UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
Bridgeport Division

In re: DESORMES KENNETH,
Debtor

Case No. 10-50079
Chapter 7

KENNETH DESORMES :
:
Plaintiff

Adv. Proc. No. 10-05014

:
:

Adv. Proc. No. 10-05025

Vs.

:
CHARLOTTE SCHOOL OF LAW, LLC.
Et al.,
Defendants. :

July 21st, 2011

:

PLAINTIFF-DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT THEREOF.

Plaintiff, Kenneth Desormes who is the debtor in this case respectfully moves this Court for partial summary judgment under Fed. R. Civ. P. 56, made applicable to adversary proceedings by Fed. R. Bankr. P. 7056 on his Claim for Declaratory Relief set forth in paragraphs twenty-three through twenty-nine of his second amended complaint. Based on the Complaint (including the Promissory Note, attached to the Complaint), the Answers, Interrogatories, and Admissions, together with the other attached documents produced through Discovery, there is no genuine issue of material fact as to this claim. Wherefore, Plaintiff prays this Court for an order granting partial summary judgment to the Plaintiff in the above-captioned adversary proceedings.

This motion for partial summary judgment is supported by an accompanying memorandum of law concurrently filed herewith, and an affidavit of Plaintiff, dated July 21st, 2011, also filed contemporaneously herewith.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff attended the Charlotte School of Law (Hereinafter "CSL") from 2007 until 2010. The school became recognized as an accredited institution by the Department of Education in the Spring of 2009 which made it eligible for federally subsidized loans on that year. During the course of his education, Plaintiff obtained financing from Nelnet and Sallie Mae, including one "Infilaw Loan".[1] In 2008, Nelnet and Sallie Mae stopped offering educational loans to CSL students. In turn, Plaintiff and CSL executed a promissory note (Hereinafter "The Note") for the equivalent sum of $12,122 in order to cover his cost of attendance for the upcoming semester (See, Exhibit A). The Note matured and became fully payable in April of 2009 while Plaintiff was on his last year of study at CSL. Faced with an inevitable default, Plaintiff sought a deal with the school to extend the maturity date on the Note and/or possibly obtain an affordable payment plan. CSL agreed to the extension, but not to the payment plan (See, Exhibit B, Q&A #5). Eventually, Plaintiff defaulted on the loan and CSL began collection efforts by restricting Plaintiff's access to his transcript and class registrations. Finally, without notifying the Plaintiff, CSL intercepted the proceeds from his federal loans and applied them towards

[1] **It is still unclear despite Discovery whether CSL or Infilaw Corp. acted as the lenders of the loan, although the promissory note is referenced as Infilaw Loan throughout the discoverable documents.**

the outstanding Infilaw loan or Note.[2] Because Plaintiff relied on those funds to cover his tuition and living expenses for the upcoming semester, he had no other options but to temporarily withdraw from the school.

II. PROCEDURAL HISTORY

On January 14, 2010, Plaintiff ("Debtor") filed for bankruptcy relief under Chapter 7 of the Bankruptcy Code and listed the CSL Note as an unsecured debt obligation owed to Charlotte School of Law (See Exhibit C). On February 19, 2010, the Plaintiff commenced an adversary proceeding, Adv. Pro. No. 10-5014, seeking a determination pursuant to 11 U.S.C. § 523(a)(8) of dischargeability of his student loans, including the Note. CSL responded by filing an opposition to the adversary proceeding and the parties proceeded to pretrial motions. On April 7, 2010, the Plaintiff commenced a second adversary proceeding (Adv. Pro. No. 10-5025), alleging that CSL had violated the automatic stay pursuant to 11 U.S.C. § 362(k). On October 8, 2010, the two adversary proceedings were consolidated by Order of the Court for administrative purposes.

III. LEGAL CLAIMS

This memorandum supports Plaintiff's assertion that the Note is unenforceable and dischargeable under the current bankruptcy code as a matter of law. Defendants, CSL and Infilaw Corp. in their administration of the Note violated the Federal Debt Collection Practices Act, the Federal Truth in Lending Act (Hereinafter "TILA"), and State's consumer protection laws (***See* N.C. GEN. STAT. § 24-10.2(c) (2007); N.C. GEN. STAT. §**

[2] **The terms Infilaw Loan and Note are used interchangeably in this case.**

75-16, 16.1 (2007); N.C. GEN. STAT. § 75-1.1). The defendants contend that Plaintiff's federal claims are barred by the Statute of Limitation. This memorandum explains that the Plaintiff's claim for violation of the TILA is not time barred because: (1) the federal truth in lending claims may be asserted in recoupment without regard to the statute of limitations; (2) the running of all relevant limitation periods on the Plaintiff's claims were tolled during the defendants' fraudulent acts. Plaintiff's claim under the TILA arose from defendants' intentional concealment of their relationships in the establishment of the loan. Furthermore, Defendants violated the TILA by not following the Federal guidelines of the FTC and the Federal Reserve Board in the administration of their student loan program, more particularly Plaintiff's loan arrangement.

