

BK 95
(Rev. 8/83)

United States Bankruptcy Court

For the NORTHERN District of IOWA

IN RE: JON B. LARSEN, Debtor. Chapter 7

JON B. LARSEN,

Plaintiff

v.

HIGHER EDUCATION ASSISTANCE
FOUNDATION,

Defendant

FILED Case No. X88-00720M
U.S. BANKRUPTCY COURT & C
NORTHERN DISTRICT OF IOWA

DEC 22 1989

BARBARA A. EVERLY, Proceeding No. X88-0199M

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable William L. Edmonds, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered.

(OR)

The issues of this proceeding having been duly considered by the Honorable William L. Edmonds, United States Bankruptcy Judge, and a decision having been reached without trial or hearing.

IT IS ORDERED AND ADJUDGED:

that Higher Education Assistance Foundation shall recover from defendant, Jon B. Larsen, the sum of \$11,567.32 plus interest as by law provided from and after December 21, 1989. This judgment is non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(8). Counterclaimant's recovery of legal fees is denied.

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copies mailed with order
12/22/89,

BARBARA A. EVERLY

Clerk of Bankruptcy Court

(Seal of the U.S. Bankruptcy Court)

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
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NORTHERN DISTRICT OF IOWA

DEC 22 1989

BARBARA A. EVERLY, CLERK

IN RE:

JON B. LARSEN,
Debtor.

Chapter 7

Bankruptcy No. X88-00720M

JON B. LARSEN,
Plaintiff,

Adversary No. X88-0199M

vs.

HIGHER EDUCATION ASSISTANCE
FOUNDATION,
Defendant.

ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
ON COUNTERCLAIM

The matter before the court is the motion for summary judgment filed by the defendant on its counterclaim. Hearing on the motion was held telephonically on December 21, 1989. Larry Eide appeared on behalf of the counterclaim-defendant Jon B. Larsen. Thomas P. Peffer appeared on behalf of counterclaimant Higher Education Assistance Foundation.

FINDINGS OF FACT

Jon B. Larsen, debtor-plaintiff, filed this adversary complaint on August 8, 1988 seeking a determination that his indebtedness to Higher Education Assistance Foundation is dischargeable as an exception to 11 U.S.C. § 523(a)(8) because excepting such debt from discharge would impose an undue hardship on the debtor. On September 6, 1988, Higher Education Assistance Foundation

filed its answer and counterclaim. In its counterclaim, defendant sought judgment against the defendant for the unpaid indebtedness and a determination that such indebtedness was not dischargeable. Counterclaimant also sought legal fees pursuant to the promissory notes. On August 8, 1989, Larsen filed a motion to dismiss his complaint against the defendant. On August 29, 1989, the court granted the motion to dismiss but retained jurisdiction of defendant's counterclaim upon which a motion for summary judgment, filed by the counterclaimant, was pending.

In support of the motion for summary judgment, the attorney for the counterclaimant filed an affidavit in support of his client's claim for legal fees. An affidavit was also filed by counterclaimants in support of the motion for summary judgment.

The motion for summary judgment was not resisted.

Based on the affidavit and the failure to resist, the court finds that the allegations contained in the counterclaim are true and that there is no genuine issue as to any material fact and the counterclaimant is entitled to judgment as a matter of law.

Since counterclaimant seeks recovery of legal fees based on its promissory notes, such recovery must be under state law. Recovery of legal fees provided for in a promissory notes are governed by the notes themselves, and by Iowa Code § § 625.22 and 625.24. The affidavit of counsel for the counterclaimant fails to include the necessary provisions as set out in § 625.24 of the Iowa Code.

CONCLUSIONS OF LAW

The indebtedness of Jon B. Larsen to Higher Education Assistance Foundation is a non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(8)

ORDER

IT IS ORDERED that judgment shall enter that Higher Education Assistance Foundation shall recover from defendant, Jon B. Larsen, the sum of \$11,567.32 plus interest as by law provided from and after December 21, 1989. This judgment is a non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(8). Counter-claimant's recovery of legal fees is denied.

SO ORDERED ON THIS 22nd DAY OF DECEMBER, 1989.



William L. Edmonds, Bankruptcy Judge

cc: Larry S. Eide
Thomas P. Peffer
U. S. Trustee
on 12/22/89, *lm*