IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

IN RE: TERRI LYNN MORRIS — CASE NO. 00-11167M
CHAPTER 7

TERRI LYNN MORRIS — PLAINTIFF

VS. — AP NO. 00-1517

UNIVERSITY OF ARKANSAS;
BANC ONE STUDENT LOAN TRUST 1994A;
BANC ONE, COLUMBUS, N.A. TRUSTEE;
NORTH TEXAS HIGHER EDUCATION AUTHORITY;
USA GROUP SECONDARY MARKET, BANC ONE, NA.,
AS TRUSTEE; ARKANSAS STUDENT LOAN
GUARANTY FOUNDATION, RONNIE
NICHOALDS, DIRECTOR — DEFENDANTS

ORDER

On March, 27, 2000, Terri Lynn Morris ("Debtor") filed a voluntary petition for relief under the provisions of chapter 7. On August 4, 2000, the Debtor commenced this adversary proceeding against the University of Arkansas and other defendants.

The amended complaint filed on February 7, 2001, seeks a determination that repayment of a student loan to the University of Arkansas in the sum of $11,000.00 and other student loans owed to entities other than the State of Arkansas totaling $110,082.76 are dischargeable under the provisions of 11 U.S.C. § 523(a) (8) because "repayment of these debts would cause undue hardship to the Plaintiff and the Plaintiff's dependants." (First Amended Complaint to Determine Dischargeability of Educational Loans at 3.)

The University of Arkansas has filed a motion to dismiss, alleging that the Debtor's action against it is barred by the Eleventh Amendment to the United States Constitution, that the State of Arkansas has not waived its sovereign immunity, and that it does not consent to be sued in this Court.

The University of Arkansas' motion will be granted. The Eleventh Amendment stands for the constitutional principle that state sovereign immunity limits federal courts' jurisdiction under Article III of the United States Constitution. Seminole Tribe of Florida v. Florida, 517 U.S. 44 , 64 (1996). In Seminole, the United States Supreme Court held that Congress lacked authority under the Indian Commerce Clause to abrogate the states' Eleventh Amendment immunity. Seminole, 517 U.S. at 47. See also Alden v. Maine, 527 U.S. 706, 712 (1999)(holding that without federal constitutional provision, Congress' Article I powers do not include the power to subject nonconsenting states to private suits in state courts); Florida Prepaid Post-Secondary Educ. Expense Bd. v. College Savs. Bank, 527 U.S. 627, 648 (1999) (ruling that Congress was without constitutional authority to abrogate state sovereign immunity through patent statute).

The Bankruptcy Code provides that "[n]otwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following: . . . Sections . . . 523 . . ." 11 U.S.C. § 106(a)(1994). Since Seminole, many courts have held that Congress' attempt to abrogate the state's Eleventh Amendment immunity pursuant to section 106(a) is unconstitutional. See, e.g., Elias v. United States (In re Elias), 218 B. R. 80, 84-86 (B.A.P. 9th Cir. 1998),

aff'd, 216 F.3d 1082 (9th Cir. 2000); H.J. Wilson Co. v. Commissioner of Revenue (In re Service Merchandise Co.), 265 B.R. 917, 922 (M.D. Tenn. 2001)(citing Arecibo Comm. Health Care, Inc. v. Puerto Rico, 244 F.3d 241 (1st Cir. 2001); Mitchell v. Franchise Tax Bd. (In re Mitchell), 209 F.3d 1111 (9th Cir. 2000); Dodson v. Tennessee Student Assistance Corp. (In re Dodson), 259 B.R. 635 (Bankr. E.D. Tenn. 2001); Grabscheid v. Michigan Employment Sec. Comm'n (In re C.J. Rogers, Inc.), 212 B.R. 265 (E.D. Mich. 1997); Seay v. Tennessee Student Assistance Corp. (In re Seay), 244 B.R. 112 (Bankr. E.D. Tenn. 2000); Pitts v. Ohio Dept. of Taxation (In re Pitts), 241 B.R. 862 (Bankr. N.D. Ohio 1999)).

Most cases have concluded that unless a state waives its right to sovereign immunity, complaints brought against the state to determine dischargeability of a debt are barred by the sovereign immunity defense. Addison v. United States Dept. of Educ. (In re Addison), 240 B. R. 47, 50 (C. D. Cal. 1999); 2 Collier on Bankruptcy, ¶ 106.03[1][b] (Lawrence P. King *et al.* eds., 15th ed. rev. 1993) (discharge orders are not enforceable against states).

The case law is so overwhelming for this proposition, no useful purpose would be served by an extended discussion of the issue. See, e.g., NVR Homes, Inc. v. Clerks of Circuit Courts (In re NVR, L.P.), 189 F.3d 442, 454 (4th Cir. 1999), *cert. denied*, 528 U.S. 1117 (2000); Sacred Heart Hosp. v. Pennsylvania (In re Sacred Heart Hosp.), 133 F.3d 237, 245 (3d Cir. 1998); Schlossberg v. Maryland (In re Creative Goldsmiths, Inc.), 119 F.3d 1140, 1145 (4th Cir. 1997); May v. Missouri Dept. of Revenue (In re May), 251 B.R. 714, 719 (B.A.P. 8th Cir. 2000), *aff'd*, 2001 WL 238077 (8th Cir. 2000). See also Rose v. United States Dept. of Educ. (In re Rose), 187 F.3d 926, 929 (8th Cir. 1999) (ruling state

agency's submission of proof of claim was waiver of Eleventh Amendment immunity).

Therefore, for the reasons stated, the motion to dismiss filed by the University of Arkansas is granted on the grounds that the State of Arkansas is rightfully asserting a claim of sovereign immunity. Trial on the merits as to the other defendants will be set by subsequent notice.

IT IS SO ORDERED.

James G. Mixon

JAMES G. MIXON
U. S. BANKRUPTCY JUDGE

DATE: 11-16-01

cc: William S. Meeks, Trustee
Mark Drake, Esq.
Scott Varady, Esq.
Connie Meskimen, Esq.
Richard Taylor, Esq.
Debtor