

NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 15-11564)	
)	
LATONYA RENE ELLIS)	
)	
Debtor)	
)	
LATONYA RENE ELLIS)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 15-1071
)	
DEPARTMENT OF EDUCATION/ NAVIENT)	
)	
Defendants)	

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 22, 2015.

The debtor filed this adversary proceeding in order to obtain a declaration that her continued liability on student loans owed to the defendants would constitute an undue hardship and, therefore, that the obligation should be discharged. See, 11 U.S.C. § 523(a)(8). Navient Solutions filed a motion for summary judgment asking that it be dismissed from this proceeding because it simply services the loan for the actual creditor – the Department of Education – and the plaintiff owes nothing to Navient, so that as to Navient there is nothing to be discharged.

The plaintiff has not responded to the motion.¹ However, simply because a motion for summary judgment is unopposed does not mean that it should be granted. Instead, the court is

¹The plaintiff is proceeding pro se and the defendant did provide her with the notice required by N.D. Ind. L.B.R. B-7056-1(c).

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). See also, Adickes v. S.H. Kress and Co., 398 U.S. 144, 161, 90 S.Ct. 1598, 1610 (1970).

Having considered the motion, together with the materials submitted in support thereof, the court concludes that there is no genuine issue of material fact. There is no obligation running from the plaintiff to Navient Solutions, Inc. and it is entitled to the entry of judgment in its favor as a matter of law.

Navient Solutions Inc.'s motion for summary judgment will be granted and it will be dismissed from this proceeding. This adversary proceeding will, however, continue as to the Department of Education.²

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

²The Department of Education has not appeared in this proceeding. Whether the lack of an appearance is because it has not been properly (and timely) served with the summons and complaint or is in default the court does not know, because the plaintiff has yet to file a return of service showing when, where, how and to whom service was made. In the absence of an appearance and service upon the only remaining defendant, it seems to be relatively pointless to hold a scheduling conference at this time. See, Fed. R. Civ. P. Rule 16(b)(2).