


SO ORDERED.

SIGNED this 22nd day of September, 2015.



  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Michael James Bennett,	)	Case No. 14-51218
	)	
Debtor.	)	Chapter 7
_____	)	
	)	
Michael James Bennett,	)	
	)	
Plaintiff,	)	Adv. Pro. No. 15-06051
v.	)	
	)	
U.S. Department of Education and	)	
Pennsylvania Higher Education Assistance	)	
Agency d/b/a FedLoan Servicing,	)	
	)	
Defendants.	)	
_____	)	

**ORDER ON MOTION TO DISMISS**

This adversary proceeding came before the Court for hearing on September 9, 2015, after due and proper notice, upon the motion by Pennsylvania Higher Education Assistance Agency d/b/a FedLoan Servicing (“PHEAA”) to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), or alternatively to drop PHEAA from the adversary proceeding (the “Motion to Dismiss”). At the hearing, Michael James Bennett (the “Plaintiff”) appeared pro se, and

Gregory P. Chocklett appeared on behalf of PHEAA. For the reasons stated herein, the Court will dismiss PHEAA as a defendant from this adversary proceeding.

Michael James Bennett (the “Plaintiff”) filed a complaint against the U.S. Department of Education and PHEAA to determine the dischargeability of student loan debt under 11 U.S.C. § 523(a)(8) (the “Complaint”). According to his Complaint, the Plaintiff undertook loans to pay for tuition and expenses at Case Western Reserve University School of Law, the University of Akron, and Saint Louis University. In December 2012, the Plaintiff consolidated his educational loans through the U.S. Department of Education’s William D. Ford Direct Consolidation Loan Program and, as he states in the Complaint, “became indebted to one or more of the Defendants in the original principal amount of \$76,110.79.” The Complaint further alleges that “Plaintiff is uncertain who owns or is in physical custody of the promissory note(s) and/or security agreements evidencing the debt.”

In response to the Complaint, defendant PHEAA filed the Motion to Dismiss, asserting that PHEAA is merely the servicer of the educational loans at issue and is not the holder, originator, owner, assignee, or guarantor of the loans. Def.’s Mem. Supp. Mot. Dismiss 2.<sup>1</sup> Along with the Motion to Dismiss, PHEAA filed a copy of the Federal Direct Consolidation Loan Application and Promissory Note, which identifies the U.S. Department of Education as the lender. PHEAA also filed the Affidavit of Marc Brisco, who identifies himself as the Vice President of Loan Operations for FedLoan Servicing at PHEAA.

The Plaintiff filed a response to PHEAA’s Motion to Dismiss in which he clarified that he knows that the U.S. Department of Education is the owner of loans. Pl.’s Mem in Opp’n to PHEAA’s Mot. Dismiss 2-3. Nevertheless, the Plaintiff asks the court to retain PHEAA as a

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<sup>1</sup> Defendant PHEEA filed its Motion to Dismiss on August 7, 2015, and a Memorandum in Support of its motion on August 27, 2015.

party, asserting that PHEAA is in the best position to provide correct information about the loans. At the hearing on the Motion to Dismiss, the Plaintiff reiterated that he was aware that PHEAA was the servicer, not the lender, and requested that the court allow him some “leeway” so he could obtain further information about his student loans.

Rule 12(b)(6) provides for dismissal where a party has failed “to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). The facts alleged must be sufficient “to raise a right to relief above the speculative level” and state a claim “that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007). When considering a motion to dismiss, the court must take all well-pleaded factual allegations as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Pursuant to Rule 12(d), when considering a 12(b)(6) motion, if matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Fed. R. Civ. P. 12(d). Although PHEAA has filed a notarized affidavit in support of its motion, the Court will rule on the Motion without consideration of this affidavit. The Complaint does not specifically allege that the Plaintiff is indebted to PHEAA, and it is clear from both the Plaintiff’s own pleading in response to the Motion to Dismiss and from his oral argument that he agrees PHEAA is the servicer of his student loan, not the lender.

The Plaintiff’s Complaint seeks to discharge his student loan debt under § 523(a)(8). The Plaintiff acknowledges in his response that it is the U.S. Department of Education, the owner of the student loans, that can discharge the debt under § 523(a)(8). The Plaintiff argues that he seeks merely to obtain information from PHEAA. This court agrees with other courts that have dismissed § 523(a)(8) actions against student loan servicers on the ground that there is no debt owed to the servicer to find dischargeable. E.g., Shanks v. Sallie Mae (In re Shanks), No. 14-

52925-BEM, Adv. No. 14-5189-BEM, 2014 WL 4365962, at \*1 (Bankr. N.D. Ga. Aug. 28, 2014); Hubbard v. Pennsylvania Higher Educ. Assistance Agency (In re Hubbard), No. 13-15606, Adv. No. 14-1010, 2014 WL 1654703, at \*4 (Bankr. E.D. Tenn. Apr. 25, 2014); Aalabdulrasul v. ACS (In re Aalabdulrasul), No. 11-02108, Adv. No. 11-09089, 2012 WL 1597277, at \*2 (Bankr. N.D. Iowa May 7, 2012); see also Srinivasan v. Sallie Mae, Inc. (In re Srinivasan), No. 10-12732(RTL), Adv. No. 10-1545(RTL), 2010 WL 3633062, at \*3 (Bankr. D.N.J. Sept. 7, 2010), aff'd, No. 10-5661(JAP), 2011 WL 3040218 (D.N.J. July 25, 2011) (denying motion for default judgment on § 523(a)(8) complaint against student loan servicer). While the Court is not unsympathetic to the Plaintiff's desire to obtain information about his student loan, a cause of action under § 523(a)(8) against the loan servicer is not the appropriate procedure in which to do so.

Accordingly, PHEAA's motion to dismiss is hereby GRANTED, and PHEAA is dismissed as a defendant from this adversary proceeding.

**END OF DOCUMENT**

PARTIES TO BE SERVED

Bennett vs PHEAA  
15-6051

Michael James Bennett  
328 Pennsylvania Ave.  
Winston-Salem, NC 27104

Gregory Chocklett  
711 Harvey St.  
Raleigh, NC 27608

Pennsylvania Higher Education  
Assistance Agency  
1200 North Seventh St.  
Harrisburg, PA 17102-1444

William P. Miller  
Bankruptcy Administrator  
P.O. Box 1828  
Greensboro, NC 27402