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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

SERENA J PATTON,

Debtor.

NO. 99-01040-R33

SERENA J PATTON,

Plaintiff,

vs.

ADV. NO. A00-00177-R33

**U S DEPT OF EDUCATION & WINDHAM
PROFESSIONALS INC. & NORTHWEST
EDUCATIONAL LOAN ASSOCIATION &
FINANCIAL ASSISTANCE INC &
WINDHAM PROFESSIONALS INC &
NORTHWEST EDUCATIONAL LOAN
ASSOCIATION & FINANCIAL
ASSISTANCE INC**

Defendants.

RICKY DALE RASBERRY,

Debtor.

NO. 99-02877-R33

RICKY DALE RASBERRY,

Plaintiff,

vs.

ADV. NO. A00-00185-R33

**U.S. BANK & SALLIE MAE &
NORTHWEST EDUCATION LOAN
ASSOCIATION,**

Defendants.

FILED

APR 3 2001

MEMORANDUM OPINION /1

I. S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON 4/5/01 CS

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ARMANDO L PEREZ,
Debtor.
ARMANDO L PEREZ,
Plaintiff,
vs.
UNITED STATES DEPARTMENT OF
EDUCATION & SALLIE MAE &
EDUCATIONAL CREDIT
MANAGEMENT CORPORATION,
Defendants.

NO. 99-07300-R33
ADV. NO. A00-00192-R33

CYNTHIA A. MARTIN,
Debtor.
CYNTHIA A. MARTIN
Plaintiff,
vs.
NORTHWEST EDUCATION LOAN
ASSOCIATION & EDUCATIONAL
CREDIT MANAGEMENT CORP.,
Defendant.

NO. 99-05334-R33
ADV. NO. A00-00193-R33

DOUGLAS BRIAN & DENISE
ST. GEORGE,
Debtor.
DOUGLAS BRIAN & DENISE
ST. GEORGE
Plaintiff,
vs.
NORTHWEST EDUCATION LOAN
ASSOCIATION & FINANCIAL
ASSISTANCE INC & ACCOUNT
CONTROL TECHNOLOGY &
EDUCATIONAL CREDIT
MANAGEMENT CORP.
Defendants.

NO. 99-05445-R33
ADV. NO. 00-00219-R33

MEMORANDUM OPINION

These summary judgment motions involve a common issue raised in five adversary

1 proceedings pending before the Court. The issue raised in each of the cases is whether the
2 provisions of a confirmed Chapter 13 plan dealing with discharge of student loan debt can be
3 attacked post confirmation on the basis that the provisions are contrary to the Bankruptcy Code,
4 when the aggrieved creditor had notice of the plan and failed to object to confirmation or appeal the
5 confirmation order.

6 Facts

7 Counsel for the debtors/plaintiffs in each of these cases is VanNoy Culpepper. Common to
8 each of these cases is a debt owed for student loans which would be excepted from discharge
9 pursuant to 11 U.S.C. §523(a)(8). As of the filing of the respective bankruptcies the amount of
10 student loan debt owed ranged from \$1,225.00 to \$3,544.00. Each of the Chapter 13 plans filed by
11 debtors/plaintiffs included the following language:

12 All timely filed and allowed claims of the United States Department of Education,
13 Sallie Mae and Educational Credit Management Corporation, and any other person
14 or entity who is owed a governmental sponsored or governmental guaranteed
15 educational loan, shall be paid their pro rata share as an unsecured creditor only; and
16 the balance of each said claims shall be discharged. Pursuant to 11 USC 523(a)(8),
excepting the aforementioned educational loans from discharge will impose an undue
hardship on the debtor and the debtor's dependent child. Confirmation of the
debtor's plan shall constitute a finding by this court to that effect and that said debt
is discharged.

17 Neither Educational Credit Management Corporation (ECMC) or its predecessor National
18 Educational Loan Association (NELA) objected to confirmation or appealed the confirmation
19 orders. All of the underlying Bankruptcy cases were filed during 1999. The first case was filed in
20 February 1999 and the last case was filed in December 1999. The first confirmation order was
21 entered on July 8, 1999 and the last order was entered on March 30, 2000. In each case ECMC filed
22 a timely proof of claim. Debtors/Plaintiffs filed the instant adversary proceedings for declaratory
23 judgment on the issue of whether the student loan obligation would be discharged upon successful
24 completion of the respective plans. There are no material issues of fact in dispute.

