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JUDGE: M. A. Mahoney
PARTIES: Jean Taylor Alexander, USA Funds
CHAPTER: 13
ATTORNEYS: M. W. Wetzel, B. L. Thompson
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JEAN TAYLOR ALEXANDER, Case No. 94-12345-MAM-13

Debtor.

**ORDER OVERRULING DEBTOR'S OBJECTION TO CLAIM OF USA FUNDS, INC.**

Melissa W. Wetzel, Mobile, AL for Debtor
Barry L. Thompson, Mobile, AL for Plaintiff

This matter came before the Court upon the motion of Debtor ("Alexander") to sustain her objection to part of the claim of Plaintiff ("USA Funds") alleging that USA Funds is not entitled to postpetition interest on its student loan claim. The Court has jurisdiction to hear this matter pursuant to 11 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Proper notice of the motion was given and appearances were as noted in the record. For the reasons discussed below, Alexander's claim objection is overruled.

On November 9, 1994, Alexander filed a voluntary petition under Chapter 13 of the Bankruptcy Code. USA Funds is an unsecured creditor of Alexander for student loan debt and was scheduled as such in Debtor's schedules. USA Funds filed an amended timely proof of claim in the amount of $2,004.54, "plus any interest that will accrue during the duration of the plan until the loan is paid in full." Debtor and USA Funds agree that the principal and any prepetition interest due on the debt is owed. Alexander objects to USA Fund's claim only on the basis that USA Funds is not entitled to any postpetition interest on the student loan pursuant to 11 U.S.C. § 502(b)(2).

Student loans, such as the one given by USA Funds, are generally nondischargeable in Chapter 13 cases. 11 U.S.C. §§ 523(a)(8) and 1328(a)(2). Alexander does not dispute this. However, Section 523(a)(8) does not make clear if interest accruing after a debtor files bankruptcy is also nondischargeable as an integral part of the nondischargeable debt. 11 U.S.C. § 502(b)(2) establishes the general rule that interest upon a debtor's claim ceases to accrue the date the bankruptcy petition is filed. Specifically, this statute authorizes allowance of a claim except to the extent that "such a claim is for unmatured interest." 11 U.S.C. § 502(b)(2). At the end of a Chapter 13 case, a debtor receives a discharge of, among other things, "all debts . . . disallowed under Section 502." Section 1328(a). This Court must decide how the two statutes are to be reconciled.

There is conflicting case law on the issue. One case uses statutory construction to resolve the issue in favor of disallowing any claim for postpetition interest and discharging a debtor of any liability for the interest if the entire prepetition claim is paid in full during the Chapter 13 case. *In re Wasson*, 152 B.R. 639 (Bankr. D.N.M. 1993). This result furthers the basic "fresh start" policy for debtors which is an underpinning of the present Bankruptcy Code. The court in *Wasson* came to the following conclusion:

> The applicable rule of statutory construction is that "a general statutory rule usually does not govern unless there is no more specific rule." *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 524, 109 S. Ct. 1981, 1992, 104 L. Ed. 2d 557 (1989). In the instant case, section 523(a)(8) of the Bankruptcy Code gives the general rule that student loans are nondischargeable. 11 U.S.C. § 523(a)(8). Section 523(a)(8) does not govern the issue of postpetition interest on student loans, however, because § 502(b)(2) is the more specific rule which disallows creditors' claims for unmatured interest. *Id*. at § 502(b)(2).

*Wasson* at 642.

Another case reaches the opposite result. *In re Shelbayah*, 165 B.R. 332 (Bankr. N.D. Ga. 1994). The detailed reasoning in the *Shelbayah* case will not be restated but this Court agrees with it. The *Shelbayah* case relied on three cases this Court considers particularly relevant in reaching its conclusion—*Bruning v. U.S.*, 376 U.S. 358, 84 S. Ct. 906, 11 L. Ed. 2d 772 (1964), *Burns v. U.S. (In re Burns)*, 887 F.2d 1541 (11th Cir. 1989) and *Hanna v. U.S. (In re Hanna)*, 872 F.2d 829 (8th Cir. 1989). The three cases hold that prepetition interest on nondischargeable tax debts continues to accrue during and after a bankruptcy case until fully paid. This Court finds the *Shelbayah* reasoning to be correct, particularly since it relies on relevant U.S. Supreme Court and Eleventh Circuit Court of Appeals precedents.

Alexander argues that the Supreme Court and Circuit Court cases are not relevant since they dealt with nondischargeable tax debt under Section 523(a)(1). This is not a distinguishing factor. There is no reason interest would accrue on one type of Section 523 claim—tax debts—and not on another—student loans. The law should be consistent as to two types of debts contained in the same Code section without specific language differentiating the two.

The seminal Supreme Court case—*Bruning v. U.S.*—upon which the two circuit cases of *Burns* and *Hanna* are based is a pre-Bankruptcy Code case. However, the Eleventh Circuit Court of Appeals explained in *Burns* that "Congress did not intend to change the pre-Code law" in enacting the Code. *Id*. at 1543 (citing the reasoning in *Hanna*). The *Burns* case, following *Bruning*, held that postpetition interest on nondischargeable taxes was nondischargeable. This is relevant precedent in this circuit as to accrual of interest on nondischargeable debts.

Although on an equitable level the *Wasson* result is arguably fairer (the *Shelbayah* court disputes this) and would encourage use of Chapter 13, this Court cannot ignore the precedent of the U.S. Supreme Court and the Eleventh Circuit to reach that result.

Therefore, it is ORDERED that Debtor's objection to Claim No. 7 of United Student Aid Funds, Inc. is overruled.

Dated: July 21, 1995

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MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE