

student loans were discharged in their previous Chapter 13 case. An answer and counterclaim were timely filed by Defendant Nebraska Student Loan Program. Nebraska Student Loan Program filed this Motion for Summary Judgment on July 31, 1997, and the case was taken under advisement. Based upon the briefs submitted by both parties, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors filed for relief under Chapter 13 on February 14, 1991. Nebraska Higher Education Loan Program, Inc. (“NEB/HELP”) filed its proof of claim in the amount of \$2,428.93 and contemporaneously filed an assignment of its claim to Defendant Nebraska Student Loan Program (hereinafter “NSLP”.) The proof of claim filed by NEB/HELP did not contain any notation or indication that interest was continuing to accrue. Defendant Florida Department of Education (hereinafter “FDOE”) also filed a proof of claim in the amount of \$2,610.61.

Debtors’ Chapter 13 plan paid the claim of FDOE in full. The plan otherwise paid a dividend to other unsecured, nonpriority creditors, including NSLP, of approximately 75%.¹ The case was closed and the Debtors were discharged from all debts on February 5, 1996. At the time of the discharge order, NSLP had received payments from the Chapter 13 Trustee in the amount of \$1,800.81, with a remaining principal balance of

¹ It appears from the Trustee’s Final Report that the allowed claim of NSLP was misclassified as a general unsecured claim, while the claim of FDOE was classified separately and thus paid in full.

\$628.12.² Both FDOE and NSLP sought postpetition interest from Debtors after the close of Debtors' Chapter 13 case.

FDOE intercepted \$1,091.57 from Defendant Internal Revenue Service to be applied against the interest which accrued on the loan during the pendency of the case, even though the plan paid FDOE in full on its claim. FDOE remains in possession of the intercepted tax refunds. Because FDOE did not file an Answer to Plaintiff's Complaint and did not appear at the pre-trial hearing, the clerk entered default as to FDOE on July 22, 1997. FDOE filed a Motion to Set Aside Default on July 31, 1997, which was granted on September 15, 1997.³

NSLP capitalized the accrued interest and included it as part of the outstanding principal balance upon its repurchase of the loan. As of June 1, 1997, the outstanding balance owing on the NSLP loan is \$983.07, with interest accruing at the rate of \$0.25 per day.⁴

Treatment of Post-petition Interest on Nondischargeable Debts in Bankruptcy

11 U.S.C. Section 1328(a)(2) provides:

² Payments from the Trustee to NSLP were applied first to prepetition interest and then against the principal balance owed on the loan obligation.

³ See In re Walter, Order on Defendant Florida Dept. of Education's Motion to Set Aside Default.

⁴ See Affidavit of Connie Holbrook. Defendant NSLP's Answer, dated June 27, 1997, indicated that the total amount at that time was \$1,007.42.

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.” NSLP 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 accrued 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, however, 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 derived from 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 NSLP 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 Nebraska Student Loan Program is entitled to judgment in the amount of \$983.07, plus interest from June 1, 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.