THIS OPINION IS NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	Case No. 94-51910
	)	
MYRON D. PAPP, JR.	)	Chapter 7
DIANA LYNN PAPP	)	
	)	Adversary No. 95-5041
Debtors	)	
	)	
	)	
MYRON D. PAPP, et al.,	)	
	)	
Plaintiffs	)	**JUDGE MARILYN SHEA-STONUM**
	)	
v.	)	
	)	
UNITES STATES OF AMERICA,	)	
U.S. DEPARTMENT OF EDUCATION	)	**ORDER GRANTING**
	)	**DEFENDANT'S MOTION FOR**
Defendant	)	**SUMMARY JUDGMENT**

This matter is before the Court on a motion for summary judgment filed by defendant, United States Department of Education (the "Movant-Defendant"). This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is determined to be a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I) over which this Court has jurisdiction pursuant to 28 U.S.C. §§1334(b), 157(a), and 157(b).

The Complaint in this matter alleges that the student loan of

Plaintiff-Debtor, Diana Papp, became payable more than seven years before the filing of her bankruptcy petition and is thus dischargeable pursuant to 11 U.S.C. §523(a)(8)(A). Movant-Defendant contends that the loan is not dischargeable as it became payable within seven years of the bankruptcy filing. Based upon these contentions, Movant-Defendant filed a motion for summary judgment asserting that when the loan became payable is a question of law and that there are no genuine issues as to the material facts in this case. Plaintiff-Debtor did not respond to that motion.

BACKGROUND

The parties stipulated in writing, filed on June 2, 1995, to the following: (1) that on July 9, 1987, Plaintiff-Debtor executed a promissory note relating to a guaranteed student loan in the amount of $2,625.00; (2) that in October of 1987, Plaintiff-Debtor withdrew from school; and (3) that on December 13, 1994, Plaintiff-Debtor and her husband filed a joint and voluntary chapter 7 bankruptcy petition. Based upon those stipulated facts, Plaintiff-Debtor argues that her loan became payable in October 1987, when she ceased to be a student and that the bankruptcy petition was, therefore, filed more than seven years after the loan became due. Movant-Defendant argues that the loan became payable in March 1988, after the conclusion of a six month grace period provided for by statute and the terms of the loan and that the bankruptcy petition was, therefore, filed within seven years of the date on which the loan became due.

ISSUE

Whether Plaintiff-Debtor's student loan became due more than seven years before the date of her bankruptcy filing, thus making it dischargeable

pursuant to 11 U.S.C. §523(a)(8)(A).

DISCUSSION

A court shall grant a party's motion for summary judgment "if ... there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). A material fact is one that must be decided before there can be a resolution of the substantive issue that is the subject of the motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Bachner v. State of Illinois (In re Bachner), 165 B.R. 875, 878 (Bankr. N.D. Ill. 1994). The party moving for summary judgment bears the initial burden of showing the court that there is an absence of a genuine dispute over any material fact, Searcy v. City of Dayton, 38 F.3d 282, 286 (6th Cir. 1994) (citing Celotex Corp. V. Catrett, 477 U.S. 317, 323 (1986)), and, upon review, all facts and inferences must be viewed in the light most favorable to the nonmoving party. Searcy v. City of Dayton, 38 F.3d 282, 285 (6th Cir. 1994); Boyd v. Ford Motor Co., 948 F.2d 283, 285 (6th Cir. 1991), cert. denied, 503 U.S. 939 (1992).

In the case at bar, the parties have stipulated to the dates concerning the loan. Further, the terms of the parties' agreement are set forth in a promissory note attached as an exhibit to the Movant-Defendant's motion. Ambiguity was not raised as an issue with respect to that promissory note. As such, there exists no issue as to any material fact and this Court can decide as a matter of law when Plaintiff-Debtor's loan became due and whether or not it is dischargeable in her chapter 7 bankruptcy.

Although debts for student loans are generally not dischargeable in a

chapter 7 proceeding, §523(a)(8)(A) of the Bankruptcy Code provides that such a debt will be discharged if "such loan ... first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition." 11 U.S.C. §523(a)(8)(A).[1] To determine the date upon which the loan first became due, the Court must look to the agreement between the parties as "[w]hen the loans became due is simply a question of fact to be determined from the promissory notes signed pursuant to the student loan agreement." Commonwealth of Virginia v. Brown (In re Brown), 4 B.R. 745, 746 (Bankr. E.D. Va. 1980).

In the case at bar the promissory note regarding Plaintiff-Debtor's student loan states, inter alia, as follows:

D. REPAYMENT

> I will repay this loan in periodic installments during a repayment period that will begin no later than the end of my grace period ... The grace period begins when I cease to carry at least one-half the normal academic workload at a school that is participating in the Guaranteed Student Loan Program (GSLP).

The cessation of the "grace period" referenced in the "Repayment" provision is not defined in the loan agreement. A grace period is, however, defined in 34 C.F.R. §682.209(a)(3)(B), which states that "for a Stafford loan the repayment period begins ... 6 months following the date on which the borrower is no longer

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[1] Section 523(a)(8)(B) also provides that a student loan may be dischargeable in a chapter 7 proceeding if excepting such a debt from discharge "will impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. §523(a)(8)(B). This "undue hardship" provision was not, however, raised by the plaintiff-debtor in her Complaint.

enrolled on at least half-time basis at an eligible school." 34 C.F.R. §682.209(a)(3)(B). Although it was not stipulated that this federal regulation applied to the loan agreement, the Movant-Defendant in its memorandum supporting its motion for summary judgment alleged that 34 C.F.R. §682.209(a)(3)(B) applied to this case. The Plaintiff-Debtor has not disputed its applicability. Thus, the promissory note addressed a repayment period which would begin six months after Plaintiff-Debtor ceased to carry one-half of the normal academic workload.

The federal regulation governing the grace period also provides that "the repayment period begins prior to the end of the grace period if the borrower requests in writing and is granted a repayment schedule that so provides." 34 C.F.R. §682.209(a)(5)(emphasis added). This early payment option was also addressed in the promissory note which stated in the "Repayment" section that "during the grace period I may request that the repayment period begin earlier." This early payment option apparently is not applicable in this case as the pleadings never referenced a request by Plaintiff-Debtor to begin payments on her loan prior to the end of the grace period. This Court interprets her silence regarding this matter to indicate that this is not a fact in dispute.

Section 523 of the Bankruptcy Code dictates that the measuring time for when a student loan became due is "exclusive of any applicable suspension of the repayment period." 11 U.S.C. §523(a)(8)(A). Based upon §523 and the terms of the promissory note evidencing the student loan, Plaintiff-Debtor's loan "became due" after the expiration of the six month grace period that the lender was required by the governing federal regulations to extend to the debtor and

that the debtor could, but did not, waive. Therefore, in interpreting the promissory note and applying the uncontested facts, the loan became due in March 1988, a date which falls within seven years of the filing of debtors' bankruptcy petition.

CONCLUSION

Based upon the foregoing, summary judgment in favor of Movant-Defendant is proper. Plaintiff-Debtor's obligation arising from her student loan is not dischargeable pursuant to 11 U.S.C. §523(a)(8)(A) and judgment on the pleadings will be entered in favor of the defendant.

IT IS SO ORDERED.

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MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 7/20/95