Dated: December 06, 2006
The following is SO ORDERED:

David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

HEATHER PATRICE HOGROBROOKS, Case No. 98-32476-K

Debtor. Chapter 7
SSN: XXX-XX-6557

HEATHER PATRICE HOGROBROOKS,

Plaintiff,

vs. Adv. Proc. No. 99-00618

EDUCATIONAL CREDIT MANAGEMENT
COMPANY,

Defendant.

ORDER RE PLAINTIFF'S "MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE MOTION FOR AN ORDER THAT SETS OUT THE FACT [SIC] PRESENTED AND DISCLOSED TO THE COURT DURING PETITIONER'S [PLAINTIFF'S] RULE 60 PROCEEDING" COMBINED WITH NOTICE OF THE ENTRY THEREOF

The instant core proceeding[1] before the bankruptcy court arises out of the motion filed on November 29, 2006, by the *pro se* plaintiff, Heather Patrice Hogrobrooks, the above-named chapter 7 debtor ("Ms. Hobgrobrooks"), styled "Motion for Reconsideration or in the Alternative Motion for an Order that Sets Out the Fact [sic] Presented and Disclosed to the Court During Petitioner's [Plaintiff's] Rule 60 Proceeding" ("Instant Motion").[2]

The relevant background facts, bankruptcy case and adversary proceeding histories, and applicable law may be briefly summarized as follows: On September 9, 1998, Ms. Hogrobrooks, acting *pro se*, filed an original petition under chapter 7 of the Bankruptcy Code ("Code").[3] On July 27, 1999, Ms. Hogrobrooks, acting *pro se*, filed a complaint under 11 U.S.C. § 523(a)(8) seeking a discharge from certain student loan obligations. The sole named defendant in the above-referenced adversary proceeding was the defendant, Educational Credit Management Corporation ("ECMC"). On November 1, 1999, an "Order of Judgment of § 523(a)(8)(B) Discharge"[4] was entered reflecting the partial discharge of the student loan obligation held by ECMC. The sum of $44,854 at 6% interest in favor of ECMC was declared nondischargeable. This adversary proceeding was thereafter closed.

On November 12, 2000, Texas Guaranteed Student Loan Corporation ("TGSLC") filed a motion to reopen this adversary proceeding and set aside the earlier order and judgment

---

[1]See 28 U.S.C. § 157(b)(2)(I) and (O).

[2]FED. R. BANKR. P. 9023 directs that FED. R. CIV. P. 59 applies in cases under Title 11 (except as provided in FED. R. BANKR. P. 3008). FED. R. CIV. P. 59(e) entitled, ***Motion to Alter or Amend Judgment***, provides that any motion to alter or amend a judgment must be filed no later than 10 days after entry of the judgment. Ms. Hobgrobrooks' instant motion was timely filed. A timely filed Rule 9023 motion tolls the ten-day period to appeal. See FED. R. BANKR. P. 8002(b). Motions to reconsider ordinarily are treated as Rule 9023 motions to alter or amend a judgment or for a new trial. *See, e.g., In re Aguilar*, 861 F.2d 873 (5th Cir. 1988). See also FED. R. BANKR. P. 9024 entitled ***Relief from Judgment or Order.***

[3]Although acting *pro se*, Ms. Hogrobrooks is a law school graduate and has practiced law. As reflected in various pleadings, the loans subject to this adversary proceeding appear to have been incurred while Ms. Hogrobrooks attended the University of Houston - University Park and the South Texas College of Law.

[4]This Order was submitted by counsel of record herein for ECMC, Charles C. Exum, Esquire.

discharging the student loan obligation pursuant to § 523(a)(8) insofar as the order and judgment would affect the student loan obligations owed by Ms. Hogrobrooks to TGSLC. TGSLC's motion to reopen this adversary proceeding and set aside, in part, the prior partial discharge order, in conjunction with the hearing thereon, revealed that TGSLC was never properly served with the summons and complaint herein and was accordingly denied procedural due process.[5] Subsequently, TGSLC's motion was granted for the reasons set forth in TGSLC's motion and the resulting order thereon. This adversary proceeding was again closed on April 26, 2000.

On July 26, 2006, Ms. Hogrobrooks filed a combined motion seeking, *inter alia*, to reopen this adversary proceeding and for requested findings that TGSLC be found in contempt and also to set aside the prior order granting relief to TGSLC as being "obtained by intentional and specific fraud and misrepresentation upon the court." TGSLC filed a 12-page response and memorandum in opposition to Ms. Hogrobrooks' motion to reopen, etc. After notice and a hearing on November 28, 2006, the court orally denied Ms. Hogrobrooks' July 26, 2006 motion, whereupon Ms. Hogrobrooks filed the instant motion on November 29, 2006, for reconsideration or for alternative relief seeking additional findings by the court. (The actual order arising out of Ms. Hogrobrooks motion to reopen, etc. was entered on December 5, 2006.) It is noted that Ms. Hogrobrooks' student loans owed to TGSLC in the approximate collective amount of $7,000 have now been reassigned to the United States Department of Education, who has paid TGSLC.

It is emphasized here that although the TGSLC is a creditor of Ms. Hogrobrooks, nonetheless it was NOT a named defendant in this adversary proceeding NOR was it properly served with process (*i.e.,* properly served with the summons and complaint) as contemplated and required by FED. R. BANKR. P. 7004.[6] The Supreme Court has held that before a federal court may

---

[5] *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

[6] *See, e.g.,* FED. R. CIV. P. 4(j). The Federal Rules of Bankruptcy Procedure state the method by which service must be effected in order to provide proper notice in adversary proceedings.

exercise personal jurisdiction over a defendant, the procedural requirements of service of process must be satisfied. There must be more than mere notice to the defendant and a concomitant constitutionally sufficient relationship between the defendant and the forum. *See, e.g., Omni Capital Intern. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Proper service of process on a defendant in a bankruptcy adversary proceeding requires the issuance and proper service of a summons and complaint served together as provided under FED. R. BANKR. P. 7004(a).

Section 523(a)(8) of the Code restricts the dischargeability of educational benefits or loans that were insured or guaranteed by a governmental unit or under any program funded by a governmental unit or nonprofit institution.[7] To fall within the discharge exception, a student loan obligation must meet the literal criteria of § 523(a)(8) of the Code. The United States Supreme Court has stated that § 523(a)(8) is self-executing and unless the debtor affirmatively secures a hardship determination, the § 524(a) discharge order will NOT include a student loan debt.[8] That is, student loan debts, like alimony and child support obligations, remain nondischargeable and due until there is an independent judicial determination that the loan or debt is expressly dischargeable.[9] After the § 362(a) automatic stay dissolves and notwithstanding the discharge, the holder of such student loan debt, or alimony and child support obligation, may seek collection against the debtor without fear of a subsequent meritorious contempt charge being brought against it.

As discussed earlier, FED. R. BANKR. P. 9023 and FED. R. CIV. P. 59 govern motions to alter or amend judgments. Motions filed under these provisions are typically characterized as motions for reconsideration and are within the discretion of the trial court to grant or deny. *See, e.g., Huff v. Metropolitan Life Insurance Co.*, 675 F.2d 119 (6th Cir. 1982). Such motions are appropriate only to correct "manifest errors of fact or law" or to present newly discovered evidence.

---

[7] It is noted that this is a pre-BAPCPA case.

[8] *Tennessee Student Assistant Corporation v. Hood (In re Hood)*, 541 U.S. 440 (2004).

[9] *Underwood v. United Student Aid Funds, Inc. (In re Underwood)*, 299 B.R. 471 (Bankr. S.D. Ohio 2003).

See, e.g., In re Cafferky, 39 B.R. 330, 335 (Bankr. M.D. Tenn. 1984). Stated differently, "relief under Rule 59(e) is limited to manifest misapprehension of the law or mistake of fact." *See, e.g., In re Winer*, 39 B.R. 504, 512 (Bankr. S.D.N.Y. 1984). Motions for reconsideration should not be used merely to relitigate the issues already decided. Unless the movant can demonstrate "manifest errors of fact or law," reconsideration should not be sought or granted. Such motions should not be used as a substitute for an appeal. *See, e.g., Kellog v. Schreiber*, 197 F.3d 1116 (11th Cir. 1999); *In re McDaniel*, 217 B.R. 348 (Bankr. N.D. Ga. 1998)(J. Drake); *In re Oakbrook Apartments of Henrico County, Ltd.,*, 126 B.R. 535 (Bankr. S.D. Ohio 1991).

