

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	
RAYMOND GEORGE GUNN)	Adversary Proceeding
(Chapter 13 Case <u>91-20505</u>))	
)	Number <u>97-2015</u>
_____ <i>Debtor</i>)	
)	
)	
RAYMOND GEORGE GUNN)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
GEORGIA HIGHER EDUCATION)	
ASSISTANCE CORPORATION)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

Debtor filed this Complaint on February 25, 1997, seeking a declaratory judgment that his obligation under a student loan was discharged in his previous Chapter 13 case. The previous case was closed on July 25, 1996 by order of this Court. An answer and counterclaim were timely filed and the case was taken under advisement on July 31, 1997. Based upon the briefs submitted by both parties, I make the following Findings of

Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor, Raymond George Gunn, filed a Chapter 13 petition on June 24, 1991. Defendant, Georgia Higher Education Assistance Corporation (“GHEAC”), filed a claim in that case for \$3,461.23 as an unsecured non-priority creditor. GHEAC’s claim was for a government guaranteed student loan. The proof of claim filed by GHEAC did not include post-petition interest and did not note that post-petition interest would be sought. The plan was confirmed on November 7, 1991, without objection from GHEAC.

The plan proposed to pay a dividend of approximately 17.74% to unsecured nonpriority creditors; the claim of GHEAC, however, was paid in full through the plan.¹ Debtor’s case was closed and debts discharged on July 25, 1996. On October 23, 1996, GHEAC then filed suit against Debtor in the State Court of Glynn County, Georgia, seeking judgment for post-petition interest. Debtor’s case was reopened on January 23, 1997 to allow him to bring the instant adversary proceeding. Debtor seeks a declaratory judgment that he is not liable to Defendants for interest accrued on his student

¹ This Court has consistently ruled, in unpublished opinions, that in order to be confirmed, a plan must propose to either pay government guaranteed student loans in full or maintain the contractual payments Debtor was obligated to make as of the filing date, if the maturity date extends beyond the life of the plan, pursuant to section 1322(b)(5), with the balance to remain nondischargeable. See In re Salver, Order on Trustee’s Motion to Reconsider, Ch. 13 No. 91-60201 (Bankr. S.D.Ga. Dec. 9, 1991). The rationale for this treatment of student loans is that in a fully administered Chapter 7 case, the debtor would not be discharged from the student loan and the creditor, under 523(a)(8), would hold a fully matured nondischargeable judgment against the debtor which the creditor could pursue under the full extent of state law. See In re Bauman, Order on Motion for Reconsideration, Ch. 13 No. 93-41818 (Bankr. S.D.Ga.). Therefore, full payment is required to meet the Section 1325(a)(4) requirement, unless the debtor cures and maintains payments under Section 1322(b)(5).

loans after he filed his petition for relief. Defendants filed a Motion for Summary Judgment on July 30, 1997.

Treatment of Post-petition Interest on Nondischargeable Debts in Bankruptcy

11 U.S.C. § 1328(a)(2) provides:

As soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title.

Section 523(a)(8) excepts from discharge any debt for an “educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit.” GHEAC contends that because student loan debts are nondischargeable, interest continues to accrue on such debts after the petition for relief is filed.

Under the former Bankruptcy Act, interest accrues on nondischargeable unpaid tax debts as a personal liability of the debtor. Bruning v. United States, 376 U.S. 358 (1964). The Eleventh Circuit follows the holding and reasoning of Bruning with regard to the Bankruptcy Code. Burns v. United States, 887 F.2d 1541 (11th Cir. 1989) (adopting reasoning of In re Hanna, 872 F.2d 829 (8th Cir. 1989)). The Bruning Court distinguished

personal liabilities of the debtor, which survive bankruptcy, from liabilities of the bankruptcy estate. Because the underlying tax debt was intended by Congress to survive discharge, logic and reason lead to the conclusion that post-petition interest on such a debt should be recoverable as well. Bruning, 376 U.S. at 360. Interest is the cost of the Debtor's use of the money owed to the creditor, and thus is an "integral part of a continuing debt"; therefore, post-petition interest accruing on a nondischargeable debt is itself nondischargeable. Id.