In retrospect, there is no genuine issue of material facts as to whether the Note classifies as a non-dischargeable debt. The Bankruptcy Code defines "debt" as a "liability" on a claim and the term "claim" as the "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, disputed, undisputed, legal, equitable, secured or unsecured." **11 U.S.C. §§ 101(12), (5)(A).** In *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991), the Supreme Court stated a "right to payment" means "nothing more nor less than an enforceable obligation." Accordingly, the Note is dischargeable because the alleged contractual obligation is unenforceable since it violates key principles of contract law, including several provisions of State and Federal laws.

IV. STANDARD OF REVIEW

Summary judgment is appropriate when the submissions "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as

a matter of law." Fed.R.Civ.P. 56(c) ; Celotex Corp. v. Catrett, 477 U.S. 317, 322-26 (1986). Fed. R. Civ. P. 56, is made applicable to adversary proceedings by Fed. R. Bankr. P. 7056, which governs motions for summary judgment. The party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In making its determination, the court must view the facts and draw inferences in the light most favorable to the party opposing the motion, and must indulge all inferences favorable to that party. Morris v. Government Development Bank, 27 F.3d 746, 748 (1 Cir. 1994). Nevertheless; "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 106 S. Ct. at 1356 (citations omitted). As demonstrated below, Defendants cannot meet this burden, and judgment in Plaintiff's favor is appropriate as a matter of law.

V. ARGUMENT

A. ***THE NOTE MAY NOT BE AN EDUCATIONAL LOAN EXCEPTED FROM DISCHARGE UNDER 11 U.S.C. § 523(a)(8).***

This is a Case of first impression in this Bankruptcy Court and in this District. Congress failed to define the term "loan" when it passed section 523(a)(8) of the bankruptcy code, therefore the term has been subject to various interpretations in different jurisdictions. The Second Circuit of Appeals in *In re Renshaw* adopted the

classic common law definition of a loan as articulated by *In re Grand Union Co.* "a loan of money is a contract by which one party delivers a sum of money to another, and the later agrees to return at a future time a sum equivalent to that which he borrows." By this definition, the transaction between the parties may not be a loan because the sum that is owed was never delivered. Although the documents in Discovery reveal that the School's original intent was to enter into a loan agreement for the transfer of a total of $12,122 to the Plaintiff, the Defendants ultimately failed to advance that amount to the Plaintiff. The outcome of the underlying transaction is suggestive of a breach or discord in the parties' initial understanding of the terms of the agreement. Historically, Courts have always construed against the drafter of a contract for any misunderstanding or mistake arising from the contractual agreement.

To prevent any misunderstanding, some jurisdictions require that money actually change hands before a transaction can constitute a loan. This requirement is primordial in order to prevent contractual duress or undue influence in situations where bargaining power is pervasively unequal, such as in the case at bar. However, this Circuit adheres to the general principle of "substance over form" when determining if a loan originates from a monetary transaction. Absent any acts of coercion,[3] it is irrelevant whether money changes hands in order for this Circuit to find the origination of a loan, as long as the intent of the parties was clearly manifested.

To conclude, although it defies common sense to loan intangible things like unpaid tuition bills, if this Court determines that the Note constitutes a loan, such loan would still be dischargeable because as a matter of law it fails to meet the bankruptcy test for exception from discharge.

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[3] **See, in re Nelson 188 B.R. 32, 33 (D.S.D. 1995)**

B. THE CSL NOTE DOES NOT MEET THE BANKRUPTCY TEST UNDER 11 U.S.C. § 523(a)(8).

A determination of the dischargeability of a student loan debt is determined under the direction of 11 U.S.C. § 523(a), which states, in material part, that an individual debtor does not receive a discharge of the following kind of debt:

(8) Unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for --

> ***(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or an obligation to repay funds received as an educational benefit, scholarship, or stipend; or any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.***
>
> **11 U.S.C. § 523(a)(8)(A)**

Although it remains unclear whether the Note was an educational loan, it is undisputed that it was not made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution. It is also undisputed that CSL was not an accredited institution by Department of Education standards during the period in which the "loan" was made. Furthermore, it is fairly conclusive that the "loan" was not received as a scholarship or stipend. Given those parameters, the sole legal argument that is available to CSL is that the "loan" represents an obligation to repay funds received as an educational benefit. The problem with this logical reasoning is that CSL never advanced any funds to the Plaintiff for which a repayment could be required.[4] In other words, one cannot make a repayment when there fails to exist a previous payment to serve as an antecedent. Lastly, it is

[4] **See, (In re Mehta), 262 B.R. 35, 2001 U.S. Dist. LEXIS 5987 (D.N.J. 2001)**

counterintuitive for CSL to argue that the Plaintiff received an educational benefit when it is the misleading actions of the School coupled with the predatory terms of the Note that truncated the Plaintiff's educational opportunities. (See, Exhibit D)

C. VIOLATION OF TRUTH IN LENDING ACT

The Infilaw Loan is clearly covered by TILA which means that the school should have provided the required disclosures at three points in the time (1) when students apply for credit (2) when the credit is approved (3) when the loan is consummated.[5] Oddly, none of these events triggered any disclosures from the school or Infilaw Corp.

TILA remedies may be pursued as a matter of defense by recoupment or set-off without limitation. Affirmative litigation for TILA damages must be commenced "within one year of the date of the occurrence of the violation." 15 U.S.C. § 1640(e). However, § 1640(e) specifically provides that:

> This subsection does not bar a person from asserting a violation of this subchapter ***in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or offset in such action***. . . . (emphasis added)

The TILA violations at issue here occurred when the Plaintiff signed the Note in August of 2008. It is still indeterminable whether the Defendants qualified as "private educational lenders" or "creditors" at the time the loan was consummated.[6] In any event, the Defendants failed as "creditors" to provide the proper TILA disclosures that are required of institutions that extend credits to their students. (See, Exhibit E) As shown in the sample forms, an institution must disclose that if a student files for bankruptcy, the

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[5] **Reg. Z, 12 C.F.R. § 226.46(b)(5)(iv)**
[6] ***See, generally*** **National Consumer Law Center, Truth in Lending § 2.3 (6th ed. 2007 and Supp.).**

student may still be required to repay the loan.[7] Instead, the Note improperly contains a clause that holds a student in default if they do file for bankruptcy. (See, section_____ of the Note)

The Plaintiff TILA claim is protected by the action of the Defendants' representative on September of 2009 to collect the debt which was brought more than a year from the date of the occurrence of the TILA violation. (See, Exhibit F) Recoupment and counterclaim may be asserted after the expiration of the statute of limitations when the defense arises "out of some *feature* of the transaction on which the plaintiff's action is grounded." Bull v. United States, 295 U.S. 247, 55 S. Ct. 695, 700 (1935) (emphasis added). Recoupment is therefore available when a lender "has not complied with some cross obligation of the contract . . . *or because he violated some duty which the law imposes on him in the making or performance of that contract."* In re Smith, 737 F.2d 1552, note 7, quoting Ballentines Law Dictionary (3d ed. 1969).

Such a defense is never barred by the statute of limitations so long as the main action itself is timely. Id. At 700 In addition, the federal common law principle of equitable tolling "operates to toll the statute of limitations 'where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part.'" *See,* King v. California, 784 F.2d 910, 915 (9th Cir. 1986), Jones v. The TransOhio Savings Association, 747 F.2d 1037, 1043 (6th Cir. 1984).

The Defendants knowingly invited and subdued the Plaintiff into engaging in a fraudulent scheme to finance his education through illegal means. The documents obtained through Discovery show that the defendants intentionally set out to skirt the required regulatory guidelines of the TILA in order to mitigate their business risk. For

[7] **12 C.F.R. § 226.47(a)(3)(iv)**

the foregoing reasons and as a matter of law, the Note is illegal and thus dischargeable in this Bankruptcy case.

VI. CONCLUSION

The Bankruptcy Code was drafted to provide a discharge procedure that enables insolvent debtors the ability to reorder their affairs and enjoy "a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."[8] The legislative history of the 11 U.S.C. § 523(a)(8) teaches us that the exclusion of educational loans from the discharge provisions was designed to remedy an abuse by students who, immediately upon graduation, filed petition for bankruptcy and obtained a discharge of their educational loans. **See H.R.Rep. No. 95-595, 95th Cong., 1st Sess. 466-75 reprinted in 1978 U.S.Code Cong. & Admin.News 5787.** Arguably, the Infilaw loan in the present case is not an educational loan of the type that Congress intended to shield from students' abuse. In fact, the Plaintiff's bankruptcy in this case is the direct result the school's institutional loan because it contained abusive and predatory terms. Therefore, exceptions from discharge ought to be narrowly construed against the creditors and in favor of the debtor in this case.

