

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA  
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)  
4 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

6 Case No. A15-00383-HAR

In Chapter 7

7 In re JESSIE L. RIZOR and ASHLEY M.  
8 RIZOR,

9 Debtor(s)

10 JESSIE L. RIZOR,

Adv Proc No A16-90001-HAR

11 Plaintiff(s)

v.

**MEMORANDUM GRANTING  
DEFENDANTS' MOTION FOR ATTORNEY  
FEES**

12 ACAPITA EDUCATION FINANCE  
13 CORPORATION, a Texas Non-profit  
14 Corporation, BRAZOS STUDENT  
15 FINANCE CORPORATION and BRAZOS  
16 HIGHER EDUCATION  
SERVICE CORPORATION, Texas  
Non-profit Corporations,

Defendant(s)

17 Defendants' motion for attorney fees<sup>1</sup> will be granted.

18 Defendant student lenders seek \$11,130 for attorney fees for successfully defending against  
19 plaintiff debtor's adversary proceeding challenging that the defendants were appropriate  
20 educational lenders, and that the loans were appropriate claims, entitled to protection from  
21 nondischargeability under 11 USC §523(a)(8). The court granted defendants summary judgment  
22 on the merits.<sup>2</sup>

24  
25 <sup>1</sup>ECF Nos. 24 and 25.

26 <sup>2</sup>ECF Nos. 21, 22, and 23.

1 The fees requested are exceedingly modest for the quality of the briefing and result  
2 obtained. Most of the hours were billed at the low rate of \$125 per hour by a law clerk working  
3 for Richard Crabtree. Plaintiff does not challenge the amount sought.

4 Neither party has adequately briefed whether attorney fees are awardable in a situation  
5 like the one presented. This is a litigation about educational loan dischargeability under the terms  
6 of 11 USC §523(a)(8) that would not exist outside of bankruptcy. The defendants motion states:

7 The promissory notes state that Plaintiff agreed to pay to Defendants' "reasonable  
8 collection costs permitted by law, including reasonable attorney's fees (to the extent  
9 permitted by law) and court costs, which [Brazos] incur[s] in enforcing the terms of  
this Note if [Rizor is] in default." Section "I," appearing on pages 2, 9, 19, 22, 29, 42,  
45, 53, 57, 59, and 67 of the Affidavit, ECF No. 20-2.

10 Plaintiff does not contest this representation.

11 I will adopt the holding of the Seventh Circuit case In re Busson-Sokolik.<sup>3</sup> Some of the  
12 arguments by the plaintiff debtor in that case, which also involved an educational loan, were  
13 similar to plaintiff Rizor's in this case. They challenged the use of the loan and whether the loans  
14 qualified for nondischargeability under §523(a)(8).<sup>4</sup> The promissory notes also had provisions for  
15 the lender recovering collection costs which were similar to notes in this case.<sup>5</sup>

16 The basis for Seventh Circuit court's finding that the contractual provisions were sufficient to  
17 warrant the grant of attorney fees is:

18 Under the "American Rule," a litigant who prevails in a lawsuit is not ordinarily  
19 allowed to collect attorney's fees from the losing side. See *Alyeska Pipeline Service*  
20 *Co. v. Wilderness Society*, 421 U.S. 240, 247, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975).  
21 However, this rule can be overcome by statute or by an enforceable contract with a  
22 provision regarding the allocation of attorney's fees. See *Travelers Cas. and Sur. Co.*  
*of America v. Pacific Gas and Elec. Co.*, 549 U.S. 443, 448, 127 S.Ct. 1199, 167  
L.Ed.2d 178 (2007).

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23 <sup>3</sup>Busson-Sokolik, et al v. Milwaukee School of Engineering (In re Busson-Sokolik), 635 F3d 261 (7<sup>th</sup> Cir.  
24 2011).

25 <sup>4</sup>*Id.* at pages 266-67.

26 <sup>5</sup>*Id.* at page 265.

