

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VALERIE FREW,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 05-5297
v.	:	
	:	
VAN RU CREDIT CORPORATION and	:	
UNITED STATES DEPARTMENT	:	
OF EDUCATION,	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, S. J.

August 7, 2006

Presently before the Court are Plaintiff's Amended Complaint (Docket No. 12), Defendant United States Department of Education's Motion to Dismiss and Partial Remand (Docket No. 14), Plaintiff's Response (Docket No. 15), and Defendant Van Ru Credit Corporation's Joinder in Defendant Education's Motion to Dismiss (Docket No. 16). The Court dismisses Counts I, II, and IV of the Amended Complaint against Defendant Department of Education. The Court grants Defendant Department of Education's request to remand Count III to the Department of Education for further administrative proceedings. The Court also dismisses Counts I and IV of the Amended Complaint against Defendant Van Ru; however, the Court dismisses without prejudice Count II against Defendant Van Ru.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiff obtained federal student loans between 1991 and 1995 to assist in payment of her schooling at American International College. On June 12, 1998, Plaintiff filed a Chapter 7 bankruptcy petition. Plaintiff claims that she was contacted in 1998 by an agent of

Defendant United States Department of Education (“Department of Education”) who was attempting to collect her student loan debt. Although federal student loan debts are not typically discharged in bankruptcy, Plaintiff alleges that the agent agreed with her that the debt would be discharged by her Chapter 7 bankruptcy order.<sup>1</sup>

According to Plaintiff, she was not contacted by Defendant Department of Education again until November 2004. At that time, Defendant Department of Education informed her that she still owed payment on her student loan debt. In February 2005, Defendant Department of Education mailed Plaintiff a “Notice of Proposed Wage Garnishment Due to Debt Owed to U.S. Government.” (Pl.’s Am. Compl. Ex. C.) Plaintiff timely filed a written dispute of the debt, requested a hearing, and requested copies of the records concerning the debt.<sup>2</sup>

Defendant Department of Education failed to provide Plaintiff with her records, but conducted a written hearing per her request. Defendant Department of Education determined that the debt was valid and that it had the authority to garnish Plaintiff’s wages. (Pl.’s Am. Compl. Ex. E.) Plaintiff objected to the decision and continued corresponding with Defendant Department of Education in an attempt to forestall the wage garnishment. Notwithstanding Plaintiff’s continued correspondence, Defendant Department of Education sent Plaintiff a letter stating that she had failed to respond and thereafter instituted the wage garnishment. (Pl.’s Am. Compl. Ex. G.) Although Plaintiff alleges that the correspondence she received came from

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1. The order discharging her debt was filed on January 5, 1999.

2. Although no documentation has been provided by Defendant Department of Education to prove that this debt exists, Plaintiff attached copies of the “Application and Promissory Notes for a Stafford Loan” for the academic years between 1991 and 1993. (Pl.’s Am. Compl. Ex. E.) These documents show that Plaintiff apparently applied for federal loans beginning in August 1991. Plaintiff claims to have no recollection of when she completed the loan applications or the amounts for which she applied. (Pl.’s Am. Compl. ¶ 7.)

Defendant Van Ru Credit Corporation (“Van Ru”), the exhibits attached by Plaintiff show that the correspondence was sent from Defendant Department of Education and merely mentions Defendant Van Ru as a customer service contact.

Plaintiff filed suit against Defendant Department of Education and Defendant Van Ru in the Court of Common Pleas of Philadelphia County on June 23, 2005. Plaintiff’s initial Complaint alleged violations of the Bankruptcy Code, the Fair Debt Collection Practices Act, the Debt Collection Improvement Act of 1996 and Pennsylvania law prohibiting wage garnishment against both Defendants. At that time, Plaintiff also filed for and received a preliminary injunction enjoining Defendant Van Ru from garnishing her wages.<sup>3</sup> Defendant Department of Education then removed the suit to federal court and subsequently filed a Motion to Dismiss (Docket No. 9) in which Defendant Van Ru joined. (Docket No. 10.)<sup>4</sup> In response to Defendants’ Motion to Dismiss, Plaintiff filed an Amended Complaint. (Docket No. 12.) Due to the filing of the Amended Complaint, the Court denied Defendants’ initial Motion to Dismiss as moot. (Docket No. 13.)

## **II. DISCUSSION**

### **A. Motion to Dismiss**

#### **1. Standard of Review**

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3. The injunction was dissolved four days after it was granted following a hearing in the Court of Common Pleas of Philadelphia. (Docket No. 8.)

4. Before the filing of Defendant’s initial Motion to Dismiss, Defendant Department of Education directed Plaintiff’s employer to stop withholding her wages and processed a refund of all funds that had been obtained through the administrative wage garnishment. Defendant Department of Education also recalled Plaintiff’s debt from Defendant Van Ru. (Def.’s Mot. to Dismiss 19.)

A motion to dismiss pursuant to Rule 12(b)(6) is granted where the plaintiff fails to state a claim upon which relief can be granted. Fed R. Civ. P. 12(b)(6). The motion “may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000). While the Court must accept all factual allegations in the complaint as true, it “need not accept as true ‘unsupported conclusions and unwarranted inferences.’” Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 183-84 (3d Cir. 2000) (citing City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 263 n.13 (3d Cir. 1998)). In a Rule 12(b)(6) motion, the defendant bears the burden of persuading the Court that no claim has been stated. Gould Elecs., Inc. v. United States, 220 F.3d 169, 178 (3d Cir. 2000). Courts generally consider the allegations contained in the complaint, exhibits attached to the complaint, and public records of which the court may take judicial notice. Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993).

## **2. Bankruptcy Code Violation**

With respect to Count I of Plaintiff’s Amended Complaint that Defendant Department of Education and Defendant Van Ru violated the Bankruptcy Code, the Court finds that Plaintiff fails to state a claim upon which relief can be granted. Plaintiff alleges that Defendants violated the Bankruptcy Code by attempting to collect student loan debt that she alleges was discharged when she filed for bankruptcy in 1998. Plaintiff claims that she meets the criteria for student loan dischargeability under the 1998 version of the Bankruptcy Code. However, a discharge under the Bankruptcy Code in 1998 did not discharge an individual debtor from any debt for educational loans guaranteed by a governmental institution unless: “(A) such

loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition.”<sup>5</sup> 11 U.S.C. § 523(a)(8) (1998). The only loan documentation provided by Plaintiff are the copies of the “Application and Promissory Notes for a Stafford Loan.” (Pl.’s Am. Compl. Ex. E.) Even by the most conservative estimate, the Court finds that Plaintiff could not have entered repayment status prior to August 1, 1991. Since Plaintiff filed her Chapter 7 bankruptcy petition on June 12, 1998, that places her within the seven year period and her student loans debt are therefore not dischargeable under the seven year exception.<sup>6</sup> Thus, the Court dismisses Plaintiff’s bankruptcy claim against Defendant Department of Education.

The Court also dismisses the claim against Defendant Van Ru because the Court finds that Defendant Van Ru was acting only in the capacity of a customer service agent of Defendant Department of Education.

### **3. Fair Debt Collection Practices Act Violation (“FDCPA”)**

With respect to Count II of Plaintiff’s Amended Complaint, the Court finds that Plaintiff fails to state a claim against Defendant Department of Education because Defendant Department of Education does not meet the definition of “debt collector” as defined in the FDCPA. 15 U.S.C. § 1692a(6). The definition of “debt collector” in the FDCPA specifically

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5. The Bankruptcy Code also allows a discharge for educational loans guaranteed by a government institution when “excepting such debt from discharge . . . will impose an undue hardship on the debtor and the debtor’s dependents.” 11 U.S.C. § 523(a)(8). Although Plaintiff alleges in her Amended Complaint that she is eligible for a hardship discharge, the provision requires that she obtain a court ruling specifically discharging the student loan on the basis of hardship, which Plaintiff has not done. Further, the Court notes that obtaining an undue hardship discharge is extremely difficult. “[O]nly the most pitiful of bankrupt students have been able to escape from the general rule of nondischargeability” based on undue hardship. David G. Epstein et al., Bankruptcy §§ 7-33 (West 1993) (1943).

6. Until 1991, the term for outstanding loans under § 523(a)(8) was five years. Epstein, supra, §§ 7-33.

excludes “any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.” § 1692a(6)(c). The Court finds that Defendant Department of Education does not meet the definition of a debt collector under the FDCPA because: (1) the collection of debts is not the primary purpose of the Department of Education, and (2) the debts the Department of Education collects are its own, not those due to a third party. (Def.’s Mot. to Dismiss 12.) Thus, the Court dismisses Plaintiff’s FDCPA claim against Defendant Department of Education.

The Court also dismisses the FDCPA claim against Defendant Van Ru. Unlike Defendant Department of Education, the Court finds that Defendant Van Ru does meet the definition of a debt collector under the FDCPA. However, even under the notice pleading standards of Federal Rule of Civil Procedure 8 and the Court’s practice of liberally construing *pro se* complaints, Plaintiff fails to give Defendant Van Ru fair notice of which provision of the FDCPA Defendant Van Ru allegedly violated. Holley v. Dept. of Veterans Affairs, 165 F.3d 244, 247-48 (3d. Cir. 1999) (holding that courts have an obligation to read a *pro se* litigant’s pleading liberally). Plaintiff alleges that “the Defendants . . . violated the FDCPA by dunning [her] in her attempts to obtain documentation of the Alleged Debt, and misrepresenting the amount and terms of the debt, misrepresenting to Plaintiff that there was no documentation, no recourse, and likening her to a ‘scumbag’ as barred by the FDCPA.” (Pl.’s Am. Compl. ¶ 46.) The Court is unsure which Defendant allegedly likened Plaintiff to a “scumbag,” potentially an abusive debt collection practice under the FDCPA. If Plaintiff is referring to Defendant Department of Education, the FDCPA, as noted above, is inapplicable. If, however, Plaintiff is referring to Defendant Van Ru, then the Court invites Plaintiff to file a new Complaint against

Defendant Van Ru on this count. Thus, the Court dismisses without prejudice Count II of the Amended Complaint against Defendant Van Ru.

#### **4. Violation of Pennsylvania state law on Wage Garnishment**

With respect to Count IV of Plaintiff's Amended Complaint that Defendant Department of Education and Defendant Van Ru violated Pennsylvania state law regarding wage garnishment, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff alleges that wage garnishment is prohibited by 42 Pa. Cons. Stat. § 8127. Section 8127 provides that, with few exceptions, personal earnings are exempt from wage garnishment. However, the Debt Collection Improvement Act ("DCIA") authorizes federal agencies to use administrative wage garnishment to collect outstanding debts "[n]otwithstanding any provision of State law." 31 U.S.C. § 3720D(a). Although this exception is not enumerated in § 8127, the DCIA language preempts "those provisions of state law that would otherwise prohibit or hinder the ability of a guaranty to garnish a debtor's wages." Cliff v. Payco Gen. Am. Credits, Inc., 363 F.3d 1113, 1125 (11th Cir. 2004) (referring to the language in the Higher Education Act's provision on administrative wage garnishment ("AWG"), 20 U.S.C. § 1095a, which is identical to the DCIA language). Furthermore, in Cliff, the Eleventh Circuit held that "even if Congress has neither expressly preempted state law nor occupied the field, state law is preempted when it actually conflicts with federal law." Id. at 1122. The Pennsylvania state law in question, 42 Pa. Cons. Stat. § 8127, is therefore preempted by the garnishment provision of DCIA § 3720D since application of the Pennsylvania law would hinder the ability of Defendant Department of Education to garnish Plaintiff's wages. Thus, the Court dismisses Plaintiff's state law claim against Defendant Department of Education.

Since the Court finds that Defendant Van Ru was acting as a customer service agent for Defendant Department of Education, the Court also dismisses this claim against Defendant Van Ru.

### **5. Laches**

With respect to Plaintiff's claim that Defendants collection of her student loans debt is barred by laches, the Court finds that Plaintiff fails to state a claim upon which relief can be granted. (Pl.'s Am. Compl. ¶ 30.) Defendants correctly point out that in 1991, Congress retroactively eliminated all statutes of limitations and laches defenses for collection of student loans. 10 U.S.C. § 1091a. Section 1091 states that the purpose of the subsection is to provide that the repayment of loans and grant overpayments are enforced regardless of any federal or state statutory, regulatory, or administrative limitation which might otherwise "terminate the period of time within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated." Id. The Court finds that Defendant Department of Education, and Defendant Van Ru acting as a customer service agent of Defendant Department of Education, is attempting to enforce its right to collect on outstanding student loans. Therefore, under § 1091, the defense of laches does not apply.

#### **B. Remand: Debt Collection Improvement Act Violation ("DCIA")**

With respect to Count III of Plaintiff's Amended Complaint, the Court grants Defendants' Motion for a Partial Remand so that an administrative hearing may take place. Plaintiff alleges that Defendant Department of Education deprived her of the opportunity to dispute her debt, in violation of the Debt Collection Improvement Act. Plaintiff further alleges

that despite her request she never received copies of the records relating to her student loan debt from Defendant Department of Education.

Defendant Department of Education does not contest the allegation that Plaintiff never received the requested records. (Def.'s Mot. to Dismiss 19.) Defendant Department of Education acknowledges that before an AWG takes place, it is required to comply with certain procedures that work to protect the debtor from an "erroneous deprivation of property." *Id.* at 18. The debtor's rights to avoid garnishment include, *inter alia*, the right to inspect and copy records, enter into a repayment agreement to avoid garnishment, and contest the existence or amount of the debt to be collected as well as the terms of the repayment schedule. 34 C.F.R. §§ 34.4-34.9 (2006). The Court finds that Plaintiff was not given the opportunity to inspect her records or to effectively contest the existence of her student loan debt. Presumably, that procedural mistake led Defendant Department of Education to direct Plaintiff's employer to stop withholding her wages, process a refund of all the funds that Defendant Department of Education had obtained through an AWG, and recall Plaintiff's debt from Defendant Van Ru.

The Court expects that Defendant Department of Education will provide Plaintiff with copies of all of the records concerning her student loan debt. Upon remand, Plaintiff will be given the opportunity to submit any new objections that she may have after reviewing her records. The hearing official will then issue a decision based on a review of Plaintiff's original objections, new objections, and any new evidence that she submits. In light of the Court's decision to remand, the Court denies Plaintiff's request for alternative dispute resolution requested in her Reply.

### **III. CONCLUSION**

For the reasons stated above, the Court dismisses Counts I, II, and IV of the Amended Complaint against Defendant Department of Education. The Court grants Defendant Department of Education's request to remand Count III to the Department of Education for further administrative proceedings. The Court also dismisses Counts I and IV of the Amended Complaint against Defendant Van Ru; however, the Court dismisses without prejudice Count II against Van Ru.

An order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VALERIE FREW,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 05-5297
v.	:	
	:	
	:	
VAN RU CREDIT CORPORATION and	:	
UNITED STATES DEPARTMENT	:	
OF EDUCATION,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of August, 2006, upon consideration of Plaintiff's Amended Complaint (Docket No. 12), Defendant United States Department of Education's Motion to Dismiss and Partial Remand (Docket No. 14), Plaintiff's Response (Docket No. 15), and Defendant Van Ru Credit Corporation's Joinder in Defendant Education's Motion to Dismiss (Docket No. 16), it is hereby **ORDERED** that the Court **DISMISSES** Counts I, II, and IV of the Amended Complaint against Defendant Department of Education. The Court **GRANTS** Defendant Department of Education's request to remand Count III to the Department of Education for further administrative proceedings. The Court also **DISMISSES** Counts I and IV of the Amended Complaint against Defendant Van Ru, however, **DISMISSES WITHOUT PREJUDICE** Count II against Defendant Van Ru.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.  
RONALD L. BUCKWALTER, S.J.