United States Bankruptcy Court
Northern District of Illinois
Eastern Division

Transmittal Sheet for Opinions

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Bankruptcy Caption: Sandra Ann Chambers

Bankruptcy No.: 99 B 33040

Adversary Caption: Chambers v. Illinois Student Assistance Commission, et al.

Adversary No.: 01 A 00355

Date of Issuance: 12/5/01

Judge: Carol A. Doyle

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	
SANDRA ANN CHAMBERS,	)	No. 99 B 33040
	)	
Debtor.	)	
_____	)	Honorable Carol A. Doyle
	)	
SANDRA ANN CHAMBERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 01 A 00355
	)	
ILLINOIS STUDENT ASSISTANCE COMMISSION, et al.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This matter is before the court on Defendant Board of Trustees of the University of Illinois' (the "University" or "Defendant") Motion to Dismiss Adversary Complaint. Debtor Sandra Ann Chambers ("Chambers") filed an Adversary Complaint seeking a discharge under 11 U.S.C. § 523(a)(8) of a debt owed to the University. The University moved to dismiss, raising sovereign immunity as a defense. For the reasons stated below, the court grants the University's motion but grants the Debtor 30 days to amend her complaint.

I. BACKGROUND

While a student at the University of Illinois at Chicago, Chambers accrued $1,256.30 in debt on her student charge account for expenses. On October 25, 1999, she filed a Chapter 7 bankruptcy petition. Chambers listed the University's claim on her Chapter 7 schedules. However, the University did not file a proof of claim. On January 30, 2000, the Debtor received a discharge and on February 8, 2000, Debtor's Chapter 7 case was closed. The University continued to seek payment of its claim and place a "hold" on Debtor's transcript until she paid the amount owed.

On April 12, 2001, Chambers filed an adversary complaint to determine the dischargeability of the debt pursuant to 11 U.S.C. § 523(a)(8). The University did not file an answer to the complaint. Chambers filed an amended motion for summary judgment on August 23, 2001. On September 18, 2001, the University filed its motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1). In considering a motion to dismiss for lack of subject matter jurisdiction, the court must accept the complaint's well-pleaded factual allegations as true and draw reasonable inferences from those allegations in the plaintiff's favor. Rueth v. EPA, 13 F.3d 227, 229 (7th Cir.1993).

II. SOVEREIGN IMMUNITY

The University seeks dismissal of Chambers' complaint based on Eleventh Amendment sovereign immunity. Chambers initially argues that the University's assertion of immunity is untimely. However, an immunity defense is appropriate when a private party brings a suit against the state without the state's consent. In this case, the appropriate time for the University to assert this defense was when Chambers filed her adversary complaint. The University is not required to invoke sovereign immunity

immediately. See Schlossberg v. Maryland (In re Creative Goldsmiths of Wash., D.C., Inc.), 119 F.3d 1140, 1144 (4th Cir. 1997) (citing Edelman v. Jordan, 415 U.S. 651, 677-78 (1974)).

To succeed on a claim of sovereign immunity, the University must establish: 1) that it is an agency or arm of the state; 2) that the Eleventh Amendment applies; 3) that Congress has no authority to abrogate its Eleventh Amendment immunity under the Bankruptcy Code; and 4) that it has not waived this immunity. DeKalb County Division of Family and Children Servs. v. Platter (In re Platter), 140 F.3d 676, 679 (7th Cir. 1998).

A. Arm of the State

The University must first establish that it is an arm of the state. Chambers argues that the University is not the "state" for purposes of sovereign immunity. However, the Illinois Supreme Court has specifically held that "the Board is an arm of the State of Illinois" for purposes of sovereign immunity. Ellis v. Bd. Of Governors, 102 Ill. 2d 387, 393, 80 Ill. Dec. 750, 753, 466 N.E.2d 202, 205 (1984). The Ellis court based its conclusion on several factors, including the Board's operation pursuant to statute, the payment of employees from state funds, and payment of the Board's excess revenues to the state treasury. Id. at 392-93. Therefore, the University is an arm of the state for purposes of sovereign immunity. See also Kroll v. Bd. of Trustees of Univ. of Ill., 934 F.2d 904, 908 (7th Cir. 1991).

B. Applicability of Eleventh Amendment

Second, the University must show that the Eleventh Amendment applies. The Eleventh Amendment only provides immunity from "suit[s] in law or equity." U.S. Const. amend. XI. An

adversary proceeding against the State is a "suit" under the Eleventh Amendment. See, e.g., Sacred Heart Hosp. of Norristown v. Commonwealth of Penn., Dep't of Public Welfare (In re Sacred Heart Hosp.), 133 F.3d 237 (3rd Cir. 1998); In re Collins, 173 F. 3d 924 (4th Cir. 1999); In re Fernandez, 123 F.3d 241 (5th Cir. 1997); Sullivan v. Town & Country Home Nursing Servs., Inc. (In re Town & Country Home Nursing Servs., Inc.), 963 F.2d 1146 (9th Cir. 1992); In re Peterson, 254 B.R. 740, 743 (Bankr. N.D. Ill. 2000). Therefore, a complaint to determine the dischargeability of a student debt constitutes a "suit" under the Eleventh Amendment.

C. No Authority to Abrogate

Third, the University must show that Congress has no authority to abrogate its Eleventh Amendment immunity under the Bankruptcy Code. An exception to sovereign immunity exists where Congress unequivocally expresses its intent to abrogate state immunity by acting pursuant to a valid exercise of its power. Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 55 (1996). The exception applies where: 1) Congress unequivocally expresses an intent to abrogate state immunity and 2) it acts "pursuant to a valid exercise of power." Green v. Mansour, 474 U.S. 64, 68 (1985).

The plain language of 11 U.S.C. § 106(a) unequivocally waives the states' sovereign immunity. Section 106(a) provides that "[n]otwithstanding any assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section." 11 U.S.C. § 106(a). However, the second requirement of the exception is not met. In Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), the Supreme Court held that Congress may not abrogate state sovereign immunity by legislation passed pursuant to its Article I powers. Seminole Tribe of Fla., 517 U.S. at 72-

73. The Bankruptcy Clause is in Article I of the Constitution. U.S. Const. art. I, § 8. The Court held that only Section 5 of the Fourteenth Amendment empowers Congress to abrogate sovereign immunity. Seminole Tribe of Fla., 517 U.S. at 59-73. There is no indication that § 106(a) was passed pursuant to the Fourteenth Amendment. In re Fernandez, 123 F.3d 241, 245 (5th Cir. 1997) (applying the principles of the Seminole Tribe case). Consequently, the overwhelming majority of courts addressing this issue has found § 106(a) to be unconstitutional. See, e.g., id. at 246; Mitchell v. Franchise Tax Bd. (In re Mitchell), 209 F.3d 1111, 1121 (9th Cir. 2000); In re Sacred Heart Hosp., 133 F.3d 237, 245 (3rd Cir. 1998); In re Creative Goldsmiths of Wash., D.C., Inc., 119 F.3d 1140, 1147 (4th Cir. 1997). This court accepts that analysis. See In re Peterson, 254 B.R. 740, 744 (Bankr. N.D. Ill. 2000). Therefore, Congress did not have the authority to abrogate the University's Eleventh Amendment immunity under the Bankruptcy Code.

D. No Waiver of Immunity

The fourth requirement for a valid assertion of sovereign immunity is that the State of Illinois or the University cannot have waived immunity and consented to suit in federal court. Chambers argues that the State of Illinois has waived immunity pursuant to the state constitution. See Ill. Const. 1970, art. XIII, § 4. The test for determining whether a state has waived its immunity from federal court jurisdiction is a stringent one. College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 675 (1999) (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)). The Illinois constitution provides that "[e]xcept as the General Assembly may provide by law, sovereign immunity in this State is abolished." Ill. Const. 1970, art. XIII, § 4. However, the General

Assembly has passed legislation immunizing the State. The State Lawsuit Immunity Act provides that "the State of Illinois shall not be made a defendant or party in any court," except as provided in the Illinois Public Labor Relations Act and the Illinois Court of Claims Act. 745 ILCS 5/1 (West 2001). Neither of those statutes is applicable here, and therefore the State has not waived its immunity.

Chambers argues that the letter sent to her from the Credit and Collections Department of the University constitutes an informal proof of claim and therefore, the University has submitted to jurisdiction in this case. While the filing of a proof of claim does waive sovereign immunity, see Gardner v. New Jersey, 329 U.S. 565, 574 (1947); In re Platter, 140 F.3d 676 (7th Cir.1998), the University's letter to Debtor does not rise to the level of an informal claim. The informal proof of claim is an equitable doctrine developed by the courts to ameliorate the strict enforcement of the claims bar date. In re Wigoda, 234 B.R. 413, 415 (Bankr. N.D. Ill. 1999). An informal claim generally requires a writing that is filed with the court. Id. (citing In re Scott, 227 B.R. 832 (Bankr. N.D. Ind. 1998), and In re Houbigant, Inc., 190 B.R. 185 (Bankr. S.D.N.Y. 1995)). The University's letter, however, was not filed with the court as a proof of claim.

Chambers cites In re Plunkett, 82 F.3d 738 (7th Cir. 1996), and In re Town & Country Home Nursing Servs., Inc., 963 F.2d 1146 (9th Cir. 1992), in support of her argument. However, in Plunkett, the creditor's letter was addressed to the trustee, not the debtor, and the trustee consented to treatment of the letter as an informal proof of claim. Plunkett, 82 F.3d at 740. In Town & Country Home Nursing Servs., Inc., the creditor offset its claims against estate assets and sent notice of the offset to the debtor-in-possession. Town & Country Home Nursing Servs., Inc., 963 F.2d at 1153. Here, however, the University's letter is only addressed to Chambers. In addition, Chambers'

bankruptcy case was already closed when she received the letter. This letter does not reflect an intent by the University to claim assets of Debtor's bankruptcy estate, since the estate was no longer in existence. Therefore, the University has not waived sovereign immunity by sending this letter.

III. LEAVE TO AMEND

Chambers has also moved to amend her complaint and reopen the bankruptcy case for various reasons. The court will grant Chambers leave to amend her complaint so that she may consider the Young doctrine as an alternative basis for relief. Under the Young doctrine, a party may sue a state officer to enjoin official actions that violate federal law, even if the state itself is immune from suit under the Eleventh Amendment. See Idaho v. Coeur d'Alene Tribe, 521 U.S. 261, 287-89 (1997); Schmitt v. Missouri Western State College (In re Schmitt), 220 B.R. 68 (Bankr. W.D. Mo. 1998); Kish v. Verniero (In re Kish), 221 B.R. 118 (Bankr. D.N.J. 1998). The court will grant Chambers time to evaluate whether the doctrine may be applicable in this case and whether she wishes to amend her complaint.

IV. CONCLUSION

For the foregoing reasons, the University's motion to dismiss is granted. Chambers is granted leave to amend her complaint within 30 days.

ENTERED:

December 5, 2001

_____
CAROL A. DOYLE
United States Bankruptcy Judge