

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

McKay v. Ingleson

558 F.3d 888 (9th Cir. 2009) · No. No. 07-35362 · Decided February 23, 2009

SUMMARY

The Ninth Circuit held that a student's agreement with Vanderbilt University to defer payment for tuition, housing, dining, and related charges constituted a loan under 11 U.S.C. § 523(a)(8). Because the student loan was nondischargeable, the university's attorney did not violate the bankruptcy discharge injunction by attempting to collect it.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Diarmuid F. O'Scannlain; Susan P. Graber; Jay S. Bybee
JURISDICTION	Federal
DECIDED	February 23, 2009
DOCKET	No. 07-35362
DISPOSITION	affirmed
PROCEDURAL POSTURE	McKay appealed from the District of Oregon's affirmance of a bankruptcy court ruling rejecting her claim that collection efforts violated the discharge injunction.
STANDARD OF REVIEW	The court determined de novo whether the Agreement constituted a loan under 11 U.S.C. § 523(a)(8).
PRECEDENTIAL VALUE	Published Ninth Circuit opinion; precedential
PARTIES	Elle Melissa McKay v. John B. Ingleson

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QUESTIONS PRESENTED

1. Whether McKay's account and deferment agreement with Vanderbilt constituted a loan under 11 U.S.C. § 523(a)(8).
2. Whether the collection action violated the bankruptcy discharge injunction under 11 U.S.C. § 524.

HOLDINGS

1. The Agreement constituted a loan for educational expenses even though it operated as a deferred-payment or revolving-credit arrangement and no money was directly exchanged between Vanderbilt and McKay.
2. Ingleson could not have violated the discharge injunction by attempting to collect the account because McKay's student loan was excepted from discharge under § 523(a)(8).

KEY QUOTATIONS

“Because McKay’s student loan was exempt from discharge under § 523(a)(8), Ingleson could not have violated the discharge injunction by attempting to collect the loan.” (2076)

“The Johnson court’s analysis is persuasive, and we find no relevant differences between the Agreement here and the arrangement in Johnson.” (2075)

FACTUAL BACKGROUND

McKay signed Vanderbilt University's Graduate and Professional Student Account and Deferment Agreement, under which she could defer payment for educational services and was required to repay charges by specified dates, with late fees on unpaid balances. Her account incurred approximately \$13,142.07 in tuition, housing, dining, activity, and other charges, plus late fees. After McKay received a bankruptcy discharge, Vanderbilt's attorney pursued collection of the account through a state-court action and obtained a default judgment.

PROCEDURAL HISTORY

McKay filed for bankruptcy on June 4, 2003, and received a discharge on September 17, 2003. In 2005, Ingleson, acting for Vanderbilt University, filed a state-court collection action alleging that McKay had failed to pay her loan; the state court entered a default judgment in January 2006. McKay then commenced an adversary proceeding against Ingleson and Vanderbilt under 11 U.S.C. § 524. The bankruptcy court ruled against her, the district court affirmed, and the Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Barstow v. IRS (In re Bankr. Estate of Mark Air, Inc.), 308 F.3d 1038, 1041 (9th Cir. 2002)
- General Electric Capital Corp. v. Future Media Products, Inc., 547 F.3d 956, 958 (9th Cir. 2008)
- Quicken Loans, Inc. v. Wood, 449 F.3d 944, 949-50 (9th Cir. 2006)
- Johnson v. Missouri Baptist College (In re Johnson), 218 B.R. 449, 456-57 (B.A.P. 8th Cir. 1998)

- *Andrews University v. Merchant (In re Merchant)*, 958 F.2d 738, 741 (6th Cir. 1992)
- *President of Ohio University v. Hawkins*, 317 B.R. 104, 110 (B.A.P. 9th Cir. 2004)
- *Navarro v. University of Redlands (In re Navarro)*, 284 B.R. 727, 732, 734 (Bankr. C.D. Cal. 2002)
- *Arpin v. Santa Clara Valley Transportation Agency*, 261 F.3d 912, 919 (9th Cir. 2001)

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