

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	:	Case No. 17-30033 (JJT)
	:	
ELLEN J. VILLANO,	:	Chapter 13
DEBTOR.	:	
	:	Re: ECF No. 25

ORDER DENYING MOTION FOR RELIEF FROM STAY

Before the Court is Hamden Hall Country Day School's Motion for Relief from Stay Regarding Termination of Services (ECF No. 25, the "Motion"). For the reasons set forth below, the Motion is denied.

The Motion is anomalous, as the movant, an esteemed private educational institution, Hamden Hall Country Day School ("Hamden Hall" or "Creditor"), seeks stay relief based upon unpaid prepetition and colorable post-petition tuition claims for a high school senior in his last three weeks of the regular session of classes. The student is the son of the Debtor¹ and a minor, not represented in these proceedings, and lacking contract capacity under Connecticut law. The relief sought, if granted, would immediately terminate his education, preclude his graduation and withhold his diploma and official transcripts. The emotional, social and educational consequences of the proposed relief on the student are undeniably severe.

It is a fundamental proposition that stay relief is not granted to allow for the collection or enforcement of a prepetition unsecured debt. *See* 11 U.S.C. § 362(a)(1) and (6). Here, the Debtor is in Chapter 13 and has advanced a plan² not yet subject to a confirmation hearing. The rights

¹ The student's other parent, Anthony Villano, has also filed a bankruptcy petition, which is pending before this Court. Hamden Hall moved for relief from stay in each case based upon the same grounds. Accordingly, a nearly identical Order is docketed in each case.

² The proposed Chapter 13 plan (ECF No. 7) proposes a 100% dividend to general unsecured creditors.

and priorities of the Creditor are bound by the Chapter 13 process and the priorities and treatment that might be approved in a Chapter 13 plan. If that plan fails to achieve confirmation, the Creditor's rights may be determined under Chapter 7. In both instances, Hamden Hall's claims are largely general unsecured claims. In the Chapter 13 process, a portion of the tuition accrued since the filing date may also be entitled to an administrative priority.

Section 362 of the Bankruptcy Code is explicit in its fundamental prohibition of the pursuit of creditor remedies on such claims based upon prepetition contracts, including those enforcement efforts that may have the effect of creating leverage to enhance a creditor's recovery beyond the treatment afforded in Chapter 13 or Chapter 7. *See In re Parker*, 334 B.R. 529, 536 (Bankr. D. Mass. 2005).

The permissible remedies of Hamden Hall are bound by the rights, priorities and prohibitions of the Bankruptcy Code. Accordingly, the exercise of the proposed remedies—including the termination of the student's semester, withholding of his transcript, graduation and diploma—would circumvent the boundaries of Bankruptcy Code and needlessly exact disproportionate punishment upon the student. Stated most directly, it would be inappropriate for Hamden Hall to exact from the student, or his parents, redress beyond that provided for in Chapter 13 or Chapter 7, as it would be violative of the automatic stay. Hence, such relief is prohibited.

In this matter, the Court has also weighed in the balance our societal value of education and the vulnerability of a minor who would bear the consequences of his parents' nonpayment with a sentence to educational purgatory. Without a transcript, graduation, diploma or a completed course of study, that student's educational transition will be necessarily impeded and a life course would be potentially diminished. Such is not in the "best interest" of a child, and is patently inconsistent with our educational values, the mission of Hamden Hall, and the student's

faith in and entrustment of it. The relief requested is particularly harsh when administered in the last three weeks of the regular session of a final semester. In the current circumstances, the financial interests of Hamden Hall must be subordinate to its student beneficiary, much like the duties of a faithful fiduciary.

This Court is not unmindful of the good faith efforts of Hamden Hall to resolve this matter. Its financial objectives must nonetheless be tempered by bankruptcy laws and its duty to a minor student about to complete his high school education. The process ahead in Chapter 13 (or perhaps Chapter 7) will forge the appropriate remedy for Hamden Hall's unpaid claims.

IT IS SO ORDERED at Hartford, Connecticut this 13th day of April 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut