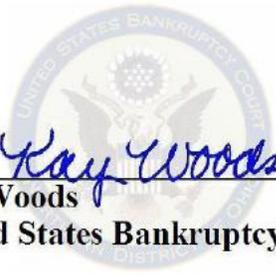


IT IS SO ORDERED.

Dated: August 12, 2016  
11:18:13 AM

  
*Kay Woods*  
\_\_\_\_\_  
Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

JAMES R. HARTSOCK,

Debtor.

\* \* \* \* \*

JAMES R. HARTSOCK,

Plaintiff,

v.

J.P. MORGAN CHASE BANK, et al.

Defendants.

CASE NUMBER 15-41366

ADVERSARY NUMBER 16-04006

HONORABLE KAY WOODS

\*\*\*\*\*  
MEMORANDUM OPINION REGARDING MOTION OF DEFENDANT  
AMERICAN EDUCATION SERVICES TO DISMISS  
\*\*\*\*\*

This cause is before the Court on the Motion of Defendant  
American Education Services to Dismiss Debtor's Complaint (With

Attached Affidavit of M. Tyler Baer) ("Motion to Dismiss) (Doc. 10) filed on July 22, 2016 by "Defendant, Pennsylvania Higher Education Assistance Agency, which conducts student loan servicing operations under the fictitious name American Education Service ("AES")." (Mot. to Dismiss at 1.) No opposition was filed to the Motion to Dismiss.

For the reasons set forth herein, the Court will grant the Motion to Dismiss.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

#### **I. BACKGROUND**

On July 30, 2015, Debtor James Richard Hartsock filed a voluntary petition pursuant to chapter 7 of Title 11 of the United States Code, which was denominated Case No. 15-41366 ("Main Case"). The Debtor received a discharge on December 4, 2015 (Main Case, Doc. 16). On February 11, 2016, the Debtor commenced the instant adversary proceeding against J.P. Morgan Chase Bank ("Chase Bank") and AES by filing Complaint to Determine Dischargeability of Private Student Loan(s) (Doc. 1). The Debtor filed Amended

Complaint to Determine Dischargeability of Private Student Loan(s) ("Amended Complaint") (Doc. 4) on February 22, 2016. The Summons and Notice of Pre-Trial Conference ("Summons") (Doc. 5) was issued on February 25, 2016.

On February 25, 2016, the Debtor filed Certificate of Service (Doc. 6), which indicated that, in accordance with Federal Rule of Bankruptcy Procedure 7004, the Debtor served a copy of the Summons and Amended Complaint by certified mail upon: (i) Jamie Dimon, Chairman of the Board and Chief Executive Office, J.P. Morgan Chase Bank, 270 Park Avenue, New York, NY 10017; and (ii) American Education Services, c/o James L. Preston, Pres. and Chief Financial Officer, 1200 N. 7th St., Harrisburg, PA 17130. (Cert. of Service at 1.)

Neither Chase Bank nor AES filed an answer within 30 days after issuance of the Summons in compliance with Federal Rule of Bankruptcy Procedure 7012(a). As a consequence, the Debtor filed Motion for Default Judgment (Doc. 7) on June 27, 2016 seeking default judgment against each defendant. On July 11, 2016, AES filed Memorandum in Opposition of Defendant American Education Services to Plaintiff/Debtor's Motion for Default Judgment ("AES Response") (Doc. 9), in which AES requested that the Motion for Default Judgment be denied as to AES and that the Debtor "be directed to identify and serve with process the correct party or parties defendant in this action." (AES Resp. at 1.) AES stated

that the student loans in question "are owned by J.P. Morgan Chase Bank, N.A." (*Id.* at 2.) AES further stated, "AES furnished the name and contact information for the owner of the loans serviced by it . . . [and] requested cooperation of the Debtor to ensure that the true parties in interest be served, and that parties who lack any interest be dismissed. AES' [sic] efforts have apparently failed." (*Id.*) Since Chase Bank – who AES acknowledges is the owner of the student loans in question – has been named as a defendant and properly served by the Debtor, it is unclear who or what party AES believes was not identified or served by the Debtor.

The Court held a hearing on the Motion for Default Judgment on August 4, 2016, at which Wayne W. Sarna, Esq. appeared on behalf of the Debtor. Mr. Sarna represented that the Debtor would proceed with seeking default judgment only against Chase Bank. Finding that Chase Bank had been properly served with the Summons and Amended Complaint and that Chase Bank had failed to file an Answer or otherwise appear in this case, the Court found that default was appropriate and granted the Motion for Default Judgment against Chase Bank.

## **II. MOTION TO DISMISS**

In the pending Motion to Dismiss, AES argues that it is not a proper party to defend the claims asserted in this adversary proceeding, nor is it a necessary party pursuant to Federal Rule of Bankruptcy Procedure 7019. AES states that it is merely the

servicer of the student loans in question and that, as the servicer, it "is not an owner or 'holder' of a student loan debt." (Mot. to Dismiss at 2.) AES admits that it "has served as servicer for private student loans of which Debtor is the obligor," but "[t]he student loans at issue are owned by J.P. Morgan Chase Bank, N.A." (*Id.*) AES goes on to state, "Thus, AES' [sic] presence in this lawsuit is entirely unnecessary." (*Id.* at 3.)

The Motion to Dismiss is supported by Affidavit of M. Tyler Baer, which is attached to the Motion to Dismiss ("Baer Affidavit") (Doc. 10-1.) Mr. Baer states that he is "Assistant Vice President of Guarantor and Insurer Relations Division of the Pennsylvania Higher Education Assistance Agency ("PHEAA")," which "conducts student loan servicing operations commercially under the registered fictitious name [AES]." (Baer Aff. ¶ 2.) Mr. Baer states that he is familiar with the Debtor's four student loans and that "[t]hrough AES, PHEAA's role in the management of all four (4) private student loans associated with the [Debtor's] account is limited to that of 'loan servicer'." (*Id.* ¶¶ 4-5.) Mr. Baer further swears, "Neither PHEAA nor AES is an owner or holder of any of the four (4) private student loans associated with the [Debtor's] Account. Neither PHEAA nor AES has any financial interest in the [Debtor's] Account." (*Id.* ¶ 7.) In addition, Mr. Baer swears that "the student loans are owned and guaranteed by J.P. Morgan Chase Bank, N.A." and that AES has

provided the names and addresses of all owners and guarantors of the loans to the Debtor. (*Id.* ¶¶ 8-9.) Despite referring to owners and guarantors in the plural in ¶ 9 of the Affidavit, AES has identified only one owner of the student loans – Chase Bank. One of two addresses AES used for service of the Motion to Dismiss on Chase Bank is the same address the Debtor used in serving the Summons and Amended Complaint.

The Debtor's Amended Complaint alleges, "Defendants are creditors or alleged assignee [sic] of creditors of the Plaintiff/Debtor and allegedly hold unsecured claims in amount totaling \$54,337.00." (Am. Compl. ¶ 3.) The Debtor has not responded to the Motion to Dismiss, apparently having no facts to dispute the allegations of AES that it has no interest in the student loans at issue and that AES "is simply an administrative contractor who may have contacted [the Debtor] on behalf of [Chase Bank]." (Mot. to Dismiss at 3.)

Accordingly, the Court finds that AES has no financial interest in the Debtor's student loans and will grant the Motion to Dismiss. The allegations of AES concerning the identity of and service upon the proper party – *i.e.*, Chase Bank – have been

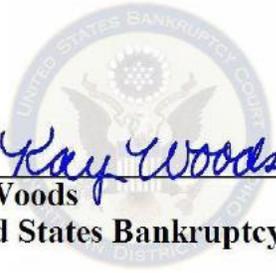
accomplished by the Debtor, who has secured a default judgment against Chase Bank.

An appropriate order will follow.

# # #

IT IS SO ORDERED.

Dated: August 12, 2016  
11:18:32 AM



*Kay Woods*  
 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

JAMES R. HARTSOCK,

Debtor.

\* \* \* \* \*

JAMES R. HARTSOCK,

Plaintiff,

v.

J.P. MORGAN CHASE BANK, et al.

Defendants.

CASE NUMBER 15-41366

ADVERSARY NUMBER 16-04006

HONORABLE KAY WOODS

\*\*\*\*\*

ORDER GRANTING MOTION OF DEFENDANT  
AMERICAN EDUCATION SERVICES TO DISMISS

\*\*\*\*\*

This cause is before the Court on the Motion of Defendant American Education Services to Dismiss Debtor's Complaint (With

Attached Affidavit of M. Tyler Baer) ("Motion to Dismiss) (Doc. 10) filed on July 22, 2016 by "Defendant, Pennsylvania Higher Education Assistance Agency, which conducts student loan servicing operations under the fictitious name American Education Service ("AES")." (Mot. to Dismiss at 1.) No opposition was filed to the Motion to Dismiss.

For the reasons set forth in the Court's Memorandum Opinion Regarding Motion of Defendant American Education Services to Dismiss entered on this date, the Court hereby finds that AES has no financial interest in the student loans in question. As a consequence, the Court hereby grants the Motion to Dismiss.

# # #