

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

UNITED STATES OF AMERICA : CIVIL ACTION
 :
 v. :
 :
 ROBERT B. BROOKS : NO. 97-5779

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J.

January 28, 1998

Presently before the Court is the Plaintiff's Motion for Summary Judgment (Docket No. 4). For the reasons stated below, the plaintiff's motion is **GRANTED**.

I. BACKGROUND

In the instant action, the United States seeks to recover monies from three defaulted student loans. In June, 1971, the defendant, Robert B. Brooks, applied for federal loan insurance to secure a student loan made by the Philadelphia Savings Fund Society ("PSFS"). To secure the loan, the defendant executed a promissory note on June 8, 1971, for \$1,500, with interest at the rate of 7.00% per annum, payable to PSFS. Pl.'s Mot. for Summ. J. Ex. B-1. The defendant defaulted on his payments under the note, and PSFS assigned all its rights in the note to the United States. Id. Exs. A, B.

In June, 1972, the defendant applied for federal loan insurance to secure a second student loan made by PSFS. To

secure that loan, the defendant executed a promissory note on June 13, 1972, for \$1,500, with interest at the rate of 7.00% per annum, payable to PSFS. Id. Exs. B-2. The defendant again defaulted on his payments under the note, and PSFS assigned all of its rights in the note to the United States. Id. Exs. A, B.

In December, 1973, the defendant applied for federal loan insurance to secure a third student loan made by PSFS. To secure the loan, the defendant executed a promissory note on December 26, 1973, for \$750, with interest at the rate of 7.00% per annum, payable to PSFS. Id. Exs. B-3. The defendant also defaulted on his payments under the third note, and PSFS assigned all of its rights in the note to the United States. Id. Exs. A, B.

On September 15, 1997, the United States initiated the instant action. The United States seeks to recover the following: 1) \$9,771.10, the principal on the defaulted loans plus the interest through August 5, 1997; 2) the interest that has continued to accrue on the defaulted loan at a rate of 7% per annum, or \$.72 per day, since August 5, 1997; 3) costs in the amount of \$57.25; 4) penalties in the amount of \$14.28; and 5) a 10% surcharge pursuant to 28 U.S.C. § 3011(a). Pl.'s Compl. ¶¶ 4-6. On December 19, 1997, the United States filed the instant motion.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate "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." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of

its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

B. Discussion

The defendant relies on two arguments in opposition to the instant motion. First, the defendant contends that the present action is time-barred, either by a statute of limitations or under the defense of laches. Second, the defendant asserts that his father paid the debt in full in 1974. Thus, the defendant argues that the instant motion should be denied.

1. Statute of Limitations/Defense of Laches

The defendant's assertion that this action is time-barred is incorrect.

"The 1991 amendments to Section 484A(a) of the Higher Education Act of 1965 (HEA) effectively eliminated all forms of statutes of limitations for suits of this kind. See Higher Education Technical Amendments of 1991 (HETA), § 3, Pub.L. No. 102-26, 105 Stat. 123, 124 (1991) (codified as 20 U.S.C. § 1091a). . . . Congress intended the statute to have a retroactive effect. See United States v. Phillips, 20 F.3d 1005 (9th Cir. 1994); see also United States v. Davis, 801 F. Supp. 581, 582-84 (M.D. Al. 1992), aff'd, 17 F.3d 1439 (11th Cir. 1994); United States v. Smith, 811 F. Supp. 646, 648 (S.D. Al. 1992).

Defendant also cannot assert the defense of laches, as this defense does not apply where, as here, the government is enforcing

its rights to collect on defaulted student loans. See United States v. Menatos, 925 F.2d 333, 335 (9th Cir. 1991); see also United States v. Collins. No.CIV.A.92-1143, 1993 WL 52103, at *3-4 (E.D. Pa. Feb. 24, 1993); United States v. Smith, 862 F. Supp. 257, 262 (D. Hi. 1994).

United States v. Doan, No.CIV.A.96-6381, 1997 WL 83738, at *1-2 (E.D. Pa. Feb. 25, 1997). Accordingly, as a matter of law, the government is not time-barred from pursuing the instant action.

2. Repayment of the Debt

In order to substantiate its request, the government offers a Certificate of Indebtedness from the United States Department of Education, signed by Loan Analyst P. Ungaro ("Ungaro"). Pl.'s Mot. for Summ. J. Ex. A. Ungaro states that "Department of Education records show that the [defendant] is indebted to the United States in the amount" of \$9,788.63, equaling the principal, interest, costs, and penalties associated with the outstanding loan. Id. Moreover, the government offers the affidavit of Peter La Rouche ("La Rouche"), another Loan Analyst employed by the United States Department of Education. Id. Ex. B. La Rouche certifies that, as of December 9, 1997, the defendant had yet to pay the outstanding balance. Id.

The defendant does not deny that he "appl[ie]d for and receive[d]" the loans at issue. Def.'s Ans. to Mot. ¶ 2. The defendant instead asserts that his father "paid the loan in full" in 1974. Id. ¶ 3. However, the defendant fails to substantiate

his contention.

The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp., 477 U.S. at 323. The government has met this burden through its exhibits and affidavits. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc., 982 F.2d at 890. In the instant case, by resting on mere general denials, the defendant has failed to meet his burden. Accordingly, the government's Motion is granted.

An appropriate Order follows.

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FINAL JUDGMENT

AND NOW, this 28th day of January, 1998, upon consideration of Plaintiff's Motion for Summary Judgment (Docket No. 4), IT IS HEREBY ORDERED that the Plaintiff's Motion is **GRANTED**.

IT IS FURTHER ORDERED that **JUDGMENT** is entered in **FAVOR** of the Plaintiff and **AGAINST** the Defendant in the amount of \$9,788.63.00, plus additional prejudgment interest accruing from August 5, 1997 until the date of this Order, plus interest on the judgment at the legal rate.

BY THE COURT:

HERBERT J. HUTTON, J.