UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND
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In re:	:	
SHALLAH SHABAZZ Debtor	:	BK No. 01-10900 Chapter 7
SHALLAH SHABAZZ Plaintiff	:	
v.	:	A.P. No. 01-1065
RHODE ISLAND STUDENT LOAN AUTHORITY, and UNIPAC Defendants	:	

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DECISION AND ORDER DECLARING DEBTOR'S EDUCATIONAL LOANS PARTIALLY DISCHARGEABLE

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

This adversary proceeding was last before the Court for a status report on Debtor's Complaint requesting a determination that her student loan obligations be declared dischargeable. This was the fourth status conference convened in this adversary proceeding which was commenced in 2001. Given the long pendency of the case, the parties, understandably impatient, asked for a final ruling on the merits, once and for all. In accordance with their joint request a hearing was held, and for the reasons discussed below, I conclude that certain of the Debtor's 15 student loans constitute undue hardship and should be discharged under 11 U.S.C. § 528(a)(8), and that certain others are not dischargeable.

BACKGROUND

A review of the travel of this adversary proceeding should be helpful, at least to understand why the matter has been unresolved for so long. In 2001, Shallah Shabazz filed a petition under Chapter 7, and three days before the discharge was entered, she filed the instant adversary proceeding seeking a determination under Section 523(a)(8) that her student loans totaling approximately $50,000 are dischargeable, on the ground of undue hardship. The Rhode Island Student Loan Authority is the real stakeholder here, as co-defendant UNIPAC is merely the loan servicer.

Back in April 2002, at the initial trial in this matter, the Debtor was a 25 year old single mother of two, ages one and seven, and was earning approximately $20,000 per year. She was living an unpretentious lifestyle, i.e., all of her income went for necessary and reasonable living expenses, with her mother helping out financially on occasion. The Debtor is a college graduate with two degrees in computer science, but had not been able to find work in her area of expertise. Nevertheless, given the Debtor's age, intelligence, and initiative, I believed in April 2002 that she had a reasonably bright future, and declined to find the debts dischargeable. Instead, I found that she had insufficient income to pay her educational loans *at that time*, scheduled a status conference in one year, and ordered the Debtor to pay one half of her federal and state income tax refunds to the creditor.

In April 2003, at the continued status conference, Debtor's counsel represented that his client's financial situation had actually worsened, as she was unemployed. In order to establish a proper record, an evidentiary hearing was held where the Debtor testified that her situation was worse than the prior year. Once again, because I still saw what appeared to be the likelihood of increased earning capacity, the Debtor was ordered to continue to pay one-half of her tax refunds to the creditor, and the matter was scheduled for an update in another year.

In July 2004, at a third evidentiary hearing, the Debtor testified that she was still the sole provider for her two children, and did not expect any future help from the fathers of the children. She also stated that after being out of work for nine months she finally landed a job netting $434 per week, moved with the children into a one bedroom apartment for $1,000 per month, drove a 147,000 mile car, and was barely meeting necessary expenses. Once again I found that although this young debtor had no present ability to pay her student loans, she still had potentially higher earning capacity, and the matter was continued for yet another year.

By July 2005, really dissatisfied with the lack of closure, both parties requested an evidentiary hearing, a ruling on the merits, and a final order. Sufficiently embarrassed, and satisfied by now that my optimism on three prior occasions was misplaced, I complied, and based on the evidence and in light of the scrutiny given this matter over four years, I make the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052 and 9014:

The Loans

1. The Debtor received 15 loans from the Defendant between January 1996 and September 1999, totaling $38,560. These were all separate transactions and none of them were consolidated.

2. Including principal and interest, the Debtor owed $45,949 to the Defendants, as of July 18, 2005.

Debtor's Income

3. After successive examinations of the Debtor's income and earning potential, and contrary to my earlier predictions, it is now reasonable to conclude that her financial situation will likely remain constant for the foreseeable future, with little or no prospect of significant improvement.

4. At the request of the Court, the Debtor submitted updated Schedules I and J, which show combined gross income from her regular employment and Navy Reserve pay of $3,429 per month. After deductions for federal income tax ($352), Rhode Island income tax ($97), FICA ($193), Medicare ($543), pension ($186), health insurance ($209), dental insurance ($14), and union dues ($46), her average monthly take home pay is $2,286.

5. In March 2005, the Debtor began receiving $606 per month in child support from the father of her four year old daughter. This court-ordered payment is automatically deducted from the father's salary, and will continue as long as he is employed. The Debtor receives no support from the father of her ten year old son.

6. Since neither the Debtor's income nor her living situation are expected to change significantly going forward, her tax

refunds should continue to be roughly the same as in prior years. In 2004, her federal tax refund was $4,890 and the state refund was $768. These are factored into the Debtor's disposable income at $472 per month.

7. The Debtor's total monthly income is $3,364 ($2,286 in take-home pay, $606 in child support, and $472 in tax refunds).

Debtor's Expenses

8. The Debtor claims monthly expenses of: rent ($850), electricity ($30), phone ($30), medical ($30), car loan ($495), auto and renter's insurance ($147), gasoline, excise tax, and auto maintenance ($150), daycare ($387), laundry ($125), son's school lunches and activities ($43), clothing ($200), food ($385), personal and household items ($50), Johnson & Wales student loans ($60), totaling $2,982. (*See* Debtor's revised schedule J.)

9. The difference between the Debtor's actual monthly income and her actual expenses is $382.

DISCUSSION

The discharge of student loans is permitted under § 523(a)(8) if the debtor establishes by a preponderance of the evidence that payment of the debt will impose an undue hardship on the debtor or his/her dependents. Although Congress has come up woefully short with guidance as to what constitutes undue hardship, some court

rulings have been instructive.[1] For example, when examining whether undue hardship exists, a "totality of the circumstances" test has been used. *Lamanna v. EFS Servs. (In re Lamanna)*, 285 B.R. 347, 353 (Bankr. D.R.I. 2002); *Educational Credit Mgmt. Corp. v. Kelly* (*In re Kelly*) 312 B.R. 200, 207-08 (1st Cir. B.A.P. 2004). That test "requires an analysis of (1) the debtor's past, present, and reasonably reliable future financial resources; (2) calculation of the debtor's and his/her dependents' reasonably necessary living expenses; and (3) any other relevant facts and circumstances surrounding that particular bankruptcy case." *Id.* Also, courts in the First Circuit, including this one, have granted partial discharge of student loan debt, as opposed to using an all or nothing approach, i.e., certain of the debtor's loans may be discharged individually, if requiring payment would cause undue hardship, while other loans whose payment would not cause undue hardship might not be so treated. *See Lamanna*, 285 B.R. 347; *Grigas v. Sallie Mae Servicing Corp. (In re Grigas)*, 252 B.R. 866

[1] Conversely, others have engrafted upon Section 523 a higher than statutory burden, finding that the proper inquiry for determination of discharge is whether "it would be unconscionable to require the debtor to take available steps to earn more income or to reduce expenses in order to repay the loan." *See Cehula v. Sallie Mae Servicing* (*In re Cehula*), 327 B.R. 241, 246 (Bankr. W.D. Pa. 2005); *Chapelle v. Educational Credit Mgmt. Corp.* (*In re Chapelle*), 328 B.R. 565, 570 (Bankr. C.D. Cal. 2005). Words such as "unconscionable" and "hopeless" appear nowhere in the statute, and the use of such a standard is not in my view a reasonable or intended Congressional application of Section 523(a)(8).

(Bankr. D.N.H. 2000). This Court follows the hybrid approach and will grant a partial discharge of student loans, where appropriate.

