

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

-----X

In re:

IVAN SALINAS

Chapter 7

Case No. 93-28792 (RG)

Debtor.

-----X

IVAN SALINAS, Plaintiff,

vs.

Adversary Proceeding No. 02-3450 RTL

U.S. DEPARTMENT OF EDUCATION,
Defendant.

-----X

OPINION

APPEARANCES:

John J. Blanchard, Esq.
Attorney for Debtor

Christopher J. Christie
United States Attorney
Anthony LaBruna, Esq.
Assistant United States Attorney

RAYMOND T. LYONS, U.S.B.J.

Ivan Salinas (“Plaintiff”) sought to discharge student loan debt incurred during the period of 1978 and 1984 and later consolidated in 1988. Plaintiff filed a petition for relief under

Chapter 7 of the United States Bankruptcy Code and an Order of Discharge was entered. Approximately 8 years after the petition date, Plaintiff received a notice of collection on the student loans. As a result, the Plaintiff instituted an adversary proceeding to determine the dischargeability of the loans. U.S. Department of Education (“Defendant”) moved for summary judgment declaring the loan nondischargeable because it had not come due more than seven years prior to the petition date. Plaintiff cross moved for summary judgment claiming the loans were discharged and asserting the defense of laches applies to preclude the government from any further collection action. Because the loans did not come due more than seven years before the petition date and the government is not subject to the equitable defense of laches, Defendant’s motion is granted.

JURISDICTION

This court has jurisdiction of this proceeding under 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a) and the Standing Order of Reference by the United States District Court for the District of New Jersey dated July 23, 1984, referring all proceedings arising under Title 11 of the United States Code to the bankruptcy court. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(I), determination of dischargeability of a particular debt.

FINDINGS OF FACT

The chronology of events is as follows:

1. Plaintiff was the recipient of several guaranteed education loans during the period of 1978 through 1984.
2. Plaintiff began repaying those loans in 1985.
3. The loans were paid off with a consolidation loan (the “New Loan”) on October

14, 1988.

4. Plaintiff filed a Chapter 7 petition on November 3, 1993 (the “Petition Date”).
5. An Order of Discharge was entered on March 9, 1994.
6. On or about February 13, 2002, Plaintiff received a notice of collection attempt on the New Loan from Diversified Collection Services, Inc.
7. Plaintiff filed this adversary proceeding seeking a determination of dischargeability for the New Loan.
8. On January 12, 2004, Defendant filed a motion for summary judgment arguing, among other things, that the New Loan was not dischargeable because at the time of the Petition Date, § 523(a)(8)(B) provided for discharge of educational loans that first became due more than seven years prior to the petition date. Thus, since Plaintiff’s obligations under the New Loan became due in 1988, only 4 years prior to the Petition Date, Defendant asserted that the New Loan was excepted from discharge.
9. Plaintiff filed a cross-motion for summary judgment on February 26, 2004, arguing that consolidation did not change the date the New Loan first came due thereby permitting the New Loan to be discharged. In addition, Plaintiff asserted that the doctrine of laches precludes the Defendant from its collection efforts.
10. On July 25, 2005, an Order was entered denying those motions without prejudice and finding that (i) the New Loan is an education loan within the meaning of § 523 and (ii) the New Loan was not discharged or dischargeable under § 523(a)(8)(B). The Court did not find sufficient evidence to determine whether the

Plaintiff's defense of laches applies in this case.

This matter is now before the Court to determine whether the defense of laches applies to preclude Defendant's collection of the New Loan. Plaintiff argues that the doctrine of laches applies in the case since the Defendant did nothing to put Plaintiff on notice that it intended to pursue its claim. Moreover, Plaintiff argues that the Defendant's collection of this debt constitutes "commercial activity" thereby creating an exception to the unlimited defense of laches. Defendant argues that laches is not an available defense for the Plaintiff since Congress has specifically abolished any statute of limitations on collection of defaulted loans by virtue of 20 U.S.C. §1091a(a).

DISCUSSION

Generally, the United States is not subject to the defense of laches in enforcing its rights. *United States v. Summerlin*, 310 U.S. 414, 416 (1940). Several courts throughout the country have applied this principal in the context of student loan collection actions making it clear that the amount of time of the delay does not invoke use of the defense. *United States v. McLaughlin*, 7 F.Supp.2d 90, 92 (D. Mass 1998) (laches defense was precluded in suit brought by government 16 years after default); *United States v. Smith*, 862 F. Supp. 257, 262 (D. Hawai'i 1994) (court did not apply laches defense in case where suit brought by government over 20 years after default). "By virtue of 20 U.S.C. § 1091a, Congress has eliminated any time constraint on the United States' (or a guaranty agency) collection of student loan obligations." *Gallagher v. Educational Credit Management Corp.*, 2006 BNH 003 (Bankr. D.N.H., January 18, 2006) (citing *In re Loving* where the Court concluded that laches does not apply even when collection attempts resume out of the blue four years after debtor thought she had discharged the

student loan debt in bankruptcy. 269 B.R. 655, 663 (Bankr. S.D. Ind. 2001)).

Some courts in the country have allowed a laches defense in cases where the unreasonable delay caused hardship. *United States v. Rhodes*, 788 F. Supp. 339 (E.D. Mich. 1992) (laches applied where all records were destroyed and lender and school dissolved during 17 year period between default and action by the government); *S.E.R., Jobs for Progress, Inc v. United States*, 759 F.2d 1 (Fed. Cir. 1985) (discussing the applicability of laches defense on a case by case rather than all-inclusive basis). However, in most of these cases, the nature of the contract differed from that of an education loan and the statutory lending schemes included a statute of limitations. The statutes governing education loans, like those in this matter, do not include a statute of limitations. The Higher Education Technical Amendments of 1991 (“HETA”) eliminated all statutes of limitations on actions to recover defaulted student loans. Pub. L. No. 102-26, 105 Stat. 123 (1991). HETA, as codified at 20 U.S.C. § 1091a(a)(1), specifically provides that “it is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory or administrative limitation on the period within which debts may be enforced.” It is clear that this language is intended to broaden, and not limit, the government’s ability to collect education loan debts. In addition to eliminating any statute of limitations for actions to collect unpaid student loans, Congress made HETA effective as if it were enacted under the Consolidated Omnibus Budget Reconciliation Act of 1985 by stating in § 3(c) that “the amendments made by this section shall be effective as if enacted by the Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99-272) and shall apply to any actions pending on or after the date of enactment of [HETA] that are brought before November 15, 1992. Pub. L.

No. 102-26, 105 Stat. 123, 125.¹ The absence of a statute of limitations and the retroactive application of this subsection further supports Congress' intent to allow the Defendant to collect defaulted loans regardless of the amount of time that has passed since default.

With respect to the Plaintiff's argument that the collection of the loans constitutes commercial activity and is therefore an exception to the government's unlimited defense of laches, a reading of the case Plaintiff cites as support indicates that the Court in that case was merely discussing possible exceptions to the unlimited laches defense. In *United States v. Administrative Enterprises, Inc.*, the Court questions the broad, unlimited applicability of laches as a defense against the government and goes on to say that the Court entertained the possibility of exceptions in certain cases but does not venture to create same. 46 F.3d 670, 673 (7th Cir. 1995). Plaintiff is petitioning this Court to find dicta and cases from outside the Third Circuit sufficient justification for new law on these issues. Given the broad collection powers provided for in the statute and the absence of cases indicating otherwise, its clear that laches is not an appropriate defense for the Plaintiff's use.

CONCLUSION

Defendant's motion for summary judgment is granted. As previously decided, the consolidation loan entered into in 1988 is a new education loan with the first payment due less than eight years before the Petition Date. Thus, the loan is not dischargeable under 11 U.S.C. § 523(a)(8) as in effect on the Petition Date. The government is not subject to the equitable defense of laches. Congress expressed a clear intent that student loans should be collectible no

¹ Subsequently, section 3(c) of HETA has been amended to eliminate the November 15, 1992, "sunset date." Pub. L. No. 102-325, §1551, 106 Stat. 838 (1992).

matter how old when it removed the statute of limitations in 20 § U.S.C. 1091a.

Dated: December 18, 2006

/s/ *Raymond T. Lyons*
Raymond T. Lyons
United States Bankruptcy Judge