

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF )  
)  
MICHAEL VINTON HOUGHTON, SR., and ) CASE NO. 05-50260 HCD  
ELIZABETH LORRAYNE HOUGHTON, ) CHAPTER 7  
)  
DEBTORS. )  
)  
)  
MICHAEL VINTON HOUGHTON, SR., and )  
ELIZABETH LORRAYNE HOUGHTON, )  
PLAINTIFFS, )  
vs. ) PROC. NO. 06-3047  
)  
TEXAS GUARANTEED STUDENT LOAN )  
CORPORATION, )  
DEFENDANT. )  
)  
TEXAS GUARANTEED STUDENT LOAN )  
CORPORATION, )  
COUNTER-CLAIMANT, )  
)  
vs. )  
)  
MICHAEL VINTON HOUGHTON, SR., and )  
ELIZABETH LORRAYNE HOUGHTON, )  
COUNTER-DEFENDANTS. )

Appearances:

Steven J. Moerlein, Esq., counsel for plaintiffs, 218 West Washington Street, Suite 630, South Bend, Indiana 46601; and

Stacia L. Yoon, Esq., counsel for defendant, Kopko, Genetos & Retson, LLP, 8585 Broadway, Suite 480, Merrillville, Indiana 46410.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 9, 2007.

Before the court is the Motion for Summary Judgment filed by the Texas Guaranteed Student Loan Corporation (“TGSLC” or “defendant”) pursuant to Federal Rule of Civil Procedure 56, made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. The defendant seeks summary judgment

in its favor on the Amended Complaint to Determine Dischargeability of Student Loan, filed by the plaintiffs Michael Vinton Houghton Sr. and Elizabeth Lorryne Houghton (“plaintiffs”). For the reasons that follow, the court grants TGSLC’s Motion for Summary Judgment and finds that the student loan debt of the plaintiffs is nondischargeable as a matter of law.

### Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(I) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

The debtors filed a chapter 7 petition on October 16, 2005.<sup>1</sup> The Complaint filed on March 25, 2006, states that plaintiff Michael V. Houghton owes a debt of approximately \$90,173.91 for an educational loan. *See* R. 3, ¶ 3. It alleges that he has significant medical conditions that currently limit his ability to work and soon will eliminate altogether his ability to work. Because of those conditions, the complaint asserts that he is unable to

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<sup>1</sup> This case therefore is governed by the Bankruptcy Code and not by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which became effective on October 17, 2005.

make payments on the loan. It asks the court to find that the debt is dischargeable because it will impose an undue hardship on him and his family under 11 U.S.C. § 523(a)(8).<sup>2</sup>

The defendant TGSLC filed an answer to the complaint.<sup>3</sup> It then propounded Requests for Admission on the plaintiffs, asking them to admit or deny the questions therein. The plaintiffs failed to respond to those Requests. On September 19, 2006, therefore, TGSLC filed a Motion for Summary Judgment. In its Memorandum in Support of Summary Judgment, the defendant asserted that there was no genuine issue as to any material fact because “the matters set forth in the Requests for Admission are now admitted” pursuant to Federal Rule of Bankruptcy Procedure 7036. R. 17, Mem. at 2. The plaintiffs did not answer the summary judgment motion.<sup>4</sup> After allowing ample time for a response by the plaintiffs, the court took the matter under advisement.

#### Discussion

It is clear that summary judgment is appropriate when the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056(c). Rule 56(c) requires that summary judgment be granted “against a party who fails to

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<sup>2</sup> Section 523(a)(8) of the Bankruptcy Code states:

(a) A discharge . . . does not discharge an individual debtor from any debt —

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor’s dependents.

<sup>3</sup> First, the original defendant Sallie Mae Servicing filed an answer. *See* R. 11. On July 21, 2006, TGSLC, which holds Sallie Mae’s loans by assignment, filed a Motion to Substitute Party and its own answer to the complaint. *See* R. 13. The court approved the substitution of TGSLC in its Order of August 4, 2006. *See* R. 15.

<sup>4</sup> The plaintiffs also failed to respond to the counterclaim of Sallie Mae, which claimed that the debtor Michael Houghton defaulted on the payments due under the promissory note payable to Sallie Mae and that the indebtedness is nondischargeable. Because the legal issues in the counterclaim are identical to those in the summary judgment motion of TGSLC, the substituted defendant, the court determines that the counterclaim is moot.

make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* N.D. Ind. L.B.R. B-7056-1 ("In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the 'Statement of Genuine Issues' filed in opposition to the motion . . .").