25 Discussion

26 The law of the Ninth Circuit on the issue of post confirmation attacks on Chapter 13 plans
27 is stated in Great Lakes Higher Education Corporation v. Robert McKnight Pardee et. al., 193 F3rd
28 1083 (9th Cir 1999). In Pardee, the Ninth Circuit addressed the situation of a confirmed Chapter 13

1 plan which improperly provided that upon completion of plan payments any unpaid interest on the
2 debtors student loans would be discharged. Great Lakes Higher Education Corporation had notice
3 of this provision and failed to object or otherwise protect its interest either prior to confirmation or
4 by appealing the confirmation order. 193 F3rd at 1086. After the debtor had completed payments
5 under the plan and been granted their discharge, Great Lakes attempted to collect the unpaid interest
6 and Pardees filed a motion to enforce the discharge and enjoin further collection attempts. In
7 upholding the BAP's ruling in Pardee the Ninth Circuit said: ¹

8 We find no reason to depart from the well-settled policy that confirmation orders are
9 final orders that are given preclusive effect. Regardless of whether the plan should
10 have been confirmed with the discharge provision, the BAP was correct in holding
11 that, "the Plan is res judicata as to all issues that could have or should have been
12 litigated at the confirmation hearing." In re Pardee, 218 B.R. 925.

13 193 F3rd at 1086.

14 The Ninth Circuit in Pardee cited with approval the Tenth Circuit's ruling in Anderson v.
15 UNIPAC-NEBHELP, 179 F3d 1253 (10th Cir 1999). 193 F3d at 1086. The Chapter 13 plan
16 proposed by Anderson provided for payment of a portion of the student loan debt with the balance
17 being discharged upon completion of the plan payments. The language of the student loan provision
18 in Anderson although not identical to the provisions at issue in these cases is remarkably similar and
19 differs only in minor details.² In Anderson, the creditor failed to timely object to the plan and it was
20 confirmed. The creditor elected not to appeal the order of confirmation. Anderson completed plan
21 payments and received a discharge. Subsequent to the granting of the discharge the successor to the
22 original holder of the student loan notes commenced collection. The Tenth Circuit held that student
23 loan provisions of the plan were binding and the loan obligation was discharged. In reaching this
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26 ¹ The BAP ruling is found in Great Lakes Higher Education Corporation v. Robert Mc
27 Knight Pardee et. al., 218 B.R. 916 (9th Cir BAP 1998).

28 ² The specific plan language at issue in Anderson is found at 179 F3rd at 1254.

1 conclusion the Court placed great emphasis on the “strong policy favoring finality, coupled with the
2 creditor’s complete failure to properly protect its interests during the course of the bankruptcy
3 proceedings”. 179 F3d at 1259.

4
5 The current cases deal with plans which fundamentally incorporate the same plan language
6 as Anderson. The Ninth Circuit’s discussion with approval of Anderson leads this Court to conclude
7 that the rule in Pardee applies to language such as that considered in Anderson. The only real
8 difference between the current cases and Anderson is that the challenge is coming before the
9 discharge is granted and not afterwards. The Court does not see this as significant.³ What is more
10 important is the fact that in the current cases there was no objection raised to confirmation, no
11 appeal of the confirmation orders, nor attempt to revoke the orders of confirmation pursuant to 11
12 U.S.C. §1330. Based upon Pardee and Anderson the Court holds that the confirmation orders in each
13 of these cases is res judicata and cannot now be challenged by ECMC.
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16 The Court’s ruling should not be interpreted as an approval or validation of the plan language
17 at issue. This court agrees with those recent decisions which disapprove of the practice of dealing
18 with the issue of discharge of student loans in the plan confirmation process. See: In re Webber,
19 251 B.R. 554 (Bankr. Ariz 2000); In re Hensley, 249 B.R. 318 (Bankr. W.D. Oka, 2000) and; In re
20 Evans, 242 B.R. 407 (Bankr. S.D. Ohio 1999). This Court will not knowingly confirm a plan which
21 contains language that attempts to discharge student loan debt independent of an adversary
22 proceeding.⁴ Inclusion of plan provisions which attempt to circumvent determination by adversary
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25 ³ Discharge is not entered in Chapter 13 cases until completion of plan payments. 11 U.S.C.
26 1328(a). If the debtors fail to complete the plan payments no discharge will be entered in their
27 cases.

28 ⁴ The Court’s comments are in no way meant as a reprimand or admonishment of debtors’
counsel in this case. Considering the state of the case law at the time the plans were proposed, it is

1 are not consistent with the Bankruptcy Code and Rules. If the plaintiffs/debtors successfully
2 complete their confirmed plans and are granted discharges, those discharges will include student
3 loan debt as provided in their respective plans. There are no material issues of fact in dispute and
4 plaintiffs are entitled to judgments as a matter of law.
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7 Done this 30 day of April, 2001.

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11 BANKRUPTCY JUDGE
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

CERTIFICATE OF SERVICE

The undersigned deputy clerk of the United States Bankruptcy Court for the Eastern District of Washington hereby certifies that a copy of the document, of which this is attached, was mailed this date to the following parties as required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

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ASPAAS, JENNIFER L
KARR TUTTLE CAMPBELL
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SEATTLE, WA 98101-3028

BEVERLY BENKA
CHAPTER 13 TRUSTEE
818 W RIVERSIDE AVE, SUITE 540
SPOKANE, WA 99201-0986

Sharon Lamb

Deputy Clerk

4/13/01

Date