Dated: February 24, 2015
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re TIFFANY FUTCH, Debtor.	Case No. 02-41372-L Chapter 13
Tiffany Futch, Plaintiff v. Christian Brothers University, Defendant.	Adv. Proc. No. 14-00223

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

THE COMPLAINT in this adversary proceeding raises the question of the dischargeability of a debt owed by the Plaintiff/Debtor to the Defendant, Christian Brothers University, a private university. The Plaintiff asserts that her obligations to the Defendant were discharged in her chapter 13 case because her debts "were not fees insured by the federal government." The Complaint does not allege that repayment of the debt to the Defendant would impose an undue hardship upon the Plaintiff or her dependents. See Adv. Proc. Doc. 1.

In its Answer, the Defendant listed four promissory notes executed by the Plaintiff in its favor. The Defendant admitted that it was paid a portion of its debt in the chapter 13 plan and admitted that following the entry of the Plaintiff's discharge, it filed suit in the General Sessions Court of Shelby County, Tennessee, to collect the balance of its debt. The Defendant asserts that the debt owed by the Plaintiff is not excepted from discharge under any provision of the Bankruptcy Code. See Adv. Proc. Doc. No. 4.

Pursuant an order of the bankruptcy court, the parties filed a Joint Pretrial Statement in which the Plaintiff reiterated her position that her debt to the Defendant should be discharged because her debt constitutes "school fees" and "not federally insured loans." Adv. Proc. Doc. No. 7. In the Joint Pretrial Statement, the Defendant computed its damages at $7,863.61 on the "CBU Account Promissory Notes," and $8,613.58 on the "CBU Student Loan Program Notes."

The Defendant filed its Motion for Summary Judgment on January 20, 2015, after discovery was complete. Adv. Proc. Doc. No. 13. The Defendant asserts that based upon the Plaintiff's own admissions, the debts owed to the Defendant:

1. constitute extensions of credit and therefore loans by the Defendant to the Plaintiff;
2. were loans made in contemplation of covering costs of attending the Defendant educational institution;
3. were loans made for payment of educational expenses owed to the Defendant, and therefore student loans for purposes of 11 U.S.C. § 523(a)(8).

The Defendant asserts that there are no genuine disputes concerning material facts and that it is entitled to judgment as a matter of law.

The Plaintiff was given notice of the filing of the Motion for Summary Judgment by the bankruptcy court, and directed to file a response on or before January 19, 2015. See Adv. Proc. Doc. No. 14. That date has come and gone, and a review of the docket reveals no response by the Plaintiff. The motion is ripe for decision.

JURISDICTION

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of the dischargeability of a particular debt is a core proceeding arising under the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(I). Accordingly, the bankruptcy court has authority to hear and decide the Defendant's Motion for Summary Judgment subject only to appellate review under section 158 of title 11. 28 U.S.C. § 157(b)(1).

SUMMARY JUDGMENT STANDARD

A motion for summary judgment may be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), incorporated at Fed. R. Bankr. P. 7056. "'Summary judgment is proper if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.'" *Pazdzierz v. First American Title Ins. Co. (In re Pazdzierz)*, 718 F.3d. 582, 586 (6th Cir. 2013),

quoting *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir. 2007). The Court of Appeals for the Sixth Circuit has described the standards for granting summary judgment as follows:

> A genuine issue of material fact exists when, "there is sufficient evidence favoring the nomoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In deciding whether this burden has been met by the movant, this court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). However, to survive summary judgment, the plaintiff must present affirmative evidence sufficient to show a genuine issue for trial. *Anderson*, 477 U.S. at 249, 106 S. Ct. 2505. Therefore, "[i]f evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50, 106 S. Ct. 2505.

White v. Wyndham Vacation Ownership, Inc., 617 F.3d 472, 475-76 (6th Cir. 2010).

ANALYSIS

In response to the Defendant's Motion for Summary Judgment the Plaintiff has offered no evidence in support of her contention that her debt to the Defendant was discharged. To the contrary, the Plaintiff admits signing the promissory notes which memorialize her obligations to the Defendant, an institution of higher learning. The Plaintiff has failed to raise a genuine dispute concerning a material fact that would require trial.

Further, the Plaintiff's legal position is without merit. The Bankruptcy Code excepts from discharge *any* "obligation to repay funds received as an educational benefit, scholarship, or stipend" whether or not that obligation was insured or guaranteed by a governmental unit. This was true at the time the loans were made and at all relevant times thereafter. See, 11 U.S.C.A. § 523(a)(8), Historical and Statutory Notes (West 2010). While the term "educational benefit" is not defined in the Bankruptcy Code, the majority of courts have said that a loan constitutes an "educational benefit" if it was intended for the purpose of paying educational expenses when it was obtained. *See Maas v. Northstar Education Finance, Inc. (In re Maas)*, 497 B.R. 863 (Bankr. W.D. Mich. 2013),

and cases collected therein. There is no suggestion by the Plaintiff that funds advanced by the Defendant to her did not impart an educational benefit to her. In fact, she admits that part of the funds advanced were for educational fees.

Further, with the 2005 amendments, the Bankruptcy Code excepts from discharge "any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual." 11 U.S.C.A. § 523(a)(8)(B) (West 2010). A "qualified education loan" is defined as follows:

> **(1) Qualified education loan.** The term "qualified education loan" means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses–
>
> > **(A)** which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,
> >
> > **(B)** which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and
> >
> > **(C)** which are attributable to education furnished during the period during which the recipient was an eligible student.
> >
> > Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term "qualified education loan" shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

26 U.S.C.A. § 221(d)(1) (West 2005).[1] There is no suggestion by the Plaintiff that the funds she received from the Defendant fall outside of the definition of a qualified education loan.

[1] I.R.C. § 221 effective December 21, 2005. Amended by PL 113-295 [HR 5771], December 19, 2014, but only as to amount of interest on education loans.

The Bankruptcy Code provides an exception to the exception. Insofar as the repayment of an educational loan would impose an undue hardship upon the debtor and the debtor's dependents, the loan may be discharged. 11 U.S.C. § 523(a)(8). The Plaintiff has not asserted that the repayment of her debt to the Defendant would impose an undue hardship on her or her dependents.

CONCLUSION

For the foregoing reasons, the Defendant's Motion for Summary Judgment shall be **GRANTED**. The obligation owed by the Plaintiff to the Defendant is an obligation to repay funds received as an educational benefit and is an educational loan that is a qualified education loan. The Plaintiff's assertion that the loan must be insured by the federal government in order to be excepted from discharge is without merit. The debt owed by the Plaintiff to the Defendant was **NOT DISCHARGED** in her chapter 13 case and may be collected by the Defendant by all means provided by contract and law.

cc: Debtor/Plaintiff
Attorney for Debtor/Plaintiff
Defendant
Attorney for Defendant
Chapter 13 Trustee