In this case, the defendant claims that there are no genuine issues of material fact because the plaintiffs, by failing to respond to the requests for admission, have admitted elements essential to the case. Requests for admission are governed by Federal Rule of Civil Procedure 36, made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7036. Under that rule, the party serving the request may ask an opposing party in writing to admit the truth of certain matters in order to satisfy its burden of proving factual issues in the case. *See* Fed. R. Bankr. P. 7036(a). "Indeed, Rule 36 provides fair warning to counsel and client that a matter will be deemed admitted unless within 30 days the opposing party provides its answer or objection to the request." *Kremen v. Slattery (In re Slattery)*, 333 B.R. 340, 345 (Bankr. D. Md. 2005) (finding that the debtor, by failing to provide responses, admitted and established fraud); *see also Bodenstein v. Wasserman (In re Wasserman)*, 332 B.R. 325, 330 (Bankr. N.D. Ill. 2005) (finding that the requests for admission to which the debtor did not respond were deemed admitted); *Household Credit Servs., Inc. v. Jacobs (In re Jacobs)*, 196 B.R. 429, 431 (Bankr. N.D. Ind. 1996) ("If the opponent fails to consider the request, the factual issue is deemed admitted.").

Subsection (b) of the rule states that "[a]ny matter admitted under [Rule 7036] is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Fed. R. Bankr. P. 7036(b). No such motion was made. Under this rule, therefore, summary judgment properly may be granted on the basis of unanswered requests for admission if the facts as admitted are dispositive. *See Sadowsky v. Larson (In re Larson)*, 169 B.R. 945, 954 (Bankr. D. N.D. 1994) (citing 4A Moore's Federal Practice ¶ 36.08, at 36-75

(2d ed. 1994) and cases). Moreover, when the plaintiffs do not respond to the summary judgment motion, as well, “the court will rule on the record as it stands, without rebuttal evidence from the [plaintiffs].” *WebMD Practice Servs., Inc. v. Sedlacek (In re Sedlacek)*, 327 B.R. 872, 886 (Bankr. E.D. Tenn. 2005).

Educational loan debts are “presumptively nondischargeable.” *In re Hanson*, 397 F.3d 482, 484 (7th Cir. 2005). To persuade the court that those debts should be discharged, the plaintiffs herein claimed in their complaint that payment of the loans would cause an undue hardship to the debtor Michael Houghton and his family. Section 523(a)(8) requires debtors to demonstrate undue hardship by showing:

- (1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for [himself] and [his] dependents if forced to repay the loans;
- (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) that the debtor has made good faith efforts to repay the loans.

*In re Roberson*, 999 F.2d 1132, 1135 (7th Cir. 1993) (quoting *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987) (per curiam)); see also *In re O’Hearn*, 339 F.3d 559, 564-65 (7th Cir. 2003) (following *Roberson*).

In this case, the defendant asked the plaintiffs to admit or deny the following matters:

- (1) that they can afford to make payment of a reasonable amount until the debts are paid in full;
- (2) that they are not permanently disabled;
- (3) that excepting the promissory note from discharge will not impose an undue hardship on them.

R. 17 at 3 (listing Requests for Admission 6, 7, and 8). Under Rule 36, the plaintiffs, by not responding, have admitted that they can afford to make reasonable payments on the loans without an undue hardship. Because of those admitted facts, the plaintiffs cannot satisfy the first two requirements of *Roberson* – that the repayment of the loan will cause their standard of living to fall below what is minimally necessary, and that the “minimal” standard of living will persist for a significant portion of the repayment period.

The court finds that the undisputed admitted facts have established that there are no issues of material fact. The plaintiffs have failed in their burden of demonstrating undue hardship, both by admitting that their payments over time are affordable within a minimal standard of living and by failing to demonstrate a good faith effort to repay the loan. *See Hasbrook v. Citibank*, 289 B.R. 375, 379 (Bankr. N.D. Ind. 2002). The facts deemed admitted under Rule 7036 are dispositive; they establish as a matter of law that the plaintiffs' educational debt is nondischargeable. Accordingly, the court grants summary judgment to the defendant TGS LC.

Conclusion

For the reasons set forth in this Memorandum of Decision, the court, finding that the student loan debt of the plaintiffs is excepted from discharge as a matter of law, grants the Motion for Summary Judgment filed by the defendant Texas Guaranteed Student Loan Corporation..

SO ORDERED.

/s/ Harry C. Dees, Jr.  
HARRY C. DEES, JR., CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT