

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:04-bk-10966-ABB
Chapter 7

REBECCA L. DIXON,

Debtor.

REBECCA L. DIXON,

Plaintiff,

vs.

Adv. Pro. No. 6:04-ap-00228-ABB

BRAZOS STUDENT FINANCE
CORPORATION,

Defendant.

ORDER

This matter came before the Court on the Motion of Brazos Student Finance Corporation for a New Trial or, Alternatively, Motion for Additional Findings of Fact and Law (“Motion”) (Doc. No. 88) filed by the intervening Defendant, Brazos Student Finance Corporation, herein (“Defendant”) against Rebecca L. Dixon, the Plaintiff and Debtor, herein (“Debtor”). The Defendant’s Motion is in response to this Court’s Order on Oral Motions and Pronouncements (“Order”) (Doc. No. 85) entered on July 26, 2007 in favor of the Debtor, discharging her student loans.

A final evidentiary hearing was held on the Motion on October 12, 2006 at which the Debtor’s and the Defendant’s respective counsel appeared. The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

Background

The Debtor filed her Chapter 7 bankruptcy petition on October 6, 2004.¹ She instituted this

¹ Pub. L. No. 109-8, 119 §220 (2005). The Bankruptcy Abuse Prevention and Consumer Protection Act

adversary proceeding by filing a Complaint² against Bank of America to determine the dischargeability of her student loans pursuant to 11 U.S.C. Section 523(a)(8). The Defendant successfully intervened pursuant to this Court’s Order entered on June 10, 2005³ because the promissory notes executed and issued by the Debtor to Bank of America were ultimately assigned to the Defendant.

The Debtor seeks in her Amended Complaint the discharge of her student loan debt asserting the loans made by Bank of America to the Debtor were not “made under any program funded in whole or in part by a governmental unit or non-profit institution,” therefore not falling within the ambit of Section 523(a)(8). The Debtor contends even if the disposition of the loans fell within this provision of Section 523(a)(8), their discharge continues to be necessary after consideration of the “undue hardship” element. Count III of the Debtor’s Amended Complaint asserts discharge of the student loan debt is appropriate because the debt was incurred by misrepresentation.

The Defendant submitted two affidavits⁴ substantiating its existence as a non-profit institution and establishing it purchased the student loans from Bank of America. The Debtor’s attorney submitted a letter to the Court following a status conference held on November 6, 2006 addressing the following:

. . .[C]ounsel for Brazos Student Finance Corporation (“Brazos”) advised me that the loans at issue in the Adversary Proceeding are not government guaranteed student loans. In addition, Brazos will not be seeking relief to file any cross-claims or third party claims in the Adversary Proceeding.⁵

(“BAPCPA”) was enacted on April 20, 2005. The new law became generally effective on October 17, 2005. BAPCPA does not govern the Debtor’s bankruptcy case or this adversary proceeding although several of the pleadings appear to utilize the new law.

² Doc. No. 1, amended on September 6, 2006 at Doc. No. 80, Amended Complaint to Determine Dischargeability of Debt (“Amended Complaint”).

³ Doc. No. 19.

⁴ Doc. No. 36 Affidavit of Non-Profit Corporation Status and Doc. No. 47 Affidavit of Process Whereby the Student Loans at Issue Were Obtained and/or Purchased from Defendant, Bank of America, N.A., by Intervenor, Brazos Student Finance Corporation and Account of Payment History.

⁵ Doc. No. 83.

A second status conference was held on December 13, 2006 where the parties stipulated the loans at issue were not guaranteed by the government, and, therefore, did not comply with the requirements of Section 523(a)(8).⁶ Entry of the Court's Order followed, corroborating with the agreement of the parties and ordering the student loans of the Debtor be discharged. The Order's foundation was the declaration made in open court that section 523(a)(8) was not applicable.

Defendant's Motion

The Defendant is seeking the order of a new trial pursuant to Federal Rule of Civil Procedure 59(a)(2), which is made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9023. *In re Waczewski*, Case No. 6:06-bk-00620-KSJ, 2006 WL 1594141 (Bankr. M.D. Fla. May 5, 2006); *In re Mathis*, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004). The Defendant contends in its Motion "the Court did not take into consideration the evidence in the record that Brazos is a non-profit corporation. . ."⁷ The Defendant, alternatively, seeks amendment of the Order pursuant to Federal Rule of Civil Procedure 52, made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 7052(a), with the issuance of additional findings of fact and law addressing the Defendant's nonprofit status and setting forth the factual and legal basis for finding the debt is dischargeable.

Rule 59 does not specify grounds for relief, but the United States Supreme Court has articulated "[w]here the practice permits a partial new trial, it may not properly be resorted to unless it clearly appears that the issue to be retried is so distinct and separable from the others that a trial of it alone may be had without injustice." *Gasoline Prods. v. Champlin Refining Co.*, 283 U.S. 494, 500 (1931); *see also Overseas Private Inv. Corp. v. Metropolitan Dade County*, 47 F.3d 1111, 1113 (11th Cir. 1995). "A trial court should not grant a new trial merely because the losing party could probably present a better case on another trial." *Hannover Ins. Co. v. Dolly Trans Freight, Inc.*, Case No. 05-cv-576-Orl-19DAB, 2007 WL 170788 (M.D. Fla. January 18, 2007). "A motion for a new trial in a nonjury case. . .should be based upon manifest error of law or mistake of fact, and a judgment should be not set aside except for substantial reasons." *Ball v. Interoceanica Corp.*, 71 F.3d 73, 76 (N.Y.S.2d 1995).

The Defendant has not presented an issue which is so distinct and separable from the others already tried to necessitate a new trial. The Motion is premised on receiving a second bite at the apple. The Defendant has presented no newly-discovered evidence or manifest error of law or fact warranting a new trial. No basis for a new trial or amendment of the Order has been established pursuant to Federal Rule of Civil Procedure 59(a)(2). The Defendant's Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion is hereby **DENIED**.

Dated this 29th day of August, 2007.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

⁶ Hearing Proceeding Memo found at Doc. No. 84.

⁷ Doc. No. 88, p. 1, ¶ 1.