ELA Case Commentary

In-depth explanation and commentary on a case of interest June 2019

Vicki Jo Metz Won a Partial Bankruptcy Discharge of Her Student Loan, and Her Victory Was Upheld on Appeal

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Vicky Jo Metz borrowed $16,613 back in the 1990s to attend a community college, but she never got a degree. Over the years, she filed for bankruptcy three times, but she continued making payments on her student loan under court-approved repayment plans. In fact, she paid almost 90% of what she originally borrowed.[1]

Nevertheless, Metz's student-loan debt kept growing due to accruing interest. By 2018, her total debt had grown to $67,277—four times what she borrowed.[2]

In 2017, Metz commenced an adversary proceeding in a Kansas bankruptcy court, seeking to discharge her student loan. Her creditor, Educational Credit Management Corporation (ECMC), objected to a discharge. Put Metz in an income-based repayment plan (IBRP), ECMC demanded.

But Bankruptcy Judge Robert Nugent disagreed. Metz, who was 59 years old, would never pay off her student loan under an IBRP, Judge Nugent reasoned. On the contrary, if Metz entered a 25-year IBRP and faithfully made her income-based monthly payments, her debt would continue to grow due to accruing interest. By the time Metz completed her repayment plan, she would owe $157,277—*nine times what she borrowed*![3] Although her student-loan debt would be forgiven after 25 years of making payments, Metz would face significant tax liability because the IRS considers forgiven debt as taxable income.

Judge Nugent granted Metz a partial discharge of her student loan. He canceled all the accrued interest on her student debt but required her to pay the original $16,613.[4]

ECMC appealed Judge Nugent's decision to a federal district court, where Judge John Broomes upheld Judge Nugent's ruling. Like Judge Nugent, Judge Broomes applied the three-part *Brunner* test to determine whether it would be an undue hardship for Metz to repay her student loan.[5]

In Judge Broomes' view, Metz could not repay her student loan and maintain a minimal standard of living.[6] Thus, she met part one of the *Brunner* test. The bankruptcy court had determined that Metz would need to pay $564.60 a month under an income-based repayment plan in order to fully repay her student loan, which Metz could not do at her present income level, even if she were "stripped bare of anything other than her survival needs."[7] In Judge Broomes' view, the bankruptcy court's finding that Metz could not pay off her student loan while maintaining a minimal standard of living was not clearly erroneous.[8]

Moreover, she met part two of *Brunner* because her financial situation was not likely to change.[9] Indeed, Judge Broomes observed, "ECMC does not make a colorable argument that Metz could ever truly repay her loan."[10] On the contrary, Metz, who was 59 years old when she filed her adversary proceeding, "will not see a significant increase in her income, she is approaching retirement age, her payments under [an income-based repayment plan] would not even cover the interest on her loan, and it will continue to grow."[11]

Finally, in Judge Broomes' view, Metz met part three of the *Brunner* test because she had handled her student loan in good faith.[12] ECMC argued that Metz failed the good-faith test because she "failed to apply for the income-based repayment plans, failed to minimize her expenses, and her student loan debt was a motivating factor in one of her [previous] bankruptcy proceedings."[13]

But Judge Broomes disagreed:

The record shows that Metz has continually paid on her student loan while in Chapter 13 proceedings. Essentially, Metz has been paying on a bankruptcy plan since 2001. The bankruptcy court held that Metz made nearly all payments required in the 2001 [Chapter 13] case and completed both plans in her 2006 and 2012 case. The court agrees with the bankruptcy court that this was 'no mean feat and it shows that she intended to pay at least some of her student-loan debt.[14]

Moreover, Judge Broomes continued, Metz's failure to apply for an income-based repayment plan did not show bad faith. "Metz believed that she could not afford a payment under the income-based repayment plans and that belief has not been shown to be in bad faith."[15] In addition, Judge Broomes pointed out, under the circumstances of Metz's case, "Metz's payments under the income-based repayment plans would not stop the accrual of additional interest and her payments would therefore contravene the fresh start policy of the Bankruptcy Code."[16]

In short, the court found that Metz had made a good faith effort to pay her student loan, but that she would never be able to repay the entire loan even if she entered an income-based repayment plan. The court found that Metz met the good faith test under *Brunner* and that the bankruptcy court had not erred in its decision to discharge the interest on Metz's student loan.

