845) 225-3026