

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

ENTERED

APR 11 '00

U.S. Bankruptcy Court  
Greensboro, NC

AJM

IN RE: )  
 )  
Lakhwinder Singh Chahal, ) Case No. 95-10584C-13G  
 )  
Debtor. )  
 )

ORDER

This case came before the court on February 15, 2000, for hearing upon a motion by Debtor for damages and attorney fees due to violation of the automatic stay by Nationwide Credit, Inc., and the United States Department of Education. Appearing for the hearing were J. Gordon Boyett, attorney for the Debtor, and Anita Jo Kinlaw Troxler, the Chapter 13 Trustee. Having considered the evidence offered at the hearing, the matters of record in this case and the arguments of counsel, the court finds and concludes as follows:

1. When the Debtor filed this Chapter 13 case on March 13, 1995, one of the creditors listed in the schedules was State Education Assistance Authorities, c/o Commonwealth of Virginia, in the amount of \$2,084.34. Also listed was Virginia Student Assistance Authorities with a claim of \$200.00. Both of these entries involved educational loan indebtedness and it would appear that both involve the same creditor since both are listed as having

the same address.

2. The Debtor's plan was confirmed on May 26, 1995, and provides that any timely filed claim by the "Virginia Education Loan Assistance" or by the "Virginia State Education" shall be classified as a special class of unsecured claim and paid in full under the plan.

3. Neither of the foregoing claimants filed a proof of claim in the case and, as reflected in the trustee's final report, neither creditor received any payments during the Chapter 13 case.

4. The Debtor successfully completed his plan on September 30, 1999, and received his Chapter 13 discharge on November 29, 1999, which released the Debtor from "all debts dischargeable pursuant to 11 U.S.C. 1328(a)."

5. The Debtor paid into the plan all payments called for under the plan. Because no claims were filed for the educational loan indebtedness, the other creditors got what otherwise would have gone to pay the student loans in full. The result was that unsecured creditors got a larger dividend than they otherwise would have received.

6. According to Debtor's motion, the educational loan indebtedness was assigned to the Department of Education, and Nationwide Credit, Inc., acting on behalf of the Department of

Education, attempted to collect the educational loan indebtedness from the Debtor through various letters and calls to the Debtor and attachment of Debtor's salary, some of which occurred during the pendency of this case and some of which occurred after the Debtor was granted a discharge in this case.

8. The motion seeks sanctions against the Department of Education and Nationwide Credit, Inc., based upon the collection efforts made by the Department of Education and Nationwide Credit, Inc., during the pendency of this case.

9. The issues raised by the motion are (1) whether the collection efforts during the pendency of this case violated the automatic stay; (2) whether the collection efforts after the discharge was granted constituted a violation of the automatic stay or the discharge injunction provided under § 524 of the Bankruptcy Code; and (3) if such violations have occurred, the amount of damages or sanctions which should be assessed.

10. Upon the filing of this case, the automatic stay under § 362 of the Bankruptcy Code went into effect and, pursuant to § 362(c), remained in effect until the Debtor was granted a discharge. Under § 362(a)(6) of the Bankruptcy Code, any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case is prohibited. Telephone

calls and letters to a debtor making demand for payment of prepetition indebtedness are "acts" to collect a claim within the meaning of § 362(a)(6), as would be an attachment or garnishment of a debtor's wages. The educational loan indebtedness in the present case arose before the commencement of this case. Therefore, acts of the Department of Education and its agent, Nationwide Credit, Inc., to collect such indebtedness were prohibited under § 362(a)(6) from the time this case was filed until the Debtor was granted a discharge on November 29, 1999. All collection efforts during that period constituted violations of the automatic stay.

11. Once the Debtor received a discharge on November 29, 1999, the automatic stay ended. It follows that collection efforts after that date could not constitute a violation of the automatic stay, which no longer was in effect.

12. Nor did the post-discharge efforts to collect the educational loan indebtedness violate the discharge injunction provided under § 524. This follows from the language of § 1328(a)(2) which excludes from the Chapter 13 discharge "any debt . . . of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title . . . ." It is undisputed that the indebtedness at issue in this case is educational loan indebtedness