The reasoning of Bruning and Burns has been applied to the context of student loans as well, under Section 523(a)(8). Leeper v. Pennsylvania Higher Education Assistance Agency, 49 F.3d 98 (3d Cir. 1995); *see also* Jordan v. Colorado Student Loan Program, 146 B.R. 31 (D.Colo. 1992); Wagner v. Ohio Student Loan Commission, 200 B.R. 160 (Bankr. N.D. Ohio 1996); Branch v. UNIPAC/NEBHELP, 175 B.R. 732 (Bankr. D. Nebraska 1994); Ridder v. Great Lakes Higher Education Corp., 171 B.R. 345 (Bankr. W.D. Wis. 1994); In re Shelbayah, 165 B.R. 332 (Bankr. N.D. Ga. 1994). These cases reason that where a debt is nondischargeable under Section 523(a), the interest accrues as a personal liability after the petition for relief is filed, and is likewise nondischargeable.

The fact that post-petition interest on such debt cannot be discharged is not affected by its allowance or disallowance as a claim against the bankruptcy estate. Hanna, 872 F.2d at 830; *see also* In re Hamilton, 179 B.R. 749 (Bankr. S.D. Ga. 1995) (Walker, J.)

(“The question of whether the debt is discharged is unrelated to the claims allowance process.”). The 8th Circuit Court of Appeals found that under Section 502(b)(2), claims for post-petition interest on nondischargeable tax debts are disallowed. Section 502(a) provides that “a claim or interest, proof of which is filed under section 501 . . . is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If a party in interest files an objection, the court determines whether and to what extent the claim is allowed pursuant to Section 502(b). Section 502(b)(2) states that “if such objection to a claim is made, the court shall determine the amount of [a] claim *as of the date of filing of the petition*, and shall allow such claim . . . except to the extent that--- . . . (2) *such claim is for unmatured interest.*” 11 U.S.C. § 502(b)(2) (emphasis supplied). A claim for post-petition interest, whether interest on a non-dischargeable debt or not, is therefore not allowed against the bankruptcy estate. Hanna, 872 F.2d at 830; In re Shelbayah, 165 B.R. 332.

A minority of courts have reasoned that because post-petition interest is disallowed under Section 502(b)(2), it cannot later be collected from the debtor after the discharge. This concept is supported by the provisions of 11 U.S.C. Section 1327. These courts reason that since unmatured interest is not allowed, and since confirmation binds all creditors whether or not the claim is provided for, or the creditor has objected, that unmatured interest cannot be collected post-discharge. This rationale is appealing but incomplete. The creditor is bound by the provisions of the plan, but only for so long as the plan is in effect. At the conclusion of the case, the effect of the completed plan is defined

by the discharge provisions of Section 1328. Because student loans are excepted from discharge, any balance remaining, including accruing interest, is not discharged.

During the plan, Section 502 bars payment of interest. Section 1327 bars any effort to collect sums beyond what the plan provided. But the scope of discharge is not defined by Section 1327; rather, it depends upon Section 1328. Once the case is closed and the plan paid out, a creditor holding a nondischargeable debt is no longer bound by the plan, as it was while the case was pending, but is then able to proceed against the debtor and collect the remaining deficiency. 11 U.S.C. § 1328; § 362(c). That deficiency includes not only unpaid principal and pre-petition interest, but post-petition interest which accrued during the term of the plan as well. Bruning, 376 U.S. at 360; Burns, 887 F.2d 1541; Leeper, 49 F.3d 98.

CONCLUSIONS OF LAW

Bankruptcy Rule 7056 incorporates Fed. R. Civ. P. 56, which provides that judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” After reviewing the evidence, I hold that there is no genuine issue of material fact and GHEAC is entitled to judgment as a matter of law. The balance of accrued unpaid interest on Debtor’s student loan is excepted from Debtor’s discharge.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that Georgia Higher Education Assistance Corporation is entitled to judgment in the amount of \$ 1715.46, plus interest from February 25, 1997. FURTHER ORDERED that the balance of accrued unpaid interest on Debtor's student loan is excepted from Debtor's discharge.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of September, 1997.