Date: 7/20/2011

/s/ Kenneth Desormes
KENNETH DESORMES

[8] **Grogan v. Garner, 111 S.Ct. 654, 659, 112 L.Ed.2d 755 (1991) (quoting Local Loan Co. v. Hunt, 292 .S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934)).**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
Bridgeport Division

In re: DESORMES KENNETH,
Debtor

Case No. 10-50079
Chapter 7

KENNETH DESORMES :
:
Plaintiff

Adv. Proc. No. 10-05014

: Adv. Proc. No. 10-05025
:
Vs.

:
CHARLOTTE SCHOOL OF LAW, LLC.
Et al.,
Defendants. : July 21st, 2011
:

AFFIDAVIT OF PLAINTIFF-DEBTOR IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT.

I, Kenneth Desormes, being first duly sworn, depose and say:

1. I am the Plaintiff/Debtor in the above case and I reside at 4-21 Armstrong court, Greenwich CT 06830.

2. On January of 2007, I enrolled at Charlotte School of Law, L.L.C. as a full-time student. (See, Exhibit G)

3. I withdrew from the School in January of 2010 due to financial difficulties.

4. August of 2008, I executed a loan agreement with the School in the amount of $12,122.

5. Following the agreement, I did not receive any sum of money from the School for said loan.

6. At no time during the transaction was the School accredited by an accrediting agency.

7. On January of 2010, I filed for Chapter 7 bankruptcy hoping to discharge the underlying loan.

8. In return, the School filed for an opposition to the discharge.

9. At this time, we have reached an impasse in Discovery and the Court's intervention is desperately needed.

10. The defendants' lies and deceits during the Discovery process have rendered it almost impossible for any meaningful outcome to result. (See, Exhibits H,I,J,K)

Kenneth Desormes

Subscribed and sworn to before me on this 19th day of July, 2011.

Notary Public

ROBERTA J RICH
Notary Public, State of Connecticut
My Commission Expires July 31, 2015

My Commissioner expires:

7.31.2015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
Bridgeport Division

2011 JUL 20 AM 11:24

In re: DESORMES KENNETH,
Debtor

Case No. 10-50079
Chapter 7

KENNETH DESORMES :
:
Plaintiff

Adv. Proc. No. 10-05014

: Adv. Proc. No. 10-05025
:
Vs.

:
CHARLOTTE SCHOOL OF LAW, LLC.
Et al.,
Defendants. : July 21st, 2011
:

CERTIFICATE OF SERVICE

I, Kenneth Desormes hereby certify that on July 21st, 2011 I served on the Defendants via first class U.S. mail, a true and correct copy of the following documents:

MOTION FOR SUMMARY PARTIAL JUDGMENT

MEMORANDUM OF LAW IN SUPPORT OF MOTION

AFFIDAVIT IN SUPPORT OF MOTION

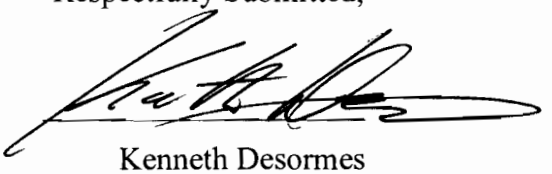
EXHIBITS A - K

Upon the following person:

Scott M. Charmoy, Esq.
1261 Post Road
P.O. Box 804
Fairfield CT 06824

Aaron A. Romney, Esq.
Zeisler & Zeisler, P.C.
558 Clinton Ave.
Bridgeport, CT 06605
Phone: 203-368-4234
Fax: 203-367-9678

Respectfully Submitted,



Kenneth Desormes
4-21 Armstrong court
Greenwich, CT 06830
(203) 622-6089

PLAINTIFF'S EXHIBIT A

STUDENT PROMISSORY NOTE
Fall Semester 2008

$12,122

August 25, 2008

FOR VALUE RECEIVED, Kenneth Desormes , (with its successors and assigns, the **"Maker"**), hereby promise[s] to pay to the order of CHARLOTTE SCHOOL OF LAW, INC., a Delaware corporation (with its successors and assigns, the **"Payee"**), Twelve Thousand One Hundred Twenty-Two Dollars AND Zero Cents ($12,122.00) in lawful money of the United States of America on the balance of principal from time to time outstanding and unpaid hereon from the date hereof until the Maturity Date (defined below). This Note represents the indebtedness incurred by Maker to Payee for tuition and fees owed to Payee in connection with the educational services obtained by Kenneth Desormes, Maker, at Charlotte School of Law in Charlotte, North Carolina, including amounts advanced by Payee to Student.

