#2587 signed 10-23-02

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In Re:	
ROBERT HUNTER TUCKER, **DONNA JEAN TUCKER,**	**CASE NO. 99-40770-7** **CHAPTER 7**
DEBTORS.	
ROBERT HUNTER TUCKER,	
PLAINTIFF,	
v.	**ADV. NO. 01-7146**
MERCANTILE BANK, **SALLIE MAE SERVICING CORP.,** **EDUCATIONAL CREDIT MANAGEMENT CORPORATION,**	
DEFENDANTS.	

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF EDUCATIONAL CREDIT MANAGEMENT CORPORATION

This proceeding is before the Court on a motion for summary judgment. Educational Credit Management Corporation ("ECMC") filed the motion through counsel N. Larry Bork of Goodell, Stratton, Edmonds & Palmer, L.L.P., Topeka, Kansas. Plaintiff-debtor Robert Hunter Tucker ("the Debtor") opposed the motion through counsel Francis E. Meisenheimer of Martindell, Swearer & Shaffer, LLP, Hutchinson, Kansas. The Court has reviewed the relevant materials and is now ready to rule.

From 1994 to 1997, the Debtor obtained loans as the sole obligor under the Federal PLUS Program to cover educational expenses of his son. ECMC obtained five of those loans from co-

defendant Sallie Mae Servicing Corporation. The total balance owed on ECMC's loans as of January 2002 was over $18,000. The question before the Court is whether these loans are covered by 11 U.S.C.A. §523(a)(8) so that they are nondischargeable.

Section 523(a) provides in pertinent part: "A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt— . . . (8) for an educational . . . loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit." A literal application of this provision would clearly cover the Debtor's loans even though he did not obtain them for his own education.

Some years ago, however, in *Mountain v. Brigham Young University (In re Mountain)*, this Court ruled that a couple's obligations as co-signers on a student loan made and disbursed directly to their daughter was dischargeable.[1] Since that time, many more courts, including one circuit court, have considered the dischargeability of debtors' obligations on debts that funded the educations of others, and the majority have found them to be nondischargeable. [2] Because part of Congress' intent in

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[1]Case No. 86-41632-7, Adv. No. 87-0003, Memorandum of Decision (Bankr.D.Kan. Oct. 27, 1987).

[2]*See, e.g., In re Pelkowski,* 990 F.2d 737, 738 n. 1 & 2 (3rd Cir. 1993) (citing many cases showing split at that time over dischargeability of non-student co-obligor's student loan debt); *Kentucky Higher Education Assistance Authority v. Norris (In re Norris),* 239 B.R. 247, 252-53 (M.D. Ala. 1999) (citing seven cases since *Pelkowski* holding such debts nondischargeable, but only cases before *Pelkowski* holding opposite); *Hamblin v. ECMC (In re Hamblin)*, 277 B.R. 676, 679-80 (Bankr. S.D. Miss. 2002) (citing many cases on both sides of issue, only one since *Pelkowski* holding debts dischargeable, and indicating nondischargeable holding is definite majority); *Lawson v. Sallie Mae, Inc. (In re Lawson)*, 256 B.R. 512, 516-17 (Bankr. M.D. Fla. 2000) (debtor could not discharge liability incurred before divorce through "spousal consolidation" of ex-husband's student loans with hers); *see also Clark v. ECMC (In re Clark),* 273 B.R. 207, 209-10 (Bankr. N.D. Iowa 2002) (in dicta, noting two decisions in district held §523(a)(8) does not apply to non-student co-obligors, but agreeing with others that provision does apply when non-student is sole obligor).

making student loans generally nondischargeable was to insure that past borrowers repaid money that could be used to fund future student loans and the co-borrower who was the student in cases like *Mountain* will generally not be able to discharge their student loans, this Court could distinguish between loans on which the non-student was just a co-signer (like those in *Mountain*) and those on which he or she was the only maker (like those in this case).[3] Instead, though, the Court is now convinced that the literal application of the statutory language is the appropriate construction of §523(a)(8). Consequently, the Court hereby rejects the position it had previously accepted in *Mountain*, and adopts the majority rule.

The Court concludes the Debtor's debts under the Federal PLUS Program are not dischargeable. ECMC's motion for summary judgment is granted.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of October, 2002.

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JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE

[3]*See Norris*, 239 B.R. at 253 (suggesting this factual distinction would be made if the statutory language did not mandate that all obligors on student loans were covered by §523(a)(8)).