

The relief described hereinbelow is SO ORDERED

Done this 26th of September, 2023



Christopher L. Hawkins
United States Bankruptcy
Judge



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re:

TAMMIE TERRELL FULLER
Debtor(s)

Chapter 13
Case No. 19-31905-CLH

TAMMIE TERRELL FULLER
Plaintiff(s)

v.

Adv. Pro.No. 23-03003-CLH

UNITED STATES OF AMERICA, et al.
(DEPARTMENT OF EDUCATION)
Defendant(s)

ORDER DETERMINING DISCHARGEABILITY AND DISMISSING PARTY

This matter came before the Court on Plaintiff's and Defendant's, United States of America, Department of Education, (hereinafter USDE), Stipulation and Joint Motion for Order Determining Dischargeability. (Doc. 20). Upon consideration of the Stipulation and Joint Motion, the record, and the statements of counsel, the Court finds as follows:

Though student loan debts are generally not to be discharged under the Bankruptcy Code, a narrow exception exists where "excepting such debt from discharge . . . will impose an undue

hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8). The Eleventh Circuit has joined the significant majority of other circuits in adopting the standard set forth in *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987), to determine when an "undue hardship" exists. *In re Cox*, 338 F.3d 1238, 1241-42 (11th Cir. 2003). The *Brunner* test requires the debtor to show:

- (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.

In re Grady, 852 F. App'x 509, 512 (11th Cir. 2021) (quoting *In re Cox*, 338 F.3d at 1241).

The debtor must prove all three *Brunner* factors are met by a preponderance of the evidence. *In re Mosley*, 494 F.3d 1320, 1324 (11th Cir. 2007). However, "the bankruptcy court must make an independent determination of undue hardship . . . even if the creditor fails to object or appear in the adversary proceeding." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 (2010).

Here, the United States and Plaintiff agree that Plaintiff has satisfied the *Brunner* test and shown that excepting certain USDE-held loans from discharge will impose an undue hardship on Plaintiff. Based on the stipulated record, this Court finds that:

- (1) Plaintiff's current gross monthly income totals \$4,900.00, and her housing and monthly expenses total \$5,144.00. Therefore, Plaintiff cannot maintain a minimal standard of living and also make payments towards all of her student loan debts;
- (2) Plaintiff has had a change in financial circumstances that will likely persist for a significant portion of the repayment period. Additionally, with the exception of the Parent

Plus loans, NSLDS Loan Numbers 36, and 39 through 40, Plaintiff's USDE-held loans have been in repayment status for at least ten years; and

- (3) Plaintiff has made good faith efforts in the past to repay her student loans. Plaintiff has also communicated with the loan holder/servicer regarding the loans and applied for deferments or forbearances, an IDR plan, and for federal consolidation.

Therefore, this Court agrees that excepting certain USDE-held student loans of Plaintiff from discharge will impose an undue hardship on Plaintiff. Accordingly, this Court GRANTS the Joint Motion and ORDERS as follows:

1. Plaintiff's USDE-held student loans, National Student Loan Database System (NSLDS) Loan Numbers 26 through 31, 34 through 35, and 37 through 38, which totals approximately \$89,075.52, are dischargeable pursuant to 11 U.S.C. § 523(a)(8);
2. Because this Court entered its order granting Plaintiff's discharge under 11 U.S.C. § 1328(a) on April 25, 2023, in bankruptcy case 19-31905, at docket entry 78, Plaintiff's student loan debts, National Student Loan Database System (NSLDS) Loan Numbers 26 through 31, 34 through 35, and 37 through 38, are discharged;
3. Plaintiff will remain indebted to USDE regarding her Parent Plus student loans, NSLDS Loan Numbers 36, and 39 through 40, for an approximate remaining balance of \$39,766.90, and are not subject to discharge under 11 U.S.C. § 523(a)(8);
4. Each party to the action will bear responsibility for its own costs and attorney fees in this matter;
5. Pursuant Rule 7041 of the Federal Rules of Bankruptcy Procedure, and the agreement and consent of all parties in this Proceeding, the United States is hereby DISMISSED from this Proceeding. The determinations set forth in this Order and the dismissal of the

United States from this Proceeding shall have no bearing on Plaintiff's claims against
ECMC.

###END OF ORDER###

Submitted by:

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*Defendant ECMC does not consent to the findings set forth above but has no objection to the relief requested as between Plaintiff and Defendant USDE.

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