Total amount owed for Fall 2008 semester is itemized as follows:

$11,448	**Fall 2008 tuition (PART-TIME)**
($0,000)	**Fall 2008 Merit Scholarship award**
$636	**Fall 2008 general fee**
$38	**Fall 2008 SBA fee**
[$12,122]	**Total (Principal)**

INTEREST. Interest shall accrue on the Loan at the fixed rate of zero percent ("0%") per annum from the date this Note is made until the Note is paid in full, or until an Event of Default triggers a different interest rate. To the extent such this Note creates any tax liability to the Maker, the Maker is solely responsibility for such liability.

REPAYMENT: Maker promises to pay to Payee the total principal balance of this Note plus interest on such principal sum, late charges and any allowable reasonable attorney's fees and other costs incurred by Payee in collecting amounts owed, to the extent permitted by applicable law. The indebtedness evidenced by this Note shall be repaid immediately upon Maker's receipt of Title IV Funds, but no later than April 30, 2009 (**"Maturity Date"**). For purposes of this Loan, "Title IV Funds" includes Federal Pell Grants, Federal Supplemental Education Opportunity Grants, Federal Perkins Loans, Federal Subsidized Stafford Loans, Federal Unsubsidized Stafford Loans, Federal PLUS loans and any other federal educational funds. Maker shall apply for Title IV Funds at the earliest date possible and shall ensure that such applications are complete and accurate.

TERMS AND CONDITIONS. This Note may be prepaid in whole or in part at any time without premium or penalty.

The Maker acknowledges that the Payee may assign, transfer, or sell this Note to a third party.

Payment of all amounts due under this Note shall be made at the office of Payee, 2145 Suttle Avenue, Charlotte, North Carolina 28208, Attention: Finance Office or such other place as Payee may from time to time designate in writing. All payments under this Note shall be payable in lawful money of the United States. If payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday, the due date thereof shall be extended to the next succeeding business day.

If Maker's payment or any portion of a regularly scheduled payment is more than 15 days late, a late fee of 4% of the amount currently due with be charged to Maker, subject to the maximum amounts permitted by law.

APPLICATION OF PAYMENTS. All payments on account of the indebtedness evidencing this Note shall be applied: first, to late charges and costs and fees incurred by Payee in enforcing its rights hereunder, including reasonable attorneys fees; and second, to reduce the unpaid principal.

MAKER REPRESENTATIONS. Maker hereby promises to pay costs of collection and reasonable attorneys fees associated with an Event of Default. Maker represents that the information about Maker provided on the signature portion of this Note is true and correct as of the date hereof. Maker agrees that if any such information changes, Maker shall notify Payee of such change in writing within 30 days after the change.

Maker also represents and warrants the following to be true and correct as of the date hereof:

(1) Maker does not owe a refund on a federal grant(s) or loan(s) and is not in default on any federal student loan(s);

(2) Maker is a U.S. citizen;

(3) Maker has a valid Social Security Number (unless Maker is from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau);

(4) Maker has registered with the Selective Service, if Maker is required to under federal law;

(5) Maker has a high school diploma or a General Education Development (GED) Certificate or has passed an exam approved by the U.S. Department of Education;

(6) Maker will be enrolled or accepted for enrollment as a regular student working toward a degree or certificate in an eligible program at a school that participates, or is planning to participate, in the federal student aid programs;

(7) Maker does not have a drug conviction for an offense that would disqualify eligibility for federal student loan assistance.

EVENTS OF DEFAULT. After an Event of Default (defined below) hereunder, any principal sums remaining unpaid hereunder shall bear interest at the rate of sixteen percent (16%) per annum or the maximum rate permitted by law, whichever is less (the **"Default Rate"**) until such Event of Default is cured.

In the event of:

(1) Maker's failure to make any payment due hereunder that continues 15 days past the due date;

(2) the filing by Maker of a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under a chapter of the Bankruptcy Code of 1978, as amended (the **"Bankruptcy Code"**) or any similar law, state or federal, now or hereafter in effect;

(3) the filing by Maker of an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or the inability to pay its debts as they mature;

(4) the non-dismissal, within sixty (60) days after the filing against Maker, of any involuntary proceeding under the Bankruptcy Code or similar law, state or federal, now or hereafter in effect;

(5) the adjudication of Maker as a bankrupt or the entry of an order for relief in respect of Maker by any bankruptcy court;

(6) an assignment by Maker for the benefit of creditors or the admission by Maker in writing of its inability to pay its debts generally as they become due or the consent of Maker to the appointment of a custodian, receiver, trustee or liquidator of all or the major part of its property;

(7) the entry of an order appointing a custodian, receiver, trustee or liquidator of all or a major part of Maker's property which is not vacated within sixty (60) days following the entry hereof;

(8) Maker withdraws as a student from the Charlotte School of Law or otherwise fails to be a full time, degree seeking student;

(9) the failure by Maker to comply with any other obligation under this Note (other than payment of amounts due hereunder, which is an Event of Default under paragraph (1) above) that continues for five days after Payee sends notice to Maker of such failure; or

(10) death of Maker, or if more than one individual is the Maker, death of all Makers;

then an "Event of Default" shall have occurred and Payee shall have the option, without demand or notice, to declare the unpaid principal hereof and all other sums due hereunder, at once due and payable, and to exercise any and all other rights and remedies available at law or in equity to Payee; including the right to turn all or part of the total outstanding debt over to a collection agency.

