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JUDGE: M. A. Mahoney

PARTIES: Gus Bahos, II, Teresa Bahos, United States of America, United States Department of Education

CHAPTER: 7

ATTORNEYS: J. A. Johnson, E. A. Seidel

DATE: 6/9/99

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

GUS BAHOS, II
TERESA BAHOS

Case No. 99-10188-MAM-7

Debtors.

GUS BAHOS, II

Plaintiff.

vs.

Adv. No. 99-1019

UNITED STATES OF AMERICA, and
THE UNITED STATES DEPARTMENT
OF EDUCATION

Defendants.

**ORDER AND JUDGMENT DECLARING DEBT
TO DEFENDANTS NONDISCHARGEABLE**

James A. Johnson, Mobile, AL, Attorney for the Debtor
Eugene A. Seidel, Assistant United States Attorney, for the Defendants

This case is before the Court for the trial of the issues. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is declaring the debt nondischargeable.

The parties do not disagree about the facts. The debtor filed this Chapter 7 bankruptcy case on January 15, 1999. He listed a debt on the schedules to The United States Department of Education. The debt arose from student loans he received in 1978 and 1982. The loans were in

the original amounts of \$24,000. Some amounts were paid on the loans. On June 1, 1989, debtor filed a Chapter 7 bankruptcy case. When sued on the debt by the United States in 1990, he raised as an affirmative defense his discharge in bankruptcy. The U.S. District Court held that his June 1, 1989 bankruptcy filing was fourteen days too early to allow discharge of the student loans. In 1989, a debtor could discharge student loans five years after they first became due. His loans first became due June 15, 1984. The District Court order is a final order.

The debtor again filed bankruptcy as previously stated on January 15, 1999. At the present time, student loans are not dischargeable in bankruptcy unless they will impose an undue hardship on the debtor or his dependents. 11 U.S.C. § 523(a)(8). The age of the loans does not matter.

The debtor asks the Court to nevertheless declare the loans nondischargeable based on equitable considerations. This is presumably requested pursuant to 11 U.S.C. § 105(a) which allows a court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Case law indicates that section 105 is not to be used freely, but only for purposes strictly within its confines. *In re Ludlow Hosp. Soc., Inc.*, 124 F.3d 22 (1st Cir. 1997); *Carter v. Peoples Bank and Trust Co. (In re BNW, Inc.)*, 201 B.R. 838 (Bankr. S.D. Ala. 1996). The section specifically states that it is to be used only to carry out the provisions of the Bankruptcy Code. What is being sought in this case does not carry out the Code, it seeks to contravene it. Section 105 is not to be used to “do equity” and ignore title 11. Accordingly, the discharge of the debt must be denied. It is unfortunate that Mr. Bahos missed the timing for discharge by 14 days, but this Court cannot change that fact. The Court can also not change the fact that between his first and second filings the law changed again, making discharge of his loan, except for hardship reasons, unavailable at all.

THEREFORE IT IS ORDERED that the debt owed to the United States of America for student loans incurred by the debtor in 1978 and 1982 are not dischargeable debts in this bankruptcy case.

Dated: June 9, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE