

15-0524

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

KAREN ADAMS,

Plaintiff,

v.

Civil Action No. 12-C-43
The Hon. Phillip M. Stowers

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY, d/b/a
AMERICAN EDUCATION SERVICES,
A foreign corporation,

Defendant.

2015 MAY - 1 PM 2:11
PUTNAM CO. CIRCUIT COURT
RONNIE W. MATTHEWS
FILE

ORDER RE-ENTERING ORDER GRANTING SUMMARY JUDGMENT

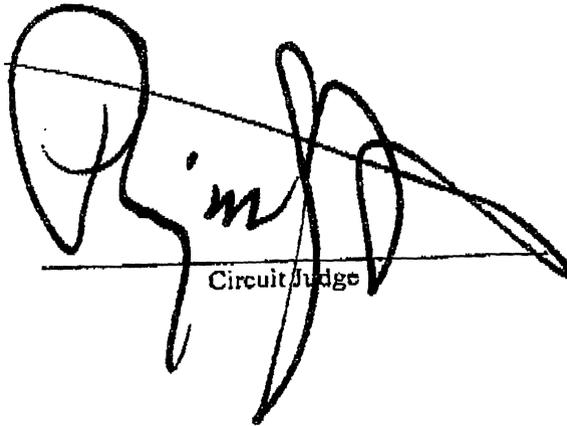
This day came the Plaintiff on her Motion to Re-enter the Order Granting Summary Judgment, previously entered on February 3, 2015. It appears that the Order was not mailed to counsel, although the order as entered directed copies be mailed to Counsel. It appearing to the Court that good cause having been shown, it is hereby **ORDERED** that the February 3, 2015 Order be re-entered by the Putnam County Circuit Clerk's Office for the purposes of appellate review, effective as of the date of entry of this Order. The objections of the defendant are noted and preserved.

The Clerk is to Ordered to provide a copy of this Order to counsel listed below:

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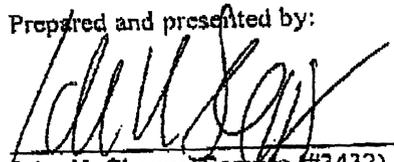
Steven L. Thomas, Esquire
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Dated this 30th day of April, 2015.

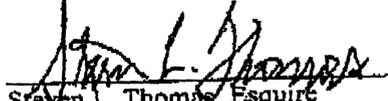


Circuit Judge

Prepared and presented by:



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IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

KAREN ADAMS,

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Civil Action No. 12-C-43
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PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY, d/b/a
AMERICAN EDUCATION SERVICES,
A foreign corporation,

SUNTRUST BANK,
A foreign corporation,

Defendants.

RONNIE W. MATTHEWS
FILE
PUTNAM CO. CIRCUIT COURT
2015 FEB -5 PM 12: 54

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER GRANTING PENNSYLVANIA HIGHER EDUCATION ASSISTANCE
AGENCY'S RENEWED MOTION FOR SUMMARY JUDGMENT**

On the 11th day of July 2014 came defendant, Pennsylvania Higher Education Assistance Agency ("PHEAA" or "Defendant"), by counsel Steven L. Thomas, and the law firm of Kay Casto & Chaney, PLLC; and plaintiff, Karen Adams ("Ms. Adams" or "Plaintiff"), by her counsel John H. Skaggs, and the law firm The Calwell Practice PLLC, for a hearing on *Pennsylvania Higher Education Assistance Agency's Renewed Motion For Summary Judgment* ("Motion").

After reviewing the pleadings, exhibits and the memoranda of law submitted by the parties hereto, and having heard the arguments of counsel on the Motion, the Court makes the following findings of fact and conclusions of law¹:

¹ In accordance with Rule 52 of the West Virginia Rules of Civil Procedure, when appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

I. Legal Standard

1. Pursuant to Rule 56(c) of the West Virginia Rules of Civil Procedure a motion for summary judgment should be granted "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." W. Va. R. Civ. P. 56.

2. The question to be decided on a motion for summary judgment is whether there is a genuine issue of fact and not how that issue should be determined." Syllabus Point 5, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W.Va. 160, 133 S.E.2d 770 (1963).

3. "Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syllabus Point 4, Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755 (1994).

4. "If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the West Virginia Rules of Civil Procedure." Syllabus Point 3, Williams v. Precision Coil, Inc., 194 W.Va. 52, 459 S.E.2d 329 (1995).

5. "Roughly stated, a 'genuine issue' for purposes of West Virginia Rule of Civil Procedure 56 (c) is simply one half of a trialworthy issue, and a genuine issue does not arise

unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that party. The opposing half of a trial-worthy issue is present where the non-moving party can point to one or more disputed 'material' facts. A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law." Syllabus Point 5, Jividen v. Law, 194 W.Va. 705, 461 S.E.2d 451 (1995).

II. Findings of Fact

6. The business records of PHEAA reflect that Ms. Adams signed a Guaranteed Student Loan Promissory Note ("Promissory Note") and Application (the Promissory Note and Application are collectively referred to herein as the "Student Loan") on November 9, 1986 to obtain student loan funds to attend PTC Institute (RETS) ("PTC").

7. Ms. Adams defaulted on the Student Loan, and later entered into a loan rehabilitation program with Collect Corp, as an agent of Educational Credit Management Corporation ("ECMC") and the United States Department of Education ("ED"), by signing a rehabilitation agreement on October 8, 2007(the "Rehabilitation Agreement").

8. Plaintiff successfully rehabilitated the Student Loan by making at least nine (9) monthly payments of \$86.00 beginning September 28, 2007, thus removing the default status of the Student Loan.

9. In 2008, the Student Loan was sold to SunTrust Bank. Contemporaneous therewith, PHEAA, a statutorily-created instrumentality of the Commonwealth of Pennsylvania, became the servicer of the Student Loan.

10. From June 23, 2008 through March 15, 2010 Plaintiff made twenty-one (21) payments on the rehabilitated Student Loan.

11. On several occasions beginning in June, 2008 through April, 2010, Plaintiff contacted PHEAA claiming that the Student Loan was wrongfully obtained in her name by an act of identity theft. On each occasion, PHEAA requested from Plaintiff certain documentation to necessary to conduct a fraud investigation including, but not limited to, signature samples and a police report reporting the identity theft.

12. Plaintiff never provided a copy of the requested police report to PHEAA.

13. Plaintiff did produce to PHEAA five notarized (5) signature samples, a copy of her social security card, and a copy of her driver's license. PHEAA reviewed the signature samples provided by Ms. Adams, the signatures on her social security card and driver's license, and the signature from the Rehabilitation Agreement, and concluded that the signature samples were consistent with the signature on the Student Loan Promissory Note. Accordingly, Ms. Adams' request for discharge of the Student Loan based upon identity theft was denied.

14. In June, 2011, Plaintiff requested a discharge of the Student Loan based upon total and permanent disability. Plaintiff, after multiple requests from PHEAA, failed to submit a complete disability discharge application including the required physician certification of disability. The plaintiff had been awarded Supplemental Security Income benefits in 1996. This order was provided to PHEAA.

15. On or about September 8, 2011, PHEAA was advised that Ms. Adams was represented by counsel. Subsequent to September 8, 2011, PHEAA continued to directly contact Ms. Adams.

16. On April 18, 2012, Ms. Adams filed her *Second Amended Petition and Complaint*, requesting: (1) declaratory judgment that the Student Loan is null and void or in the alternatively barred by a statute of limitations; and (2) statutory damages in the amount of

\$60,000.00 for alleged violations of the West Virginia Consumer Credit Protection Act ("WVCCPA"). PHEAA timely filed an answer denying all asserted claims.

17. On or about March 6, 2014, Ms. Adams completed and submitted a *Loan Discharge Application: False Certification (Ability to Benefit)* (the "ATB Discharge Application") to ECMC. On the ATB Discharge Application, Ms. Adams requested a discharge of the Student Loan pursuant to 34 C.F.R. § 682.402(e) of the Federal Family Education Loan regulations (34 C.F.R. §§ 682.100 *et seq.*) (the "FFEL Regulations").

18. On the ATB Discharge Application, Ms. Adams admitted that she signed the Student Loan but asserted that she was entitled to a discharge of the Student Loan because she never graduated from high school nor obtained a GED, and PTC failed to give her an appropriately administered entrance exam to determine her ability to benefit from the Student Loan.

19. On the ATB Discharge Application, Ms. Adams certified in writing under penalty of perjury that: (i) she attended PTC from December 30, 1986 to June 16, 1987; and (ii) federally guaranteed student loan funds were distributed to, or for, her benefit while attending PTC pursuant to the Student Loan.

20. The ATB Discharge Application was approved by ED, and Ms. Adams has been refunded all monies that she paid on the Student Loan.

21. PHEAA contends that Ms. Adams, by signing the ATB Application, has now admitted that she signed the Student Loan Promissory Note and that student loan funds were disbursed on her behalf, and therefore the entirety of Plaintiff's claim is pre-empted by the Higher Education Act of 1965 (20 U.S.C. §§ 1001 *et seq.*) (the "HEA") and the Federal Family Education Loan ("FFEL") regulations.

22. Ms. Adams contends that the federal pre-emption of student loans is not complete and is limited only to the preemption of state statute of limitations. Ms. Adams further contends that the fact that she ultimately availed herself of an administrative remedy which resulted in her claim being deemed discharged as not enforceable does not establish a basis to pre-empt her state law claims.

23. At a previous hearing, the Court Ordered that the trial be bifurcated, with the first issue to be tried to be whether the transaction between the plaintiff and the originating lender was a loan agreement. The Court now finds that a trial is not necessary because PHEAA is entitled to judgment as a matter of law, based on the facts that are not subject to reasonable dispute.

III. Conclusions of Law

24. By signing the ATB Discharge Application, Plaintiff has admitted that she signed the Student Loan and that student loan funds were disbursed for her benefit. Thus, at all times relevant, the Student Loan must be treated as a valid federally guaranteed Robert T. Safford Federal Loan governed by The Higher Education Act of 1965 (20 U.S.C. §§ 1001 *et. seq.*) (the "HEA") and the FFELP Regulations.

25. The Court finds that the loan discharge application is not excluded under West Virginia Rules of Evidence 404(b) as contended by the plaintiff. The Court finds that the statement was not made in furtherance of a settlement between the parties to this civil action.

26. The HEA provides aid to students through federally-sponsored loan programs. One such group of federally sponsored loan programs is the Federal Family Education Loan ("FFEL") program which includes certain subsidized and unsubsidized federal Stafford Loans. "Under the Guaranteed Student Loan Program, now known as the Federal Family Education Loan Program, the federal government provides a public guaranty and insurance system so that

students may obtain loans in pursuit of higher education.” Gill v. Paige, 226 F. Supp. 2d 366, 369 (E.D.N.Y. 2002).

27. PHEAA has requested the dismissal of all claims against it on the grounds of federal preemption. “[I]n analyzing the question of preemption, the focus is on congressional intent... manifested by express language in a Federal statute or implicit in the structure and purpose of the statute.” See Chevy Chase Bank v. McCamant, 512 S.E.2d 217, 222 (W. Va. 1998).

28. “To establish a case of express preemption requires proof that Congress, through specific language, preempted the specific field covered by State law.” Id. Conversely, “[t]o prevail in a claim of implied preemption, ‘evidence of a congressional intent to preempt the specific field covered by State law’ must be pinpointed.” Id. (quoting Hartley Marine Corp. v. Mierke, 196 W.Va. 669, 674, 474 S.E.2d 599, 604 (1996)).

29. The HEA and the FFEL Regulations provide a detailed statutory and regulatory governance structure for Federally-insured student loans. See 20 U.S.C. §1082(a); 34 C.F.R. § 682.411. As a part of that governance structure, the HEA and FFEL Regulations establish minimum uniform due diligence requirements for loan collection including the requirement that loan servicers, like PHEAA, must diligently attempt to contact the borrower by telephone and in writing to “forcefully” demand payment on defaulted student loans. See 20 U.S.C. §1078; See 34 C.F.R. 682.411(o).

30. Section 682.411(o) of the FFEL Regulations provides that: “The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.” See 34 C.F.R. 682.411(o).

31. The overwhelming body of case law interpreting the HEA, Section 682.411(o), and the Notice has repeatedly reinforced the principle that state law claims based upon pre-litigation collection activities relating to federally-guaranteed student loans are preempted by federal law. Brannan v. United States Aid Funds, Inc., 94 F.3d 1260, 1264 (9th Cir. 1996); Pirouzian v. SLM Corp., 396 F. Supp. 2d 1124 (S.D. Cal. 2005); Kort v. Diversified Collection Servs., 270 F. Supp. 2d 1017, 1023 (N.D. Ill. 2003); et al. The same preemption principle has been recognized, adopted and applied in the Fourth Circuit and in both federal district courts located within West Virginia. See Seals v. Nat'l Student Loan Program, 2004 WL 3314948, at 3, 6 (N.D. W. Va. 2004), aff'd, 124 Fed. Appx. 182 (4th Cir. 2005) (per curiam); Martin v. Sallie Mae, Inc., 2007 WL 4305607 (S.D. W.VA. 2007).

32. Plaintiff's WVCCPA claims are entirely based upon pre-litigation collection activities. All of PHEAA's contacts with Plaintiff were conducted in accordance with and as mandated by the HEA and the FFEL Regulations. See 34 C.F.R. § 682.411.

33. The provisions of the WVCCPA upon which Ms. Adams relies upon to support her WVCCPA based claims are in conflict with the HEA and the FFEL Regulations and are preempted by federal law. Accordingly, PHEAA is entitled to judgment as a matter of law on all of Plaintiff's WVCCPA based claims.

