

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 06-12026)
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SUSAN EDWARDS)
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Debtor)
)
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SUSAN EDWARDS)
)
Plaintiff)
)
vs.) PROC. NO. 07-1188
)
U.S. DEPARTMENT OF EDUCATION)
)
Defendant)

DECISION AND ORDER
DENYING MOTION TO DISMISS

At Fort Wayne, Indiana, on October 24, 2007.

By this adversary proceeding, the plaintiff, who is proceeding pro se, has asked that her student loan indebtedness to the defendant be discharged, as an undue hardship, pursuant to § 523(a)(8) of the United States Bankruptcy Code. 11 U.S.C. § 523(a)(8). In response, the defendant has filed a motion to dismiss, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, arguing that the bankruptcy court lacks subject matter jurisdiction over the proceeding. The proposition seems quite strange. How could the bankruptcy court possibly lack jurisdiction over a proceeding to determine whether or not a particular debt is dischargeable? As a cause of action created or determined by the Bankruptcy Code, actions to determine dischargeability constitute “civil proceedings arising under title 11.” See, In re Menk, 241 B.R. 896, 905 (9th Cir. BAP 1999). See also, In re Spaulding, 131 B.R. 84, 88 (D. N.D. Ill. 1990); In re Madison, 249 B.R. 751, 755 (Bankr.

N.D. Ill. 2000). As such, they come squarely within the scope of the jurisdiction conferred upon the district courts by 28 U.S.C. § 1334(b), which they, in turn, may refer to bankruptcy judges. See, 28 U.S.C. § 157(a); N.D. Ind. L.R. 200.1(a). It seems, however, the defendant is arguing that because the underlying bankruptcy case has been closed, and has not been reopened, the court has no jurisdiction.¹ Yet, that simply is not so. “[A] separate motion to reopen is not a jurisdictional requirement, or even a prerequisite for commencing an action [to determine the dischargeability] of a debt” In re Staffer, 306 F.3d 967, 972 (9th Cir. 2002); In re Menk, 241 B.R. 896, 910-11 (9th Cir. BAP 1999). See also, United Consumers Club, Inc. v. Bledsoe, (N.D. Ind. 2006). The defendant is confusing the judicial act of dismissing a case, thereby terminating it prior to completion, with the ministerial act of closing a case after the administration of the estate has been completed. They are two different things. See, Bledsoe, 441 F. Supp. 2d at 985; Menk, 241 B.R. at 911-13.

The motion to dismiss is DENIED. The defendant shall answer Plaintiff’s complaint within ten (10) days.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

¹To the extent the defendant may be arguing that the case should be dismissed because the complaint fails to allege whether the matter is a core or a non-core proceeding, as required by Rule 7008(a) of the Federal Rules of Bankruptcy Procedure, the argument is so poorly developed that it has been waived. Furthermore, it is obvious from the face of the complaint that the plaintiff is seeking a “determination[] as to the dischargeability of a particular debt[]” and that specifically constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(I). Cf., Rueth v. EPA, 13 F.3d 227, 229 (7th Cir.1993); Capitol Leasing Co. v. F.D.I.C., 999 F.2d 188, 191 (7th Cir. 1993) (In considering a motion to dismiss for lack of subject matter jurisdiction, the court must accept the complaint’s well-pleaded factual allegations as true and draw reasonable inferences in favor of the plaintiff.).