



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NY Parents' Ch. 7 Trustee Can Recoup Kids' Tuition Payments

By **Ryan Boysen**

Law360 (December 4, 2018, 8:54 PM EST) -- The Chapter 7 trustee overseeing the liquidation of a bankrupt couple's estate can claw back roughly \$24,000 they spent on their daughters' college tuition, a New York bankruptcy court ruled Tuesday, finding the payments did not provide the parents with any "value" as defined by the relevant statutes.

In its decision, U.S. Bankruptcy Judge Martin S. Glenn acknowledged that "whether insolvent parents receive reasonably equivalent value for college tuition payments made for the benefit of their adult children is a culturally and socially charged issue."

But he said he was "constrained by the language of the Bankruptcy Code and the [New York Debtor and Creditor Law] — those statutes define the terms 'value' and 'fair consideration' to require either the transfer of property or the satisfaction of an antecedent debt in return for an insolvent debtor's payments ... The debtors received neither in this case."

Luba Pincus and Bruce Sterman filed for bankruptcy in 2016, listing \$3,000 worth of personal property to their name and roughly \$780,000 in debt resulting from what appears to be the collapse of a catering business.

The couple's daughters, Alexandra and Samantha Sterman, attended Oberlin college from 2005 to 2009 and 2009 to 2013 respectively.

The Chapter 7 trustee for the couple's estate, Robert L. Geltzer of The Law Offices of Robert L. Geltzer, moved in February to claw back roughly \$26,000 for tuition the parents had sent their daughters before and after graduating from Oberlin, and before and after each daughter turned 21, the age of majority in New York state.

Judge Glenn said the trustee could claw back tuition money that was given to the daughters if it was sent after they turned 21, or after they graduated from college, two categories that encompassed about \$24,000 out of the \$26,000.

"The sole question," Judge Glenn said, "is whether the debtors received reasonably equivalent value for the transfers to or for the benefit of their daughters."

Judge Glenn said Geltzer was able to point to several other cases supporting the notion that any payments made by parents to their children after they've reached the age of majority are "constructively fraudulent" and therefore avoidable, i.e. able to be clawed back in a bankruptcy case.

After examining those cases, Judge Glenn said, he was inclined to agree with Geltzer's

position.

"The court does not question whether the debtors' decision to send money to or for the benefit of their adult daughters for their college education was economically prudent," Judge Glenn said. "But, unfortunately, the economic 'benefit' identified by the defendants does not constitute 'value' under the NYDCL or the Bankruptcy Code."

The tuition payments made to each daughter after they graduated also occurred after they'd turned 21, Judge Glenn said, so the same logic applied to both sets of payments.

Judge Glenn did, however, deny Geltzer's request to claw back \$2,276 sent to Samantha before she turned 21, saying he was convinced that parents do "receive reasonably equivalent value" by paying for the education of their minor children.

"The court concludes that transfers to or for the benefit of Alexandra and Samantha after they reached the age of 21 for college tuition and related expenses are avoidable as constructive fraudulent transfers if the debtors were insolvent at the times the transfers were made," Judge Glenn said.

Neither party responded Tuesday to requests for comment.

Sterman and Pincus are represented by Paul Milbauer.

Geltzer is represented by himself and Allen G. Kadish of Archer & Greiner PC.

The case is *Geltzer et al. v. Oberlin College et al.*, case number 18-01015, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Adam LoBelia.

All Content © 2003-2018, Portfolio Media, Inc.