

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<b>v.</b>	)	<b><i>Docket No. 99-294-P-DMC</i></b>
	)	
<b>HEATHER BARTLETT, a/k/a</b>	)	
<b>HEATHER CRAIG,</b>	)	
	)	
<i>Defendant</i>	)	

**MEMORANDUM DECISION ON PLAINTIFF’S  
MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

In this student-loan debt-collection action, plaintiff United States of America seeks summary judgment against Heather Bartlett a/k/a Heather Craig with respect to two promissory notes issued in 1978 and 1979. United States of America’s Motion for Summary Judgment, etc. (“Motion”) (Docket No. 9). For the reasons that follow, the Motion is granted.

**I. Summary Judgment Standards**

Summary judgment is appropriate only if the record shows “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). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant . . . . By like token, ‘genuine’ means that ‘the evidence about the fact is such that a

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<sup>1</sup>Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

reasonable jury could resolve the point in favor of the nonmoving party . . . .” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted).

The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1st Cir. 1997). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, “the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue.” *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (citing *Celotex*, 477 U.S. at 324); Fed. R. Civ. P. 56(e). “This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof.” *International Ass’n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

## **II. Factual Context**

The summary-judgment record reveals the following. On November 24, 1978 and January 9, 1979 Bartlett executed two promissory notes (the “1978 Note” and the “1979 Note”; collectively, the “Notes”) in favor of Lawrence Savings Bank (the “Lender”) in the amount of \$2,500 each pursuant to the loan guaranty program authorized by Title IV-B of the Higher Education Act of 1965, as amended. Statement of Undisputed Material Facts (“Plaintiff’s SMF”) (Docket No. 10) ¶ 1; Defendant’s Response to Plaintiff’s Statement of Undisputed Material Facts (“Defendant’s SMF”) (Docket No. 13) ¶ 1. The 1978 Note states in part:

For Value Received the undersigned Borrower Heather J. Craig . . . promises to pay

to Lawrence Savings Bank . . . or order, at the office of said Lender at 225 Essex St., Lawrence [sic], Mass. the sum of Two Thousand Five Hundred Dollars with interest at the rate of 7% per annum, being not in excess of 7% interest on the outstanding balance of the loan, in addition to an insurance premium of one percent (1%) per annum for the term of this note, payable on March 24, 1981, said sum representing a loan made under the Higher Education Loan Plan of Massachusetts Higher Education Assistance Corporation and subject to the conditions and benefits under the Higher Education Act of 1965 as amended from time to time.

1978 Note, attached as Exh. A.1 to Complaint (Docket No. 1), at [1]. The 1979 Note contains similar language, with sums “payable on 03/01/81.” 1979 Note, attached as Exh. A.2 to Complaint, at [1].

Both Notes also provide: “The maker of this note . . . waives presentment, demand, notice, protest, and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this note . . . .” 1978 Note at [1]; 1979 Note at [1].

Simultaneously with the execution of both Notes, the Lender executed a document titled “Agreement to Renew Original Note,” the 1978 version of which states in relevant part:

In consideration of a note of even date herewith (the original note) in the amount of Two Thousand Five Hundred Dollars . . . received from Heather J. Craig Lawrence Savings Bank agrees that on or before the due date of said note the Lender will accept in payment therefor a renewal note duly executed by the Borrower . . . . The first installment to be paid under such renewal note shall be due one month following the date of its execution, and the last such installment shall be due not less than five years, unless the borrower and lender negotiate a shorter period, nor more than 10 years after said date of execution, except that not less than \$360 per year shall be payable under the note. . . .

1978 Note at [1]. The 1979 version is nearly identical. 1979 Note at [1]. The Notes finally contain a section titled “HELP Guaranteed Student Loan,” which provides *inter alia*:

[T]his loan shall be repayable in installments over a period as negotiated not less than five years, (unless the borrower and lender shall specifically [sic] agree upon a shorter period), nor more than ten years, except that repayments shall be not less than a minimum \$360 per year which may be required to begin no earlier than nine

months nor later than one year after the student ceases to pursue not less than one half the normal course of study at an eligible institution, as determined by the institution. . . .

1978 Note at [2]; 1979 Note at [2].

The parties dispute whether the Lender demanded payment; Bartlett states that no demand was ever made upon her for payment of the Notes prior to a claim of default. Plaintiff's SMF ¶ 2; Defendant's SMF ¶ 2; Statement of Material Facts in Dispute ("Defendant's Additional SMF") (Docket No. 12) ¶ 2. The United States contends that Bartlett defaulted on her obligations under the Notes on March 8, 1981; Bartlett asserts that the Notes did not obligate her to tender payment on that date. Plaintiff's SMF ¶ 3; Defendant's SMF ¶ 3; Defendant's Additional SMF ¶ 1.

What subsequently happened is not in dispute. The Lender filed a claim with the first guarantor, American Student Assistance. Plaintiff's SMF ¶ 4; Defendant's SMF ¶ 4. As the guarantor, American Student Assistance paid a claim to the Lender in the amount of \$5,137.12 and then attempted to collect the debt from Bartlett. *Id.* On July 22, 1992, unable to collect the full amount due, American Student Assistance assigned all of its rights and title to the United States Department of Education ("DOE") as the final guarantor pursuant to 20 U.S.C. § 1088(a)(5). Plaintiff's SMF ¶ 5; Defendant's SMF ¶ 5. Since this assignment, Bartlett has made no payments toward the debt. Plaintiff's SMF ¶ 6; Defendant's SMF ¶ 6. DOE demanded payment from Bartlett, but she did not pay. Plaintiff's SMF ¶ 7; Defendant's SMF ¶ 7. DOE then forwarded its claim to the Department of Justice for litigation. Plaintiff's SMF ¶ 8; Defendant's SMF ¶ 8.

### **III. Analysis**

The United States in seeking summary judgment attacks Bartlett's affirmative defenses of laches and estoppel. Motion at 2-5; *see also* Answer (Docket No. 2) at [2]. Bartlett in response does

not press her laches defense. Objection to Plaintiff's Motion for Summary Judgment (Docket No. 11). However, she continues to argue that the United States is estopped from collecting on the Notes as the result of an alleged breach of contract by the Lender. *Id.*

In Bartlett's view she was not obligated to pay her student loans in full in March 1981; rather, the Lender was obligated to provide her with a renewal note and a monthly payment schedule. *Id.* According to Bartlett, this obligation was made clear in that portion of the "HELP Guaranteed Student Loan" section of the Notes providing: "[T]his loan *shall* be repayable in installments over a period as negotiated not less than five years . . . nor more than ten years (emphasis added) . . . ." *See id.* at [2]. I disagree.

The Notes themselves unambiguously state that the full amount of the original principal, together with accrued interest and a one percent fee, was due on March 24, 1981 in the case of the 1978 Note and March 1, 1981 in the case of the 1979 Note. Bartlett waived notice; the Lender was not required to remind her or otherwise demand payment of the Notes when due. By virtue of the "Agreement to Renew Original Note," the Lender essentially made an offer — that, on or before the due date of the Notes, it would accept a renewal note containing a monthly payment schedule, the precise parameters to be negotiated. The Lender did not agree to tender such a renewal note to Bartlett or otherwise remind her that she had an option to negotiate such a note.

The language of the "HELP Guaranteed Student Loan" section on which Bartlett relies contemplates the negotiation of such an installment repayment schedule — but it begs the question of whose duty it is to initiate such negotiations. It thus does not dispel the impression that the "Agreement to Renew Original Note" was in the nature of an offer, which it was incumbent upon Bartlett to accept. Inasmuch as Bartlett took no action to accept that offer, the Notes became due and

payable in full in March 1981. The affirmative defense of breach of contract fails.

#### **IV. Conclusion**

For the foregoing reasons I conclude that the Motion should be, and it hereby is, **GRANTED**. Judgment shall be entered for the United States in the amount of (i) \$11,580.81 in principal and interest owed through June 21, 1999, (ii) prejudgment interest dating from June 21, 1999 through the date of judgment at the rate of seven percent per annum, and (iii) costs of \$150.00, representing the amount of filing fee paid pursuant to 28 U.S.C. § 1914(a). Pursuant to 28 U.S.C. § 1961, interest on the judgment shall accrue at the legal rate until it is paid in full.

Dated this 5th day of May, 2000.

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David M. Cohen  
United States Magistrate Judge

ADMIN  
U.S. District Court District of Maine (Portland)  
CIVIL DOCKET FOR CASE #: 99-CV-294  
USA v. BARTLETT  
Filed: 09/21/99  
Assigned to: MAG. JUDGE DAVID M. COHEN  
Demand: \$0,000  
Nature of Suit: 152  
Lead Docket: None  
Jurisdiction: US Plaintiff  
Dkt# in other court: None  
Cause: 20:1080 Student Loan Recovery

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v.

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