

Not Intended for Publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 13-10674)	
)	
TANA R. GEIER)	
)	
Debtor)	
)	
TANA R. GEIER)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 13-1074
)	
U.S. DEPARTMENT OF EDUCATION,)	
et. al.)	
)	
Defendants)	

DECISION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on January 15, 2014.

The debtor filed this adversary proceeding in order to obtain a declaration that her continuing liability on student loans owed to the defendant would constitute an undue hardship and, therefore, that the obligation should be discharged. See, 11 U.S.C. § 523(a)(8). Although not originally named as a party, Educational Credit Management requested and was permitted to intervene in this proceeding. It has now filed a motion for summary judgment. There has been no response to this motion within the time required by the local rules of this court. See, N.D. Ind. L.B.R. B-7007-1(a). Consequently, the court may decide the motion based upon the proposition that “the facts as claimed and supported by admissible evidence . . . exist without controversy” N.D. Ind. L.B.R. B-7056-1. This does not mean, however, that the motion should be granted merely because it is unopposed. “[T]he party moving for summary judgment has the burden to show that he is entitled to judgment

under established principles; and, if he does not discharge that burden, he is not entitled to judgment.” Adickes v. S.H. Kress and Co., 398 U.S. 144, 161, 90 S. Ct. 1598, 1610 (1970). Thus, an unopposed motion cannot be granted automatically. Instead, the court is required to go beyond the lack of opposition and make the further finding that given the undisputed facts, summary judgment is proper as a matter of law. Weinco, Inc. v. Katahn Associates, Inc., 965 F.2d at 565, 568 (7th Cir. 1992).

Educational Credit Management served a request for admissions upon the plaintiff on October 3, 2013. Most of these requests were directed to issues concerning the execution of the promissory notes representing the obligations in question, the amount due and the rate at which interest continued to accrue. Three of them, however, were directed towards the plaintiff’s ability to repay and the burden repayment would impose. The plaintiff was asked to:

- 1) admit or deny that the Plaintiff, Tana R. Geier, can afford to make payment of a reasonable amount until the debts are paid in full;
- 2) admit or deny that Plaintiff, Tana R. Geier, is not permanently disabled, and
- 3) admit or deny that excepting the Notes from discharge under 11 U.S.C. 523(a)(8) will not impose an undue hardship on the Plaintiff.

Despite having been served with a copy of these requests, the plaintiff did not respond to the defendant’s request for admissions. She did not object to the request; neither did she admit or deny any of the factual statements it contained. As a result, those facts were deemed admitted. See, Fed. R.Civ. P. Rule 36(a).

The motion for summary judgment is based upon the facts which had been “conclusively established,” Fed. R. Civ. P. Rule 36(b), by the plaintiff’s failure to respond to the request for admissions. By failing to respond, the plaintiff admits that she can pay, she is not disabled and not

excepting the debts from the debtor's discharge will not impose an undue hardship – all requirements that the debtor was required to satisfy to the contrary.

Thus, having considered the motion, together with the materials submitted in support thereof, the court concludes that there is no genuine issue of material fact and defendant Educational Credit Management Corporation is entitled to the entry of judgment in its favor as a matter of law.

IT IS THEREFORE ORDERED that Educational Credit Management Corporation's motion for summary judgment is granted and the debtor's obligation to it is non-dischargeable.¹

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

¹This decision and order appears to resolve all issues as to the intervening party, Educational Credit Management. But because the issues regarding the other defendants have not yet been resolved, the court cannot enter a final judgment. See, Fed. R. Civ. P. Rule 54(b).