The Totality of the Debtor's Circumstance

Past, Present, and Future Financial Resources

The Debtor's current net income exceeds her actual[2] expenses by about $382 per month, and although the future is fraught with uncertainty by economic and other events beyond her control, the Debtor's disposable income will probably remain constant. And although no significant pay raises appear likely, recently ordered Family Court child support payments have slightly improved the Debtor's financial situation. The evidence shows, and the Debtor expects that both her income and expenses will remain steady, and at this point there is nothing to suggest otherwise.

Her Reasonable and necessary living expenses

Overall, the Debtor appears to live frugally and within her means. She lives in a one bedroom apartment with her two minor children, because two bedrooms would be too expensive. She does without cable television and Internet access, and makes no allowance for birthday, Christmas or other gifts in her budget. Having said that, however, the Debtor has made at least one ill advised and very expensive misstep. She owned a 1996 high mileage

[2] *Actual* is not necessarily the same as *reasonable*. See discussion below at 7-9.

Nissan Maxima, which in her estimation was costing over $800 a year in repairs, but that number pales when we see what she did to correct the problem. When the brakes malfunctioned last year on her old car, she bought a new Honda Accord for $24,683. When the value of the trade-in was deducted, she ended up financing $23,683 over six years at 14.6%. The total loan is $36,807, and the Debtor's car payment is $497 per month. The Debtor testified that she gave some thought to buying a used car but decided that the Accord was her best option because she was concerned about the children's need for a safe, reliable car. Since there clearly were many far less expensive alternatives of equally reliable new car transportation, the Debtor's decision to buy a new Accord obviously trumped her desire to provide the children with their own bedroom. In the Debtor's circumstances, a monthly car payment of $300 is the maximum that can be allowed.

The Debtor's pension expense is necessary because Rhode Island employee retirement contributions are mandated by state law. R.I. Gen. Laws § 36-10-1; *Parella v. Retirement Bd. of the R.I. Employees' Retirement Sys.*, 173 F.3d 46, 50 (1st Cir. 1999) ("The Rhode Island retirement system is a defined benefit plan, which requires members to contribute a set percentage of their yearly salary...."). The Defendants have provided no authority or reason not to allow the pension contribution, or to rule that any part of

it is unreasonable, so the deduction is allowed in full, as are all of the Debtor's other claimed expenses, except for the $498 car payment.

Other Relevant Facts and Circumstances

The Debtor is an intelligent,[3] motivated young woman with a stable future, and clearly is not destined for a life of poverty. She has two reliable sources of income and there is no evidence of issues with maintaining them. In the absence of unforseen medical issues or other misfortune, the Court does not find any other facts or circumstances of relevance here.

CONCLUSION

After repeated examinations, over a long time, of her earning potential, I find that the Debtor does have the ability to pay *some* of her student loan obligations, *Lamanna*, 285 B.R. 354. The record, however, fails to provide sufficient detail about the loan history to determine which loans should be declared nondischargeable, and which loans should be discharged. But as discussed earlier, the Debtor should not be denied all relief because of this. Accordingly, this Court will delegate the math calculation to the parties as follows: To the extent that the Debtor is able to pay her loans, in chronological order of their

[3] The Debtor's economic common sense, however, evidenced by her ill advised excursion into the car buying world, has somewhat diminished the Court's confidence in her spending judgment.

date of execution, and according to their terms, based on her demonstrated disposable income, those loans are determined to be nondischargeable. The remaining loans, for which there is no present or future source with which to pay them, are discharged. Put another way, the parties should consider, starting with the oldest loan first, the payment terms of each loan, and using the Debtor's present disposable income ($577), establish how far that amount will go towards paying each subsequent loan. At the point where $577 is insufficient to make a full monthly payment on a given loan, that loan and all subsequent loans are discharged. The parties shall submit the result of their calculations to the Court within thirty (30) days.

Enter Judgment consistent with this Order.

Dated at Providence, Rhode Island, this 17th day of January, 2006.

Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 1/17/2006