

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ZENA DENISE CRENSHAW LOGAL,) CASE NO. 05-67947 JPK
) Chapter 7
) Debtor.)
) *****)
ZENA DENISE CRENSHAW LOGAL,)
) Plaintiff,)
) v.) ADVERSARY NO. 06-6045
EDUCATIONAL CREDIT MANAGEMENT)
CORPORATION, STATE OF INDIANA,)
SUPREME COURT OF INDIANA,)
) Defendants.)
)
UNITED STATES OF AMERICA)
) Intervenor Defendant)

ORDER CONCERNING ASSERTION OF
UNCONSTITUTIONALITY OF 11 U.S.C. § 523(a)(7)

By order entered on October 25, 2007, the Court stated that matters in this adversary proceeding with respect to the plaintiff's assertion of the unconstitutionality of 11 U.S.C. § 523(a)(7) – as that assertion was defined in the October 25, 2007 order – would be the subject of a separate order and separate notice to the United States of America pursuant to 28 U.S.C. § 2403(a). By its order of Certification Pursuant 28 U.S.C. § 2403(a) entered on October 4, 2007, the Court provided notice to the United States of America pursuant to 28 U.S.C. § 2403(a) of a potentially asserted constitutional challenge to 11 U.S.C. § 523(a)(7). The United States of America filed a motion to intervene in this action on December 14, 2007, which motion was granted by order entered by the Court on January 7, 2008.

By separate order, the Court has determined that the plaintiff is precluded – by order of the United States Court of Appeals for the Seventh Circuit entered on August 24, 2007 in case number 06-2046 in the United States Court of Appeals for the Seventh Circuit – from filing any papers in this adversary proceeding in relation to her assertions that 11 U.S.C. § 523(a)(7)

violates the Constitution of the United States of America. In fairness – and because the record is sufficient for determination of this issue – in that order the court also precluded the United States of America from filing further papers with respect to this issue, as well.

The record in this adversary proceeding in relation to the plaintiff's assertions as to 11 U.S.C. § 523(a)(7)'s violation of the United States Constitution is thus closed. The Court will enter its decision at this time with respect to the plaintiff's assertions that 11 U.S.C. § 523(a)(7) violates the Constitution of the United States of America.

The record is comprised of the four documents designated in the October 4, 2007 Certification, and whatever may be derived from those documents as the plaintiff's contentions. There is no factual record, and indeed in view of the plaintiff's contentions, the court deems it unnecessary for there to be one.

Crenshaw Logal's contentions are far from clear, but the essence of her claim appears to be that the failure of 11 U.S.C. §523(a)(7) to provide a defense to its designation of a nondischargeable debt, based upon financial inability or financial hardship with respect to paying that debt, is somehow Constitutionally infirm.

The simple fact of the matter is that there exists no constitutional right to obtain a discharge of one's debts in bankruptcy; the right to a discharge in bankruptcy is not a "fundamental" right demanding a compelling governmental interest as a precondition to regulation. *United States of America v. Kras*, 409 U.S. 434, 93 S.Ct. 631, 632 (1973); *Grogan v. Gamer*, 498 U.S. 279, 286, 111 S.Ct. 654, 659 (1991) ([The] debtor has no constitutional or "fundamental" right to a discharge in bankruptcy.); *United States of America v. Merritt*, 186 B.R. 924, 932 (Bankr. S.D.Ill. 1995); *In re Fitzgerald*, 167 B.R. 689, 691 (Bankr. N.D.Ga. 1994); *In re Higginbotham*, 111 B.R. 955, 966-67 (Bankr. N.D.Okl. 1990); *In re Connelly*, 59 B.R. 421, 448 (Bankr. N.D.Ill. 1986). Rather, it is a privilege and not a right. *In re Juzwiak*, 89 F.3d 424, 427 (7th Cir. 1996); *In re DeBruin*, 144 B.R. 90, 94 (Bankr. E.D.Wis. 1992). Unlike the right to appeal

a criminal conviction or to attempt to redress a violation of civil rights, obtaining a discharge in bankruptcy is a matter of legislative grace, not a constitutional right. *United States of America v. Merritt*, 186 B.R. 924, 932 (Bankr. S.D.IL 1995) (*citing*, Kras, 409 U.S. at 446-46, 93 S.Ct. at 638-39.) As a result, an individual seeking the benefit of bankruptcy legislation has no constitutional right of access to the courts. *Id.* This concept is apparent from the Constitution itself:

The Constitution, Art. I, § 8, cl. 4, merely authorizes the Congress to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." Although the first bankruptcy law in England was enacted in 1542, 34 & 35 Hen. 8, c. 4, and a discharge provision first appeared in 1705, 4 Anne, c. 17, primarily as a reward for cooperating debtors, J. MacLachlan, *Bankruptcy* 20-21 (1956), voluntary bankruptcy was not known in this country at the adoption of the Constitution. Indeed, for the entire period prior to the present Act of 1898, the Nation was without a federal bankruptcy law except for three short periods aggregating about 15½ years. The first statute was the Act of April 4, 1800, c. 19, 2 Stat. 19, and it was repealed by the Act of December 19, 1803, c. 6, 2 Stat. 248. The second was the Act of August 19, 1841, c. 9, 5 Stat. 440, repealed less than two years later by the Act of March 3, 1843, c. 82, 5 Stat. 614. The third was the Act of March 2, 1867, c. 176, 14 Stat. 517; it was repealed by the Act of June 7, 1878, c. 160, 20 Stat. 99. Voluntary petitions were permitted under the 1841 and 1867 Acts. See 1 W. Collier, *Bankruptcy* paras. 0.03-0.05, pp. 6-9 (14th Ed. 1971). Professor MacLachlan has said that the development of the discharge "represents an independent . . . public policy in favor of extricating an insolvent debtor from what would otherwise be a financial impasse." J. MacLachlan, *Bankruptcy* 88 (footnote omitted). But this obviously is a legislatively created benefit, not a constitutional one, and, as noted, it was a benefit withheld, save for three short periods, during the first 110 years of the Nation's life. The mere fact that Congress has delegated to the District Court supervision over the proceedings by which a petition for discharge is processed does not convert a statutory benefit into a constitutional right of access to a court.

Kras, 93 S.Ct. at 638-39.

Recourse to bankruptcy protection is not akin to access to courts to assert or protect Constitutional rights like free speech or other rights which are embedded in the Constitution

which Courts have come to regard as fundamental, and that thus demand the lofty requirement of a compelling governmental interest before they may be significantly regulated. Neither does bankruptcy touch upon what has been said to be suspect class categorizations, such as race, nationality or alienage. *Kras*, 93 S.Ct. at 638. Instead, bankruptcy legislation is in the realm of economics and social welfare. *Kras*, 93 S.Ct. at 638 (citing, *Dandridge v. Williams*, 397 U.S., at 484-485; *Richardson v. Belcher*, 404 U.S., at 81; *Lindsey v. Nomtet*, 405 U.S. 56, 74 (1972); *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972)). This being so, the applicable standard, in measuring the propriety of Congress' classification, is that of rational justification. *Kras*, 93 S.Ct. at 638 (citing, *Flemming v. Nestor*, 363 U.S. 603, 611-612 (1960); *Dandridge v. Williams*, 397 U.S., at 485-486; *Richardson v. Belcher*, 404 U.S., at 81).

Although Crenshaw Logal has not specified which provision of the Constitution she asserts § 523(a)(7) violates, the court will briefly outline how this type of legislation has been analyzed by the courts in other circumstances.

While the Fourteenth Amendment is not applicable to the federal government ¹, when a piece of social or economic legislation is challenged on equal protection grounds under the Fourteenth Amendment, the legislation will be upheld if the classifications established by the legislation rationally relate to a legitimate government interest. *Wood v. United States of America*, 866 F.2d 1367,1370 (11th Cir. 1989) (citing, *Kras*, 409 U.S. at 434). Under the "rational relationship" test, a court reviewing the constitutionality of a classification may only strike down the classification if the classification is without *any* reasonable justification. *Dandridge*, 397 U.S. at 485; *Lindsley*, 220 U.S. at 78. But even if in a particular case the classification as applied appears to discriminate irrationally, the classification must be upheld if "any set of facts reasonably may be conceived to justify it". *McGowan v. Maryland*, 366 U.S.

¹ "Classification" issues with respect to federal legislation are essentially addressed under the doctrine of substantive due process.