MISCELLANEOUS. The remedies of Payee shall be cumulative and concurrent and may be pursued singularly, successively or together, and may be exercised as often as occasion therefor shall arise. No act of omission or commission of Payee, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Payee

and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to a subsequent event.

If any Event of Default hereunder shall occur or if suit is filed hereon or if proceedings are held in bankruptcy, receivership, reorganization or other legal or judicial proceedings for the collection hereof, Maker shall pay all costs of collection of every kind, including but not limited to all appraisal costs, reasonable attorneys' fees, court costs, and expenses of every kind, incurred by Payee in connection with such collection or the protection or enforcement of any or all of the security for this Note, whether or not any lawsuit is filed with respect thereto.

Maker hereby waives notice of intent to accelerate, notice of default or dishonor, protest, demand and presentment. Maker agrees that its liability for the payment hereof shall not be affected or impaired by any increase, modification, renewal or extension of the indebtedness or mode and time of payment. It is specifically agreed by the Maker that except as provided below, the Payee shall have the right at all times to decline to make any such increase, modification, renewal or extension of the indebtedness or its mode and time of payment.

HEADINGS. The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof. All words used in this Note shall be construed to be of such gender or number as the circumstances require. The term "Maker" includes all signatories to this Note, regardless of whether the term Maker is expressed in the singular or plural.

GOVERNING LAW. This Note shall be governed by and construed under the laws of the State of North Carolina.

ENFORCEABILITY. If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

TAXES. All taxes and/or fees paid or payable in connection with the delivery of this Note in the State of North Carolina shall be paid by Maker, upon demand.

****

MAKER

Signature: _____ (SEAL)

Printed Full Name: KENNETH DESORMES

Address: 4 Armstrong Court #21
Greenwich, CT 06830

SSN: 080625616
Phone: 203 6226089
Cell: 704 877 4629
Email: Kdesormes@aol.com

Alternate Contact information:
Name: Roselle Alexis
Address: 121 North rd. Milford CT 06906
Phone: 203 874-2073
Email: _____

WITNESS

Name (printed): ESE IYESI

Signature: _____

Date: 8/25/2008

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
Bridgeport Division

2010 OCT 13 PM 2:00

In re: KENNETH DESORMES. Case No. 10-50079
Debtor Chapter 7

KENNETH DESORMES :
: Adv. Proc. No. 10-05014
Plaintiff
:
: ***2nd AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN***
Vs.
:
CHARLOTTE SCHOOL OF LAW, LLC.
NELNET, INC.
INFILAW CORPORATION.
Defendant(s) : October 12th, 2010
:

PRELIMINARY STATEMENT

1. This is an adversary proceeding brought under Bankruptcy Code 11 U.S.C. § 523(a)(8) to determine dischargeability of student loans of the Plaintiff/Debtor. The Plaintiff also raises various claims under applicable non-bankruptcy law against the defendant(s).

JURISDICTION

2. This proceeding is a core proceeding. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §157, §1367 and §1334. Venue of the Plaintiff's Chapter 7 case in this district is proper pursuant to 28 U.S.C. §1408.

PARTIES

3. Plaintiff, Kenneth Desormes is an individual residing at 4 Armstrong Ct. Apt.21, Greenwich CT 06830. He is the debtor in the above-captioned chapter 7 case.

4. Nelnet, Inc. is a Nebraska Corporation operating at 6420 Southpoint Pkwy, Jacksonville FL 32216. It is a lender of private student loans and is represented as a defendant in this case.

5. Charlotte School of Law is a Delaware Corporation operating at 2145 Suttle Ave., Charlotte NC 28208. It is an educational establishment and is represented as a defendant in this case.

Exhibit A

6. Infilaw Corporation is a Florida Corporation operating at 1100 5th Ave. S. Ste. 401, Naples, FL 34102. It is the parent company of Charlotte School of Law and is also represented as a defendant in this case.

GENERAL BACKGROUND

7. Defendants, Charlotte School of Law and its parent company Infilaw Corporation promise scholarships, financial assistance and job placement to prospective students in order to induce them to enroll in their programs. (i.e. "The Sales Pitch").