34. Section 1091a of the HEA expressly preempts, negates and eliminates any and all federal or state, regulatory, or administrative time limitations on the collection of ED financed student loan debts. See 20 U.S.C. § 1091a; see also Millard v. United Student Aid Funds Inc., 66 F.3d 252, 253 (5th Cir. 2001); U. S. v. Glockson, 998 F.2d 896, 897 (11th Cir. 1993); U. S. v. Lawrence, 276 F.3d 193, 196 (5th Cir. 2001); et al. The Student Loan is a federally guaranteed Stafford Loan to which Section 1091(a) applies. Thus, pursuant to Section 1091(a), there is no

statute of limitations applicable to collection efforts on the Student Loan and PHEAA is entitled to judgment as a matter of law on Ms. Adams statute of limitations based claim.

35. Plaintiff must exhaust the administrative remedies available under the HEA and FFEL Regulations before she can seek relief from this or any court. Haddad v. Dominican Univ., 2007 WL 809685 (N.D. Ill. 2007). Plaintiff has afforded herself of her administrative remedies and has obtained a full discharge of the Student Loan and reimbursement of all amounts she paid on the Student Loan.

36. It is well recognized that there is no private cause of action under the HEA and the FFEL Regulations that would permit this court to discharge the Student Loan based upon fraud, identity theft, or disability. *See generally* Coll. Loan Corp. v. SLM Corp., a Delaware Corp., 396 F.3d 588 (4th Cir. 2005); Labickas v. Ark. State Univ., 78 F.3d 333, 334 (8th Cir.1996) (per curiam); Bellecourt v. United States, 994 F.2d 427, 430 (8th Cir.1993); Karara v. United States, 176 F.3d 488 (10th Cir. 1999) McCulloch v. PNC Bank Inc., 298 F.3d 1217, 1221 (11th Cir. 2002); Green v. United States, 163 F. Supp. 2d 593, 598 (W.D.N.C. 2000); Martin; see also Armstrong; In re Barton; In re Bega, 180 B.R. 642, 643 (Bankr. D. Kan. 1995) Williams v. Nat'l Sch. of Health Tech., Inc., 836 F. Supp. 273, 279 (E.D. Pa. 1993) aff'd, 37 F.3d 1491 (3d Cir. 1994); et al. Thus, Ms. Adams is not entitled to any further remedy from this Court, and all of her state law claims are preempted by the HEA and the FFELP Regulations.

37. The Court finds that the determination that the loan was made for Plaintiff to attend a school for which there is a "blanket" administrative discharge for borrowers having no High School diploma nor GED at the time of attendance, under the "Ability to Benefit" FFEL Regulation, does not constitute an administrative finding that the loan was not a student loan in the first instance.

38. The Court finds that the preemption of the state law claims does not require further analysis under *Brown v. Genesis Healthcare Corp.*, ___ W.Va. ___, 724 S.E.2d 250 (2011) and Syllabus Point 4, *State ex rel. Dunlap v. Berger*, 211 W.Va. 549, 567 S.E.2d 265 (2002).

Judgment

WHEREFORE, based on the foregoing, this Court does hereby **GRANT** in full *Pennsylvania Higher Education Assistance Agency's Renewed Motion For Summary Judgment* and does hereby **ORDER** that:

a. At all times relevant, the Student Loan is and was a valid federally guaranteed Robert T. Stafford Federal Loan governed by The Higher Education Act of 1965 (20 U.S.C. §§ 1001 et. seq.) and the FFEL Regulations.

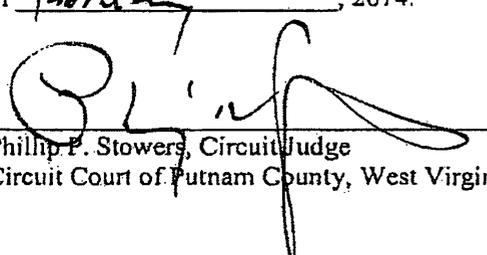
b. The claim asserted by Ms. Adams in this civil action that PHEAA is barred to collect on the Student Loan by the applicable limitations period is dismissed on the grounds that said claim is preempted by 20 U.S.C. § 1091a;

c. All of Ms. Adams' WVCCPA based claims against PHEAA for unlawful collection activity are in conflict with the HEA and the FFEL Regulations and are hereby dismissed on the grounds that said claims are preempted by the HEA and FFEL.

Plaintiff's objections and exceptions to this Order are noted.

The Clerk is hereby directed to send a certified copy of this Order to counsel of record.

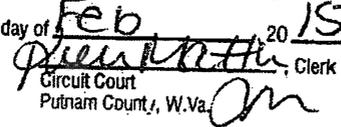
IT IS SO ORDERED this 3 day of February, 2014.


Phillip P. Stowers, Circuit Judge
Circuit Court of Putnam County, West Virginia

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STATE OF WEST VIRGINIA
COUNTY OF PUTNAM, SS:

I, Ronnie W. Matthews, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said Court. Given under my hand and the seal of said Court.

this 10 day of Feb, 2015

Circuit Court
Putnam County, W.Va.