420, 426, 81 S. Ct. 1101, 1105, 6 L. Ed. 2d 393 (1961). When evaluating substantive due process challenges to social and economic legislation, the test is virtually identical to the "rational relationship" test for evaluating equal protection claims. *Wood v. United States of America*, 866 F.2d 1367, 1371 (11th Cir. 1989). Bankruptcy legislation will be upheld against a substantive due process attack unless the legislation "manifests a patently arbitrary classification, utterly lacking in rational justification". *Wood*, 866 F.2d at 1371 (citing, *Flemming v. Nestor*, 363 U.S. 603, 611, 80 S. Ct. 1367, 13-73, 4 L. Ed. 2d 1435 (1960)). As with the "rational relationship" test, *any* plausible reason supporting Congress' action in enacting the suspect legislation satisfies the "rational basis" test. *Id.*

Here is the first problem for the plaintiff. 11 U.S.C. §523(a)(7) has no classification scheme: every person against whom a penalty within its scope has been determined is within its exception to discharge. Crenshaw Logal's apparent attempt to carve out a class of lawyers or other professionals who cannot afford to pay a sanction fails on substantive due process grounds because the statute simply has no class delineation whatsoever.

Perhaps Crenshaw Logal asserts that the Constitutional infirmity of §523(a)(7) is its failure to include a "hardship" defense of the nature of that afforded by 11 U.S.C. §523(a)(8). In one sense, §523(a)(8) does create classes of persons subject to its provisions regarding excepting student loan debts from discharge: those who are deemed to be able to afford to repay these debts, as contrasted to those are deemed unable to repay without experiencing undue financial hardship. This is certainly a rational classification within that statute, based as it is upon the concept that the incursion of a debt to advance one's life opportunities through enhanced education should be forgiven if life opportunities, as realized or experienced, cause the educational enhancement obtained by incurring the debt to be, in a sense, relatively valueless to the debtor. But we are not analyzing 11 U.S.C. §523(a)(8) here. 11 U.S.C. §523(a)(7) – as is true with all of the provisions of 11 U.S.C. §523(a) with the sole exception of

§523(a)(8) – does not provide an “exception to the exception” based upon financial hardship. Because there is no Constitutional right to a discharge in bankruptcy, in the context of determination of the nature and circumstances of debts which will be discharged and those which will not be, Congress is free to legislate without considerations of substantive due process : a class of debts cannot be discriminated against. Moreover, the real “class” distinction which Crenshaw Logal seeks to assert is a class of student loan debtors subject to §523(a)(8) versus all other debtors subject to any provision of 11 U.S.C. §523(a) other than section 523(a)(8). The refusal of Congress to engraft a hardship exception onto any provision of §523(a) – including §523(a)(7) – is within the discretion of Congress to define the terms of a bankruptcy discharge, the provenance of which is not the Constitution, but rather a Congressional enactment.

Crenshaw Logal may contend that § 523(a)(7) is unconstitutional in that the nondischargeability of the imposed penalty prevents her from practicing law because 11 U.S.C. § 523(a)(7) does not provide for taking into account her ability to pay the monetary sanction. This is not a valid basis to render the statute unconstitutional. The Court does not need to look far to determine that Congress had a rational basis when it enacted § 523(a)(7). As both the Supreme Court and Seventh Circuit have stated, bankruptcy is a privilege – not a right – and the purpose of the Bankruptcy Code is to provide relief to an unfortunate debtor. By enacting § 523(a)(7), Congress made the decision to not reward a debtor with a discharge in relation to a debt incurred as the result of conduct with respect to which a governmental entity has imposed a fine or penalty. In the context of the plaintiff’s contentions, this furthers the legitimate governmental interest of seeking to deter conduct which thwarts legitimate governmental regulation of professionals through the implementation of an effective disciplinary procedure for a professional group. The "rational basis" test is satisfied as to 11 U.S.C. § 523(a)(7).

In conclusion, Crenshaw Logal's federal constitutional challenge to 11 U.S.C.

§ 523(a)(7) fails.

The Court determines, based upon the record as established in this case, that 11 U.S.C. § 523(a)(7) does not violate the United States Constitution by its non-provision of a defense based upon financial hardship to its provisions concerning exception to discharge.

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered against the plaintiff Zena Denise Crenshaw Logal, and in favor of the Intervenor United States of America, with respect to the plaintiff's claim that 11 U.S.C. §523(a)(7) violates the Constitution of the United States of America.

Dated at Hammond, Indiana on July 10, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

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