In its appellant's brief, ECMC had argued that Metz should be placed in an IBRP and downplayed the tax consequences of such a plan. Metz would probably suffer no tax consequences from an IBRP, ECMC maintained, because she would likely be flat broke when her IBRP concluded. Under current law,

ECMC pointed out, individuals pay no federal tax on forgiven debt if they are insolvent at the time the debt is forgiven.

In a footnote, Judge Broomes pointed out the absurdity of ECMC's position "The import of that argument," Judge Broomes wrote, "is that under ECMC's plan, [Metz] will be kept insolvent, if not entirely impoverished, until she is eighty years old and the debt is forgiven—what a pleasant system."[17]

Judge Broomes' *Metz* decision is the second, recent appellate court decision out of Kansas to uphold a bankruptcy court's partial discharge of student-loan debt. The first decision, *Educational Credit Management Corporation v. Murray*, upheld a partial discharge to Alan and Catherine Murray, a married couple in their late forties, whose student-loan debt had quadrupled over 20 years due to accruing interest.[18]

Together, *Metz* and *Murray* stand for the proposition that long-term, income-based repayment plans are not appropriate for insolvent student-loan debtors when it is clear that debtors in these plans will never pay off their loans. Had ECMC had its way with Vicky Jo Metz, she would have made monthly student-loan payments for a quarter of a century—until she was in her eighties. At that point, she would face a huge tax bill for approximately $150,000 in forgiven debt, or she would be insolvent. As Judge Broomes remarked: "[W]hat a pleasant system."[19]

ENDNOTES

1 Educ. Credit Mgmt. Corp. v. Metz, Case No. 18-1281-JWB, slip op. at 2 (D. Kan. May 2, 2019) [hereinafter *ECMC v. Metz*) (finding that Metz had paid a total of $14,789.02 of her original student-loan debt in the amount of $16,613.73).

2 *Id*. at slip. op. at 3.

3 Metz v. Educ. Credit Mgmt. Corp., 589 B.R. 750, 755 (Bankr. D. Kan. 2018), *aff.d*, Educ. Credit Mgmt. Corp. v. Metz, Case No. 18-1281-JWB (D. Kan. May 2, 2019).

4 *Id*. at 760.

5 ECMC v. Metz at slip. op. 5 (citing Educ. Credit Mgmt. v. Polleys, 356 F.3d 1302, 1307, quoting Brunner v. New York State Higher Educ. Services, 831 F.2d 395, 396 (2d Cir. 1987)).

6 *Id*. at slip op. 11.

7 *Id*. at slip op. 7 (quoting bankruptcy court opinion).

8 *Id*.

9 *Id*. at slip op. 12.

10 *Id*. at slip op. 10.

11 *Id*.

12 *Id*. at slip op. 14.

13 *Id*. at 12.

14 *Id*. at slip op. 13-14.

15 *Id*. at slip. op. 14.

16 *Id*.

17 *Id*. at 10 n. 7.

18 Educ. Credit Mgmt. Corp. v. Murray, No 16-2838, 2017 WL 4222980 (D. Kan. Sept. 22, 2017).

19 ECMC v. Metz slip op. at 10 n. 7.

∗ The author wrote the amicus brief on behalf of the National Consumer Law Center, the National Consumer Bankruptcy Rights Center, and the National Association of Consumer Bankruptcy Attorneys in support of Vicky Jo Metz in the case that is the subject of this commentary. Read more from Richard Fossey on this subject at his blog, Condemned to DEBT: The Student Loan Crisis, at condemnedtodebt.org.