UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 95-14330
	)	
CORLISS A. NEWSOME,	)	Chapter 13
Debtor.	)	
	)	Adversary Proceeding No. 04-1263
CORLISS A. NEWSOME,	)	
Plaintiff,	)	Judge Arthur I. Harris
	)	
v.	)	ORDER DENYING
	)	DEFENDANT'S MOTION FOR
BALDWIN WALLACE	)	SUMMARY JUDGMENT
COLLEGE,	)	(DOCKET #15)
Defendant.	)	

This matter is currently before the Court on the defendant's unopposed motion for summary judgment (Docket #15). For the reasons that follow, the defendant's motion for summary judgment is denied. Absent agreement by the parties, the Court expects both parties to be prepared to proceed with the trial of this matter on **November 22, 2004, at 1:30 P.M.** pursuant to the scheduling order issued on August 23, 2004 (Docket #13), including the filings due on or before **November 15, 2004**.

In this adversary proceeding, the plaintiff-debtor seeks a determination that a debt owed to defendant Baldwin Wallace College was discharged when the debtor received a discharge in her Chapter 13 bankruptcy case on March 20, 2000. The debtor asserts that even though the debt is owed to an educational institution, the debt is not a loan or other obligation excepted from discharge under 11 U.S.C.

§ 523(a)(8). In its answer, defendant Baldwin Wallace College asserts that the debt is excepted from discharge under 11 U.S.C. § 523(a)(8) and is therefore nondischargeable.

Although defendant Baldwin Wallace College's motion for summary judgment is unopposed, under Bankruptcy Rule 7056 and Rule 56 of the Federal Rules of Civil Procedure, summary judgment cannot be granted unless

> the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The party moving the court for summary judgment bears the burden of showing that "there is no genuine issue as to any material fact and that [the moving party] is entitled to judgment as a matter of law." *Jones v. Union County,* 296 F.3d 417, 423 (6th Cir. 2002). *See generally Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).

In the present case, the defendant has submitted no depositions, answers to interrogatories, admissions, or affidavits. Apparently, the defendant believes that it is entitled to summary judgment on the basis that *any* debt owed to an educational institution is nondischargeable under 11 U.S.C. § 523(a)(8). This Court does not believe that this is a correct reading of 11 U.S.C. § 523(a)(8) or the Sixth Circuit's holding in *In re Merchant,* 958 F.2d 738 (6th Cir. 1992). Rather, this Court believes that the proper reading of subsection 523(a)(8) and the holding in

Merchant is set forth by Judge Speer in *In re Feyes*, 228 B.R. 887 (Bankr. N.D. Ohio 1998). In *Feyes*, Judge Speer rejected the college's interpretation that "would in effect give any educational debt to an educational institution blanket nondischargeability." 228 B.R. at 891. Under *Merchant*, in order for an extension of credit to constitute a loan within the meaning of subsection 523(a)(8), the following three factors must be present:

> (1) the student was aware of the credit extension and acknowledges the money owed; (2) the amount owed was liquidated; and (3) the extended credit was defined as a "sum of money due to a person."

958 F.2d at 741 (quoting *In re Hill*, 44 B.R. 645 (Bankr. D. Mass. 1984)). Because Baldwin Wallace College has offered nothing in the record to demonstrate that these three factors have been met, Baldwin Wallace College's motion for summary judgment must be denied.

Accordingly, absent agreement by the parties, the Court expects both parties to be prepared to proceed with the trial of this matter on **November 22, 2004, at 1:30 P.M.** pursuant to the scheduling order issued on August 23, 2004 (Docket #13), including the filings due on or before **November 15, 2004**.

IT IS SO ORDERED.

/s/ Arthur I. Harris 11/8/04
Arthur I. Harris
United States Bankruptcy Judge