of the kind described in § 523(a)(8). Hence, the indebtedness was excluded from the § 1328 discharge which the Debtor received in this case on November 29, 1999. The discharge injunction under § 524 applies only to acts to collect debts which have been discharged under section 727, 944, 1141, 1228, or 1328 of the Code, which would not include the indebtedness owed to the Department of Education which was excluded from the discharge in this case. In order to discharge educational loan indebtedness of the type described in § 523(a)(8) a Chapter 13 debtor must either pay the indebtedness in full under the plan or successfully litigate dischargeability under § 523(a)(8). See In re Bell, 236 B.R. 426 (N.D. Ala. 1999). To the extent that nondischargeable debts are not been paid in full or successfully litigated in the bankruptcy case, they may be pursued after the bankruptcy. See In re Hamilton, 179 B.R. 749 (Bankr. S.D. Ga. 1995) ("Without regard to Debtor's financial rehabilitation, 11 U.S.C. § 523(c)(1) provides that debt of the kind specified in 11 U.S.C. § 523(a)(8) need not be proved in bankruptcy in order for a creditor to pursue the nondischargeable debt after Debtor receives her discharge."); In re Kloeble, 112 B.R. 379 (Bankr. S.D. Calif. 1990). Since Debtor has neither paid nor litigated the dischargeability of the educational loan indebtedness owed to the Department of Education, such

indebtedness has not been discharged. It follows that acts to collect such indebtedness did not constitute a violation of the discharge injunction.

12. During the life of a Chapter 13 plan, a creditor holding a debt which is nondischargeable under § 523(a)(8) is bound by the plan to the extent that during the case such creditor may not proceed with collection efforts outside the bankruptcy court. However, this does not mean that an educational loan creditor is required to seek repayment through the Chapter 13 case. See In re Pardee, 218 B.R. 916, 921-22 (9<sup>th</sup> Cir. BAP 1998); In re Hamilton, 179 B.R. 749, 756 (Bankr. S.D. Ga. 1995); In re Shelbyayah, 165 B.R. 332, 335 (Bankr. N.D. Ga. 1994). Since the Department of Education was not required to file a claim in this case, its claim therefore is not barred as a result of the Department not doing so.

13. A Chapter 13 debtor is not without a remedy where, as in the present case, the plan provides for payments to the holder of a nondischargeable debt who declines to file a claim. Under Bankruptcy Rule 3004, a Chapter 13 debtor, in effect, can force the creditor to participate in the Chapter 13 case by filing a proof of claim on behalf of the creditor so that the creditor will receive the payments provided under the plan. However, Rule 3004 was not utilized in the present case and the claim therefore was not paid

as contemplated under the plan.

14. The remaining issue involves the damages which should be imposed as a result of the violations of the automatic stay. During the course of this case, and prior to the Debtor receiving a discharge on November 29, 1999, the Department of Education and Nationwide Credit, Inc. ("the Respondents") initiated numerous communications with the Debtor in which they made demands upon the Debtor that he pay the educational loan indebtedness. Even though the Debtor notified the Respondents that he was in a Chapter 13 case, such communications continued on a frequent basis. These communications included numerous letters and telephone calls to the Debtor. In addition to communicating with the Debtor, the Respondents also communicated with the Debtor's former wife and threatened to seize and sell property which formerly was jointly owned by the Debtor and his former wife. The respondents also communicated with one or more of Debtor's employers in their efforts to collect the educational loan indebtedness and during such communications issued a garnishment order to Debtor's employer directing the employer to deduct and forward 10% of Debtor's take-home pay to the Department of Education. As a result of the issuance of such order, amounts were deducted from Debtor's wages and forwarded to the Department of Education. In addition, the

numerous letters and telephone calls to the Debtor caused great distress to the Debtor, resulted in the Debtor having to spend time trying to communicate with the Respondents and with his attorney in an effort to obtain relief from the torrent of communications and demands, resulted in the Debtor having to change employment and caused the Debtor to miss time from work and lose income. As a proximate result of the foregoing willful violations of the automatic stay, the Debtor sustained actual damages of \$4,600.00 which, pursuant to § 362(h), the Debtor is entitled to recover from the Respondents. However, as noted above, the Debtor remains indebted to the Department of Education with respect to the educational loan indebtedness. According to the evidence, Debtor's educational loan indebtedness consists of debts G9509002355501 and G9709003086301, totaling \$4,383.91 as of January 26, 2000. The indebtedness of \$4,600.00 which is due under this order is available for set off against the educational loan indebtedness owed by the Debtor. Such set off is hereby implemented, with the net result that the educational loan indebtedness is being paid and satisfied in full and the Department of Education and Nationwide Credit, Inc., jointly and severally, remain indebted to the Debtor in the amount of \$216.09, less interest accruing since January 26, 2000, which the Debtor is entitled to recover from the Department



of Education and Nationwide Credit, Inc.

IT IS SO ORDERED.

This 11<sup>th</sup> day of April, 2000.

William L. Stocks

WILLIAM L. STOCKS

United States Bankruptcy Judge