

The Tipping of The Scales in Tuition Clawback Litigation

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The popular trend among bankruptcy trustees to attempt to “clawback” tuition paid to colleges, universities and other institutions of higher education made by parents, who later file for bankruptcy, for their adult children’s post-secondary education, has continued sometimes with success, but in other instances – in defeat.

The trustee’s legal theory to support “tuition clawbacks” is found in fraudulent transfer law, where a variety of payments can be recovered if the transferor does not receive reasonably equivalent value for the payment and payments that were made at the time of insolvency. The argument propounded by the trustee is that the parents do not receive reasonably equivalent value in exchange for the payments they made on behalf of their children for their college education.

Until recently, there was an even split among the U.S. Bankruptcy Courts on this issue. On August 10, 2016, the tie was broken when a Massachusetts bankruptcy judge issued a decision in the case of *DeGiacomo v. Sacred Heart University* finding in favor of the university.

The Trustee sued the University to recover tuition payments that the debtors made on behalf of their daughter, arguing that, a parent has no legal obligation to support an adult child, and that the only possible justification the parents could have had for paying for their daughter’s college costs was love and affection, and that “love and affection” do not qualify as value for the purposes for defeating a fraudulent conveyance claim. The Court disagreed with the Trustee, and found that the payments made by the parents to the University did not constitute fraudulent transfers. The Court reasoned that it is rationale for parents to assume that paying for their children to earn an undergraduate degree will enhance the financial wellbeing of children which in turn confers an economic value on the parents. The Court found that this constitutes a *quid pro quo* that is reasonable and reasonable equivalence is all that is required. The Trustee has appealed the decision.

Prior to the decision in *DeGiacomo v. Sacred Heart University*, there were two decisions favoring the trustees’ legal position and two that did not. *In re Cohen* and *In re Oberdick*, both Pennsylvania cases, the courts acknowledged that Pennsylvania law did not require parents to pay for their children’s post-secondary education but nonetheless held that the payments were “reasonable and necessary” in order to maintain the debtor’s family for purposes of the fraudulent transfer statutes and thus unavoidable.

The courts in the cases of *In re Leonard* and *In re Lindsay* found in favor of the trustee ruling, essentially, that the economic value received by the parents was not sufficiently concrete and quantifiable to constitute reasonably equivalent value.

Representative Chris Collins of New York has taken notice of these cases and has introduced a Bill into Congress known as “the PACT (Protecting All College Tuition) Act of 2015.” The Bill seeks to amend the Bankruptcy Code to provide an exception to fraudulent conveyance recoveries for good faith post-secondary tuition payments made by parents for the benefit of their children. To date, Congress has not acted on the proposed bill.