

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
) Civil No. 99-13-B
KENNETH G. DWELLEY,)
)
Defendant)

ORDER

BRODY, District Judge

Plaintiff the United States of America (“Plaintiff”) has brought suit against Defendant Kenneth G. Dwelley (“Defendant”) to recover amounts owed on his student loans. Before the Court is Plaintiff’s Motion for Summary Judgment. For the reasons outlined below, the Motion is GRANTED.

I. SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if “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). A material fact is one that has “the potential to affect the outcome of the suit under the applicable law.” Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits.” Fed.R.Civ.P. 56(c). For the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

II. BACKGROUND

On February 10, 1983 and January 15, 1984, Defendant executed two promissory notes through the Maine Savings Bank, both in the amount of \$4,500.00, to secure loans guaranteed by United Student Aid Funds, Inc. (Pl.’s Exs. A.1 and A.2.) These actions were taken pursuant to the loan guaranty program authorized under Title IV-B of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1001-1146a. The terms of the promissory notes require repayment to commence six months after Defendant ceases carrying at least one-half the normal full-time academic workload at an eligible institution. At some point, Defendant ceased carrying at least one-half the normal full-time academic workload at an eligible institution. The lender demanded payment according to the terms of the notes at that time.

On or about February 5, 1991, Defendant defaulted, and on May 14, 1997, the promissory notes were assigned to the United States Department of Education (“Education”) as the guarantor. Education demanded payment, but Defendant did not pay. Education then forwarded its claim to the Department of Justice for litigation. As of October 12, 1998, Defendant is

indebted to Education in the amount of \$5,764.77 in principal and \$2,658.62 in interest, a total amount of \$8,423.39. Interest has accrued since October 12, 1998, at the rate of 7.00% per annum. Since the promissory notes were assigned to it, Education has received no payments from Defendant. (Pl.'s Ex. B.)

Plaintiff seeks judgment in the form of the \$8,423.39 principal and interest owed through October 12, 1998; pre-judgment interest dating from October 12, 1998 through the date of judgment at the rate of 7.00% per annum; the \$150.00 filing fee mandated by 28 U.S.C. § 1914(a); and any other relief the Court deems appropriate. It further demands, pursuant to 28 U.S.C. § 1961, that interest on the judgment accrue at the legal rate until it is paid in full. Defendant has answered the Complaint, denying the factual allegations contained therein¹ and asserting nine affirmative defenses. Plaintiff has submitted a Motion for Summary Judgment to which Defendant did not respond within ten days, or at any time for that matter. Under these circumstances, according to Local Rule 7(b), Defendant has waived any objection to Plaintiff's Motion for Summary Judgment. The Court will, however, briefly address each of the nine affirmative defenses raised by Defendant.

III. DISCUSSION

1. Failure to State a Claim

Defendant's contention that Plaintiff's Complaint fails to state a claim upon which relief can be granted is specious. The Complaint clearly states a claim for **breach of contract**.

2. Lack of Subject Matter Jurisdiction

The Court has subject matter jurisdiction over this action, contrary to Defendant's assertion, because the United States is the plaintiff. 28 U.S.C. § 1345 (1994).

3. Constitutional Violation

In his third affirmative defense, Defendant appears to argue that the Plaintiff's claim is barred by the Fifth and Fourteenth Amendment of the Constitution since requiring him to repay his loans would constitute a deprivation of property without due process and a taking without just compensation. This defense fails as a matter of law for reasons too numerous to detail.

4. Statute of Limitations

Defendant's position that Plaintiff's claim is barred by a six-year statute of limitations governing breach of contract actions is in error. There is no statute of limitations applicable to the federal government's collection of student loans. 20 U.S.C. § 1091a(a) (1994); see also United States v. Smith, 811 F. Supp. 646, 647-48 (S.D. Ala. 1992) (discussing elimination of statute of limitations by virtue of Higher Education Technical Amendments Act of 1991).

5. Laches

Although the federal government may, in certain circumstances, be subject to the doctrine of laches in the context of student loan collection, see United States v. Rhodes, 788 F.Supp. 339, 342-43 (E.D. Mich. 1992) (holding seventeen year delay in collection effort caused material prejudice to defendant because relevant records were no longer accessible), this defense fails in this case because there is no indication that Defendant has been materially prejudiced by the delay here. See United States v. McLaughlin, 7 F. Supp.2d 90, 92-93 (D. Mass. 1998) (finding no evidence of "special hardship" to support laches defense in student loan collection action);

¹ In his answer, Defendant denies the allegations in Plaintiff's Complaint. According to Plaintiff, however, Defendant has never produced any evidence supporting his denials to Plaintiff, or even ever communicated with Plaintiff.

United States v. Davis, 817 F. Supp. 926, 930 (M.D. Ala. 1993) (finding laches did not bar student loan collection action because defendant was not materially prejudiced by delay).

[6. Due Process and Equal Protection Violation

Defendant argues that 20 U.S.C. § 1091a(a)(2), which eliminates a statute of limitations in student loan collection actions like this one, violates the Fourteenth Amendment guarantees of due process and equal protection. In support of this claim, he alleges that elimination of the statute of limitations “has worked a special hardship and has had an oppressive effect on [him] under the circumstances of this case.” (Def.’s Answer at 2.) This position has no legal merit.

7. Due Process Violation

Defendant argues that 20 U.S.C. § 1091a(a)(2) violates his due process rights because it is a substantive, not a procedural, change that has been applied retroactively.]

8. Contract

Defendant asserts that Plaintiff’s claim is defeated by the terms of the promissory notes, Paragraph VIII of which provides for a deferment option. This deferment provision, however, clearly states that a debtor may be considered for deferment only if he is not in default. (Pl.’s Exs. A.1 and A.2.) As Defendant has been in default since February of 1991, he cannot enjoy the benefit of the deferment option.

9. Ex Post Facto Violation

Defendant claims that 20 U.S.C. § 1091a(a)(2) violates the Ex Post Facto clause because it applies retroactively. His invocation of the Ex Post Facto Clause in this case is inappropriate because that prohibition applies only to criminal or penal measures that are applied retroactively.

IV. CONCLUSION

For the reasons discussed above, Plaintiff’s Motion for Summary Judgment is GRANTED. It is ordered that **XXX**.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 3rd day of August, 1999.