Notwithstanding the rhetoric used by Ms. Hogrobrooks in these proceedings and even though TGSLC had actual knowledge of the commencement of this title 11 case, the reality is that the salient, uncontroverted, and relevant determinative facts and applicable law are that TGSLC was NOT named as a party defendant in this adversary proceeding under § 523(a)(8) and FED. R. BANKR. P. 7001(6) and was NOT properly served with process under FED. R. BANKR. P. 7004.[10] Ms. Hogrobrooks' recharacterization of the issues do not rebut or change these realities and conclusions. Simply put, actual knowledge or notice provided under § 342 of the Code of a bankruptcy case is not the legal equivalent of service of process in an adversary proceeding.[11] Further, "anything less than strict compliance with this Rule [FED. R. BANKR. P. 7004] does not constitute effective service." *See, e.g., In re Dibartolo*, 2006 Bankr. LEXIS 3021 (Bankr. N.D. OH

---

[10]It is said that a bankruptcy case is a unique kind of legal matter; moreover, a bankruptcy case has been characterized as an umbrella under which numerous related lawsuits (*i.e.*, proceedings) may be litigated. The Federal Rules of Bankruptcy Procedure require that any party who desires to obtain any one of the ten specific forms of relief enumerated under section 523 in a bankruptcy case must proceed by filing an adversary proceeding. See, *e.g.*, FED. R. BANKR. P. 7001(6) (a proceeding to determine the dischargeability of a particular debt such as a student loan obligation). See also *In re Pioneer Inv. Service Co.*, 946 F.2d 445, 448, n.2 (6th Cir. 1991), concerning a discussion of the case/proceeding dichotomy. FED. R. BANKR. P. 7004 governs the mechanics of issuance of a summons and its form and the manner of service on parties.

[11]It is again observed that after a chapter 7 discharge is granted under § 524(a), the automatic stay dissolves by operation of law by virtue of § 362(c)(2)(C) and the holder of the nondischargeable student loan can proceed to collect its debt. The bankruptcy court does not have exclusive jurisdiction to determine the dischargeability of a particular debt (*i.e.*, concurrent jurisdiction with the state court or federal district court may exist). See § 523(c).

2006). Compliance with the Rules is essential for [i]f a defendant is improperly served, a federal court lacks jurisdiction over the defendant." *Printed Media Servs. v. Solna Web, Inc.*, 11 F.3d 838, 843 (8th Cir. 1993). Since TGSLC was not properly served with process pursuant to FED. R. BANKR. P. 7004, this court, in essence, has no jurisdiction over it. *See, e.g., Dodco, Inc. v. American Bonding Co.*, 7 F.3d 1387 (8th Cir. 1993). Anything less than strict compliance with the Rule does not constitute effective service and actual knowledge of a bankruptcy case or adversary proceeding does not cure a technically deficient service of process. *See, e.g., Drier v. Love (In re Love)*, 232 B.R. 373, 377-78 (Bankr. E.D. Tenn. 1999).

Based on all the foregoing and consideration of the case and adversary proceeding records, Ms. Hogrobrooks' instant motion for reconsideration or alternate relief for additional findings is denied without the need of a hearing. Since TGSLC did not have adequate service of process regarding this adversary proceeding, a finding of student loan dischargeability, in part or in full (as set out in the court's November 1, 1999 Order), CANNOT be applicable to a party that was not named or not properly served with process. It is for these primary reasons that Ms. Hogrobrooks' motion to set aside the prior order granting relief to TGSLC has been denied and also for her failure to carry the required burden of proof. Additionally, since the automatic stay has statutorily dissolved, TGSLC was free to attempt to collect the student loan debts owed to it by Ms. Hogrobrooks.

Accordingly and considering a totality of the facts and circumstances and applicable law, the court additionally finds that no contempt exists here on the part of TGSLC; the record does not sufficiently support the serious allegations asserted by Ms. Hogrobrooks that an "intentional and specific fraud and misrepresentation" have been perpetrated on this court by TGSLC. That is, Ms. Hogrobrooks has not sufficiently demonstrated that she is entitled to the relief sought in the instant motion (or her prior motion). A Rule 9023 or Rule 9024 motion is not intended to be a procedural and/or substantive vehicle for obtaining a rehearing or relitigation of old matters. Thus, a hearing

on the instant motion filed by Ms. Hogrobrooks is not needed or warranted under these facts and circumstances and applicable law. As mentioned earlier, such motions should not be used as a substitute for an appeal.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the entities reflected below.

BY THE COURT

Ms. Heather Patrice Hogrobrooks
Chapter 7 Debtor, Pro Se
579 Byron Drive
Memphis, TN 38109

Blair B. Evans, Esquire
Attorney for TGSLC
165 Madison #2000
Memphis, TN 38103

Charles C. Exum, Esquire
Attorney for ECMC
209 East Main St.
Jackson, TN 38301

Mr. Steve Currie
Ombudsman Specialist
U.S. Dept. of Education
830 First Street, N.E.
Washington, D.C. 20202

Barbara Zoccola, AUSA
U. S. Attorney's Office
200 Jefferson #811
Memphis, TN 38103

United States Trustee
200 Jefferson #400
Memphis, TN 38103