

Student Debtors in Court: Cautionary Tales

by

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There are a host of reasons why student borrowers file lawsuits against their student lenders. Students considering legal recourse to relieve themselves of their student loan debt should be aware that such attempts may result in injurious judgments. Two recent cases, one in which judgment has already been rendered and another that is still in litigation, highlight the severe dangers as well as drawbacks to pursuing lenders in the courtroom.

Ruinous financial repercussions are one reason why borrowers should think twice before filing claims. For instance, a judge in the [U.S. Court of Appeals for the Seventh Circuit](#) in the Eastern District of Wisconsin recently delivered a heavy financial blow to a student loan debtor who was seeking to have his loans discharged in bankruptcy. The plaintiff, Dustin Busson-Sokolik, attended the Milwaukee School of Engineering from 1999 to 2000, and owed \$3,000 in student loan debt. Mr. Busson-Sokolik and his attorney are now facing a judgment of nearly \$32,000 for filing the case, as the judge deemed it to be ‘frivolous.’ Such outcomes were made more likely by Congress’ passage of the [Bankruptcy Abuse Prevention and Consumer Protection Act](#) in 2005. The act made private student loans non-dischargeable in bankruptcy (federal loans have not been dischargeable for several decades), leaving student loan debtors who pursue bankruptcy more vulnerable to these punitive judgments.

The results are not always so extreme, but still do not necessarily offer any guarantees for student loan debtors seeking relief. One such example is the recent ruling of [U.S. District Judge Laurel Beeler](#) in a class action suit filed in the Northern District of California by four plaintiffs against student lending company Sallie Mae. The plaintiffs successfully convinced Beeler to rule against Sallie Mae’s motion to dismiss the lawsuit. It should also be noted, however, that the plaintiffs are not seeking to have their loans discharged in bankruptcy, like Mr. Busson-Sokolik. Instead, they are asserting that Sallie Mae “assessed collection charges of 25 percent of the principal and interest due (regardless of the actual collection costs incurred) and referred the loans to debt collectors.” The plaintiffs argue that the collection charges of 25 percent were illegally added because the defaulted loans had not yet been assigned to debt collectors.

The plaintiffs attended the California Culinary Academy, a for-profit school, in San Francisco, California. They received private (non-federally funded) loans from Sallie Mae’s Signature Student Loan program between September 2002 and September 2004. In addition to the unreasonable collection charges, the “plaintiffs also allege that Sallie Mae report[ed] the total outstanding balance of each private loan, including any applicable collection penalty, to various

credit reporting agencies on a monthly basis. That mean[t] that each plaintiff's collection penalties [were] included in the private loan balance on the credit report, which adversely affect[ed] each plaintiff's credit-worthiness, credit history, and credit score." Student loans by themselves can hurt one's credit score, especially if the report shows a sizeable debt-to-income ratio. Unfortunately, that is oftentimes the case for many student loan debtors, i.e., they owe more debt than what they earn. In this case, the plaintiffs claim that their defaulted loans have had devastating results on their credit scores due to the additional reporting of the collection penalties.

Again, this particular lawsuit demonstrates the drawbacks to pursuing legal action against one's student lender. First, the loans that are in dispute were last obtained over seven years ago (in 2004). This fact illustrates how long the legal process can take to potentially resolve a student loan debt issue. Second, the case reveals how difficult it is for student loan borrowers to achieve relief. Although Beeler has not dismissed the class action suit, it remains to be seen if there will even be a positive outcome for the former culinary students after much effort and time.

Both cases ought to serve as cautionary tales to why it is important to be fully prepared for the legal outcome of a case brought against your student lender. In the case of Mr. Busson-Sokolik, there is the possibility of facing significant and long-lasting financial loss, coupled with higher fines than the original debt incurred. Although the plaintiffs in the on-going case against Sallie Mae in Northern California have received some favorable rulings from Beeler, the lawsuit reveals how long the process takes, and even then the outcome is unclear. In order to avoid legal action against a student lender, it is important to read the fine print on a loan before signing it. Prospective borrowers need to be fully aware of the lender's terms of repayment, deferment, and forbearance. For those who already have student loan debt, it is critical to keep track of conversations and all documents received from their student lender. Borrowers need to keep a paper trail, which means creating a student loan debt file that also contains copies of all letters and documents that are sent to the lender (sending these materials by certified mail is helpful). If a borrower is having difficulty paying their loans back, they should inquire about alternative plans with their lender. Finally, avoiding default is crucial, even if that means taking another job or reaching out to family or friends for financial support.

Related Links

"Supreme Court Rules for Debtor in Student Loan Discharge Case," FindLaw, March 24, 2010 (accessed on February 22, 2011 at <http://blogs.findlaw.com/decided/2010/03/sup-ct-rules-for-debtor-in-student-loan-discharge.html>).

"South Carolina Bankruptcy Court Rules On Student Loan Discharge," Charleston Bankruptcy Blog, February 22,

2011(<http://www.scbankruptcyattorney.com/blog/south-carolina-bankruptcy-court-student-loans/2010/09>)