



UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

**CHRISTOPHER J. WHELTON and
TARA L. WHELTON,
Debtors.**

**Case # 99-10735
Chapter 13**

**EDUCATIONAL CREDIT MANAGEMENT
CORPORATION,**

Plaintiff,

v.

**Adversary Proceeding
#01-1037**

**CHRISTOPHER J. WHELTON,
Defendant.**

Appearances: *Gary L. Franklin, Esq.
Burlington, VT
For Plaintiff*

*Bernard M. Lewis, Esq.
Bethel, VT
For Defendant and Debtors*

FINAL JUDGMENT

Plaintiff Educational Credit Management Corporation (“ECMC”) has filed a Complaint seeking declaratory judgment that Defendant Christopher J. Whelton’s ECMC student loan obligation has not been discharged through the chapter 13 Plan confirmed in this case. Defendant Christopher J. Whelton filed a timely answer, and Counterclaim,* and appeared to defend his position on the merits.

THEREFORE, in conformity with and pursuant to the Court’s Memorandum of Decision of even date, granting judgment in favor of ECMC and vacating a portion of the Confirmation Order and a portion of the Discharge Order,

IT IS ORDERED AND ADJUDGED that the relief sought in Count III of ECMC’s Complaint, seeking a declaration that the subject Discharge Order is void to the extent that it purports to discharge Christopher J. Whelton’s student loan, is GRANTED and judgment is entered in favor of Plaintiff ECMC. The Court declares that the discharge-by-declaration provision regarding the subject student loan obligation

* Prior to the October 18, 2002, trial on ECMC’s Complaint, the Court issued an order severing the trial on Counts II, III and IV of Defendant Whelton’s Counterclaim. See Order dated Oct. 17, 2002 (A.P. doc. #88). During said trial, by agreement of the parties, the remaining count of Defendant Whelton’s Counterclaim, Count I, was also severed from ECMC’s trial. See Supp. Order dated Oct. 21, 2003 (A.P. doc. #93).

inserted into Mr. Whelton and his wife's confirmed chapter 13 Plan is void and ineffective.

IT IS FURTHER ORDERED that the Debtor is to submit for the Court's consideration, within 15 days of this Order, a proposed amended confirmation order explicitly indicating Whelton's student loan obligation is not discharged and a proposed amended discharge order explicitly indicating the same.


IT IS FURTHER ORDERED AND ADJUDGED that the relief sought in Count IV of ECMC's Complaint, seeking a declaration that it is not bound by the Debtors' Plan for lack of due process, is GRANTED and judgment is entered in favor of Plaintiff ECMC.

IT IS FURTHER ORDERED AND ADJUDGED that the remaining counts of ECMC's Complaint, Counts I and II, are DENIED.

IT IS FURTHER ORDERED that each party shall be responsible for its own costs, expenses and attorneys' fees in this proceeding.

SO ORDERED.

September 9, 2003
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge