UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: Alfred D. Norris, III Debtor.	Case No. 01-32591 Chapter 7 Adversary No. 01-3203
Loyola University New Orleans vs. Alfred D. Norris, III.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

This matter came before the Court for hearing on March 14, 2002 upon plaintiff's motion for judgment on the pleadings. At this hearing, the Plaintiff was represented by attorney Martin Hunter. Defendant was represented by attorney Robert Lindsey.

Based upon the pleadings before it, this Court finds as follows:

1. This adversary proceeding was commenced on November 5, 2001 to determine dischargeability of a debt owed to Loyola University in New Orleans.

2. This motion for judgment on the pleadings was filed by Plaintiff on February 11, 2002.

3. Defendant attended Loyola University in New Orleans for his undergraduate degree and his law degree.

4. At the beginning of the Spring 1999 semester, Defendant was enrolled in the Loyola University School of Law.

As of January 1999, Defendant owed the University $8259 in tuition and fees for the preceding semester. Defendant had no previous financing arrangements in place with the University and had simply failed to make payment on his bill.

On January 6, 1999, the University required Defendant to sign a promissory note in the amount of $8,259- the unpaid balance from the previous semester- in order to enroll in classes for the next semester. Defendant signed the promissory note but never paid on it.

5. The Defendant alleges the University threatened to cancel his registration if he did not sign this promissory note guaranteeing his tuition, fees, and expenses owed from a previous term. In lieu of having his registration cancelled, Defendant signed said promissory note.

6. The issue before this Court is whether the extension of credit by Loyola is a loan as defined by 11 U.S.C. § 523 (a)(8) and therefore non-dischargeable in this bankruptcy proceeding.

The Plaintiff argues that Defendant is indebted to Plaintiff for an education loan and as such, the debt is non-dischargeable under 11 U.S.C. § 523 (a)(8). The Defendant argues his indebtedness to the Plaintiff is not a "student loan" as defined by this Code section but was merely ordering an unsecured debt.

Held: this indebtedness is not a student loan as defined in 11 U.S.C. § 523 (a)(8) and is thereby dischargeable.

LEGAL CONCLUSIONS

For there to be a "loan," within the meaning of statutory exception to discharge for debtor's obligations on certain educational loans, there must be (1) a contract, whereby (2) one party transfers a defined quantity of money, goods, or services to another, and (3) the other party agrees to pay for the sum or items transferred at a later date. *See In re College of Saint Rose v. Regner*, 222 F.3d 82, (2nd Cir. App 2000).

As the *Regner* Court stated, in order to have a loan, both parties to the agreement must understand that the recipient is borrowing the money on a given date and will not be expected to pay it back until a later date. *See Id.* at 84. There must be a mutual understanding that a loan is being created at the outset. Casual covenants similar to the one in this case do not meet the common law definition of a loan. *See Id.* at 85.

In this case, the indebtedness to Loyola was merely an open account for which the Defendant was required to execute a promissory note before he was permitted to enroll for further study at the University. Loyola allowed Defendant to attend classes in the Fall of 1998 and the Spring of 1999 without first paying all outstanding balances from prior terms so long as he signed a promissory note. Since the outstanding debt represented by the promissory note was for an unpaid balance from a previous semester, the required mutual understanding to make a loan was

not present. Loyola advanced no money for future study on the Defendant's behalf, it merely allowed him to continue to attend class while having an unpaid balance with the University.

The promissory note between Plaintiff and Defendant did not create a "loan" as defined in § 523(a)(8) of the United States Bankruptcy Code. The debt is dischargeable. Judgment is hereby entered for the Debtor/Defendant.

SO ORDERED.

This the 19th day of March, 2002.

U.S. Bankruptcy Judge