

UNITED STATES BANKRUPTCY COURT  
FOR THE  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON DIVISION

IN RE:

MICHAEL DAVID MCVEY

DEBTOR(S)

MICHAEL DAVID MCVEY

PLAINTIFF(S)

VS.

U.S. TRAINING ACADEMY, et al

DEFENDANT(S)

CASE NO. 86-00597

ADVERSARY PROCEEDING

NO. 87-0147

AUG 25 1988

OPINION-ORDER

This matter is before the Court on the defendants', Higher Education Assistance Foundation ("HEAF"), motion in limine and/or partial summary judgment. We have reviewed the record in this case, and for the reasons set forth below, find that the defendants' motion in limine be, and hereby is SUSTAINED.

The plaintiff, Michael David McVey, filed his Chapter 7 bankruptcy petition on August 4, 1986. In August of 1987, the plaintiff filed an amended complaint against the U.S. Training Academy, HEAF and the U.S. Department of Education to determine dischargeability of an educational loan. The plaintiff obtained the student loan in May of 1985 in order to pay tuition for a course offered by the U.S. Training Academy involving truck driver training.

In his complaint, the debtor alleges that the U.S. Training Academy made misrepresentations to him concerning the structure of the course. In particular, the plaintiff states that the school represented to him that he would not have to

quit his job and relocate in order to complete the course. As it turned out, the plaintiff, in fact, was required to relocate in order to complete his education and so, consequently, he was forced to drop out of the program. The complaint also explains the plaintiff's financial struggles in supporting his wife and their six children on a \$4.50 an hour job<sup>and</sup> requests the Court to find that the student loan is dischargeable in bankruptcy on the grounds that excepting such debt from discharge will impose an undue hardship on the plaintiff.

HEAF now moves the Court for an order restricting the plaintiff from introducing any evidence concerning any misrepresentations of the U.S. Training Academy at the trial and/or granting the defendant a partial summary judgment striking from the complaint and other pleadings of the plaintiff any reference to misrepresentations made by the U.S. Training Academy. In its motion, HEAF argues that it is a holder in due course of the promissory note evidencing the guaranteed student loan and is, therefore, not subject to the defenses that the plaintiff may have against the U.S. Training Academy. HEAF admits that the holder in due course rule has been limited by the Federal Trade Commission's ("FTC") rule on preservation of consumer claims and defenses. See 16 C.F.R. §433.2. However, HEAF explains that the FTC rule only applies to a purchase money loan which is received by a consumer in return for a "finance charge" within the meaning of the Truth in Lending Act and Regulation Z. Since guaranteed student loans are clearly exempt from the Truth in Lending Act, HEAF contends that the FTC rule simply does not apply to this case 12.C.F.R. §226(f).

In response, the plaintiff argues that in 1975 when the FTC ruling was promulgated, Regulation Z and the Truth in Lending Act covered student loans. It was not until October 15, 1982, that student loans became exempt from the Act. Therefore, it is the plaintiff's contention that the drafters of the FTC rule must have intended to incorporate that version of Regulation Z in existence at the time the FTC rule was promulgated.

This Court understands and appreciates the arguments set forth by the plaintiff. However, 16 C.F.R. §433.1(d) clearly defines a purchase money loan as being a "cash advance which is received by a consumer in return for a 'finance charge' within the meaning of the Truth in Lending Act and Regulation Z . . ." (Our emphasis) In 1982, when the Truth in Lending Act was amended to exclude student loan programs, the Federal Trade Commission could have initiated its own amendment to preserve its coverage of student loans under 16 C.F.R. §433.1(d).

Since this Court finds that the FTC rule is inapplicable to HEAF, we conclude that as a holder in due course of the promissory note, HEAF is not subject to the defenses that the plaintiff may have against the U.S. Training Academy. Accordingly, the plaintiff is barred from introducing any evidence at trial or attempting to assert defenses which he may have against the U.S. Training Academy.


NOW, THEREFORE,

IT IS ORDERED that the defendants' motion in limine be, and hereby is SUSTAINED.

A copy of the foregoing Opinion-Order was mailed to: Michael David McVey, Debtor/Plaintiff, 315 Holman Street, Covington, KY; Richard Cullison, Counsel for Debtor/Plaintiff,

Northern Kentucky Legal Aid, 302 Greenup Street, Covington, KY  
41011 and Ed Stumpp, Counsel for Defendant, 1000 First Security  
Plaza, Lexington, KY 40507.

Louisville, Kentucky  
August 25, 1988 ls



---

J. WENDELL ROBERTS  
UNITED STATES BANKRUPTCY JUDGE