IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. **Case No. 2:11-cv-02337-cgc**

PATRICIA WOODS

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the Court is Plaintiff United States of America's Motion for Summary Judgment against Defendant Patricia Woods. (Docket Entry "D.E." #15). By consent of the parties, the Magistrate Judge is the presiding judge in this case. For the reasons set forth herein, Plaintiff's Motion for Summary Judgment is hereby GRANTED.

I. Findings of Fact

Between 1995 and 1997, Defendant obtained a total of eleven Direct Stafford loans, including three subsidized and eight unsubsidized, from the United States Department of Education ("DOE") for attendance at The University of Memphis. The Direct Stafford loans were disbursed for a total of $46,250.00, consisting of $21,250.00 in subsidized and $25,000.00 in unsubsidized disbursements. Defendant's first payment was due July 14, 1998, and Defendant made her first payment of $200.00 on April 6, 1999. From 1999 to 2003, Defendant made thirty-one payments totaling $19,118.29.

On May 10, 2004, Defendant defaulted on her loan obligations. DOE made attempts to negotiate repayment arrangements with Defendant, but they were unsuccessful. On November

20, 2004, Defendant's loans were sent to Financial Asset Management, Inc., a private collection agency, whose attempts to secure repayment were unsuccessful. On December 6, 2005, the collection agency returned the loans to DOE. On December 17, 2005, DOE sent Defendant's loans to another private collection agency, West Asset Management, Inc. Thereafter, Defendant made ten consecutive monthly payments for a total of $6,580.00 during the period of December 30, 2005 to September 25, 2006.

As a result of her renewed payments, Defendant's loans were transferred from the private collections agency back to DOE on October 4, 2006. Defendant made one payment on November 24, 2006, in the amount of $720.00. On September 17, 2007, Defendant defaulted on her loans for the second time. The loans were again sent to three different private collection agencies from September 20, 2008 to October 23, 2010, with limited results. Defendant made eight payments totaling $5,239.52 during the period of November 25, 2008 to October 6, 2009. To date, Defendant has made a total of $31,657.81 in payments towards the loans. As of April 6, 2012, the balance of Defendant's loans is $61,040.56, consisting of $52,296.05 in principal, $8,714.51 in interest, and $30.00 in fees. Interest continues to accrue at the current rate of 3.16% and a daily rate of $4.52.

II. Legal Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Although hearsay evidence may not be considered on a motion for summary judgment, Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp., 176 F.3d 921, 927 (6th Cir. 1999), evidentiary materials presented to avoid summary judgment otherwise need not be in a

form that would be admissible at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Thaddeus-X v. Blatter, 175 F.3d 378, 400 (6th Cir. 1999). The evidence and justifiable inferences based on facts must be viewed in a light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Wade v. Knoxville Utilities Bd., 259 F.3d 452, 460 (6th Cir. 2001).

Summary judgment is proper "against a party who fails to 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, 477 U.S. at 322. The moving party can prove the absence of a genuine issue of material fact by showing that there is a lack of evidence to support the nonmoving party's case. Id. at 325. This may be accomplished by submitting affirmative evidence negating an essential element of the nonmoving party's claim, or by attacking the nonmoving party's evidence to show why it does not support a judgment for the nonmoving party. 10a Charles A. Wright et al., Federal Practice and Procedure § 2727 (2d ed. 1998).

Once a properly supported motion for summary judgment has been made, the "adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A genuine issue for trial exists if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). To avoid summary judgment, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

III. Analysis

In order for the government to recover on a promissory note for a federal student loan, the United States must show "that (1) the defendant signed it, (2) the government is the present owner or holder and (3) the note is in default." U.S. v. Petroff-Kline, 557 F.3d 285, 290 (6th Cir. 2009) (citing United States v. MacDonald, No. 93-1924, 1994 WL 194248, at *2 (6th Cir. 1994)). Once the government has established a prima facie case, the burden shifts to the defendant to show that the debt does not exist, has been repaid, or varies from the alleged obligation. Id. (citing United States v. Davis, 28 Fed.Appx. 502, 503 (6th Cir. 2002)).

In the present case, Plaintiff has established a prima facie case that Defendant has defaulted on eleven student loans issued to her. First, Plaintiff has attached copies of the eleven Federal Direct Stafford Loans Promissory Notes signed by Defendant. Second, Plaintiff has established that DOE, an agency of the United States, is the present holder of these promissory notes. Third, Plaintiff has established that Defendant's loans are in default by attaching the declaration of a loan analyst certified under penalty of perjury that Defendant defaulted on her student loans and is indebted to the United States in the amount of $61,040.56, as of April 6, 2012.

In response to Plaintiff's prima facie case, Defendant concedes that she "has neither a factual nor legal basis for opposing the plaintiff's Motion for Summary Judgment." Consistent with her concession, Defendant has not provided any evidence that these loans have been extinguished, paid in full, or vary from Plaintiff's evidence. Accordingly, the Court finds that no genuine issue of material fact exists in the instant case, and that summary judgment is appropriate.

IV. Conclusion

For the reasons set forth herein, Plaintiff's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED this 18th day of July, 2012.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTION OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.