



# Court to College: Disgorge Tuition Payments by Insolvent Parents Made for Adult Children

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The recent case of *Geltzer v Oberlin*, Adv. Pro. Case No. 18-01015-MG illustrates an important principle of American debtor-creditor law in a way which, at first glance, may seem rather surprising.

According to a recent decision of the United States Bankruptcy Court for the Southern District of New York, it is not reasonable for a parent to pay an adult child's tuition while insolvent. It must be repaid to the Trustee in a Chapter 7 situation. The Court held that in making these payments while insolvent, the parent received nothing in return of reasonably equivalent value. That is bound to shock some of us, and other courts have opined on this same issue coming to different conclusions.

The Debtors in this case were husband and wife, parents of two daughters who attended Oberlin College. While insolvent the Debtors paid their daughters' tuition and for their books. Their Chapter 7 Trustee sued Oberlin College, its bookstore and the daughters, asserting the Debtors did not receive reasonably equivalent value in exchange for those payments (the Trustee settled with Oberlin and its bookstore leaving Samantha and Alexandra's lawyer to explain why these payments were not a constructive fraud upon their parents' creditors).

Besides the emotional reward, the feeling of discharging one's moral or ethical parental duties, and traditions of financing a child's education since nursery school, other justifications were offered. By ensuring the daughters were well educated they were more likely to become independent and not to be a financial burden on their parents.

Bankruptcy Judge Martin Glenn accepted that under the age of majority those arguments were viable, but not beyond that into adulthood. He denied the Trustee's demands for return of the money as to payments prior to age 21 and ordered repayment for anything beyond that. While citing law in New York requiring a parent to provide support to a child under 21 years of age, and even noting that other courts have ruled differently, the Court stated it was constrained by the language of the Bankruptcy Code addressing value.

The Court took no note of the developing phenomenon that in the United States the age at which children reach full independence is today much later than it was 35 years ago. Statistics show that even adults over the age of 21 postpone marriage, child bearing and even remain living at home with parents until much later than did previous

generations. It has been speculated that much greater longevity as naturally caused this transformation.

Our higher education clients should be aware of this case and consider modifying their practices concerning the payment of tuition from third parties.

As a practical matter, keep in mind that the Chapter 7 Trustee has his own economic motivation to recover assets and make distributions to creditors: he is working on a commission basis and his office is likely also billing the estate legal fees. In an economic climate with much less work for Trustees, there is a lot of motivation to make the most of each case.

Under the facts of this case, some trustees might not have proceeded with such a cause of action.

We recommend that our college and university clients consider requiring that students older than 21 years old be required to directly pay their tuition obligations rather than accepting payment from their parents or other third parties.

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