8. In 2007, Plaintiff failed victim to the Sales Pitch and enrolled at Infilaw's newly constructed establishment, The Charlotte School of Law (hereinafter "CSL").

9. Plaintiff planned to take the NY Bar exam and begin his practice in that State, shortly upon his graduation from CSL.

10. Throughout Plaintiff's education, CSL represented that it was seeking ABA accreditation and if approved, Plaintiff would received Title IV funding (i.e. federal loans) and be able upon graduation to sit for the Bar exam in any State.

11. Defendants' representations that all its graduates would qualify to take the Bar exam in any State were false. According to the NY State Bar Examiners, an applicant may qualify to sit for their Bar exam, only if the student graduates from a school which at all times during the student's attendance was approved by the ABA. (See, Exhibit A)

12. Additionally, Defendant failed to disclose that students attending CSL would be unable to transfer to another institution, as ABA rule prohibits the transfer of students from non-accredited to accredited institutions. (See, Exhibit B)

13. Nevertheless, Plaintiff was unable to transfer to another institution despite his complaints about the quality of the teaching, and most importantly Plaintiff had to resort to high interest student loans from private lenders to fund his education.

14. All of these facts were never disclosed to Plaintiff prior to enrolling at CSL.

15. In the Fall of 2008, Plaintiff under substantial economic duress signed a promissory note (hereinafter "The Note") with CSL for the sum of $12,122 in order to cover his tuition expenses for that semester. (See, Exhibit C)

16. The Note matured and became fully payable in April of 2009 before Plaintiff could graduate, thus causing an eventual default which led to CSL's collection efforts that are the main cause of this complaint, as set forth in the claims below.

CAUSES OF ACTION

Count I
Undue Hardship

17. Debtor repeats and realleges the allegations of paragraphs (1) through (16).

18. Plaintiff suffers from Disc Degenerative disease and is also seeking treatment for alcohol abuse. (See, Exhibit D)

19. Plaintiff's present income consists of approximately $600/month earned from unemployment compensation which is set to expire in November of 2010.

20. Plaintiff's inability to sustain gainful employment is likely to persist for a significant portion of the loan repayment period due to his health and/or incomplete education, also due to the dismal economic environment.

21. Plaintiff made a good faith effort to repay his loans, as evidenced by his past payments on the Nelnet loans. (See, Exhibit E)

22. Due to the underlying circumstances, Plaintiff lacks the resources to repay the aforementioned loans.

Count II
Request for Declaratory Relief

23. Plaintiff repeats and realleges the allegations of paragraphs (1) through (22).

24. Plaintiff seeks relief for declaration that his loans are void and unenforceable as a matter of law pursuant to 11 USC § 523 (a)[1] and the Truth in Lending Act.

25. The loans were not made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution.[2]

26. Plaintiff's loans do not qualify as an "educational loan" under the U.S. Bankruptcy Code; or 26 USC 221(d)(1)(C); or the Federal Reserve Board definition.

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[1] *See, In re* Segal, 57 F.3d 342 (3d Cir. 1995) (When nonprofit hospital paid off debtor's student loans, replacing it with new loans, those new loans were dischargeable because they were not made under a "program" of giving educational loans).

[2] *See, In re* Reis, 274 B.R. 46 (Bankr. D. Mass. 2002) (private student loan made by grandparents not excepted from discharge because not made pursuant to student loan program of governmental unit or by nonprofit entity).

27. Without the obtainment of a diploma or gainful employment, Plaintiff's partial and incomplete education does not constitute an "educational benefit" as per 11 USC § 523(a)(8)(A).

28. Plaintiff's loans violate the Truth in Lending Act in that they fail to provide notices to all holders, to preserve the Plaintiff's ability to raise claims and defenses against the lenders arising from the school's misconduct.[3]

29. Violations of the TILA for improper loan disclosures represent Unfair and Deceptive Trade Practices which are unconscionable and illegal, thus rendering the loans void.

Count III
Declaration of Contractual Unconscionability

30. Plaintiff repeats and realleges the allegations of paragraphs (1) through (29).

31. In the Fall of 2008, Nelnet and all other private lenders stopped issuing loans to CSL's students.

32. Consequently, Plaintiff under substantial economic duress signed a Promissory Note with the finance department of CSL in the amount of $12,122.00 to cover his tuition expenses.

33. The terms of the Note are procedurally unconscionable in that Plaintiff lacked the bargaining power to negotiate any material changes imposed by CSL.

34. In effect, the Note is a contract of adhesion because it was introduced after Plaintiff had already registered and begun attending classes, therefore Plaintiff was presented with no viable options other than to succumb to the debt.

35. Furthermore, the Note offered no grace period, deferment, forbearance or payment arrangements, in contrast the Note matured and became fully payable within a year, thus allowing CSL to initiate collection actions even though Plaintiff had not yet graduated.

36. Lastly, Plaintiff's loan agreement with CSL is illusory, in that the parties executed a contract where no funds were ever exchanged or transferred.[4]

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[3] *See*, 16 C.F.R. §433.2(a); *See, also*, 15 USC §1603.

[4] *See, In re Hill*, 44 B.R. 645 (Bankr. D. Mass. 1984) (establishing a three prong test to determine the formation of a student loan: (1) the student was aware of the credit extension and acknowledged the money owed, (2) the amount owed was liquidated, (3) the extended credit was defined as a "sum of money owed to a person.")

Count IV
Violation of Fair Debt Collection Practices Act

37. Plaintiff repeats and realleges the allegations of paragraphs (1) through (36).

38. In 2009, CSL obtained provisional accreditation from the ABA and Plaintiff was allowed to apply for Title IV funding.

39. Defendant, CSL through his agent confiscated Plaintiff's Title IV funds in order to satisfy his debt obligation on the Note, all through the use of unlawful and deceptive practices.

40. By the actions of his agent, as set forth in this pleading, CSL violated the FDCPA by:

A. Falsely representing the character or legal status of a debt. (See, section 1692(e)(2)(A)).

B. Failing to send written notice of the debt.

C. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

D. The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization. (See, section 1692(e)(14).

41. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

Count V
Unjust Enrichment

42. Plaintiff repeats and realleges the allegations of paragraphs (1) through (40)

43. Plaintiff was induced by the omissions and misrepresentations of the Administrative personnel at CSL or InfiLaw to enroll into their school.

44. Plaintiff relied on those omissions and misrepresentations at his detriment.

45. By virtue of having collected tuition from Plaintiff that was procured through misrepresentations and omissions, Defendants have unlawfully and unjustly retained a benefit at Plaintiff's detriment.

46. Furthermore, the partial and incomplete services provided to Plaintiff were of no value in the absence of means to complete his education or transfer his credits.

47. Defendants have obtained money to which they are not entitled, therefore under these circumstances equity and good conscience require that the defendants return the money with interest to Plaintiff.

48. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

49. Defendant, Nelnet is also subject to plaintiff's claim as a result of the "origination relationship" that existed between CSL and the lender. (*See* 34 C.F.R. § 682.200(b))

Count VI
Breach of Fiduciary Obligation

49. Plaintiff repeats and realleges the allegations of paragraphs (1) through (48)

50. Plaintiff entrusted CSL as his fiduciary to administer his disbursed Title IV funds in a way that best serves his interest.

51. CSL breached that trust by its actions on January 2010 of taking possession of Plaintiff's Title IV funds in order to satisfy an extraneous debt obligation.

52. CSL further breached the trust by failing to act on behalf of the Plaintiff when it executed a Promissory Note that offered no deferment, forbearance, or payment plan.

53. CSL's enforcement of the Note besides the fact that it contained unconscionable terms constituted a breach of fiduciary duty that is normally owed to students by school administrators.

54. As a direct and proximate result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

Count VII
Negligent Lending

55. Plaintiff repeats and realleges the allegations of paragraphs (1) through (54).

56. In acting as lenders of student loans, CSL and InfiLaw inherited a legal duty to exercise reasonable care towards the Plaintiff.

57. InfiLaw and CSL knew or should have known that Plaintiff would be unable to repay the Note or comply with its terms without first graduating, passing the Bar, and gaining employment.

58. Additionally, there exists an actual conflict between Plaintiff's contractual obligation under the Note and the Higher Education Act regulations.

59. Defendants breached their duty by failing to abide by the appropriate legal statutes and principles that govern the execution of the Note and the enforcement actions that ensued.

60. The foregoing unlawful acts by the defendants also constitute willful and knowing violations of N.C. Unfair Trade Practices Act[5], thereunder entitling the plaintiff to recover double or treble actual damages.

WHEREFORE, Plaintiff respectfully request that this Court enter judgment in favor of Plaintiff and against the Defendants as follows:

(1) Assume jurisdiction of this case

(2) Declare the subject student loans dischargeable under 11 U.S.C. § 523(a)(8);

(3) Declare the loans void and unenforceable.

(4) Award the Plaintiff actual, exemplary and treble damages in an amount sufficient to deter future unfair trade practices by the defendants.

(5) Granting such other or further relief as is appropriate.

Dated: 10-13-2010

Kenneth Desormes

[5] N.C. GEN. STAT. § 75-16, 16.1 (2007); *See, also,* N.C. GEN. STAT. § 24-10.2(c) (2007).