IT IS ORDERED as set forth below:

Date: May 16, 2008

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

In re:	:	
	:	
NICOLE F. EVANS-LAMBERT,	:	BANKRUPTCY CASE NUMBER
	:	**07-40014-MGD**
Debtor.	:	
_____	:	
	:	
NICOLE F. EVANS-LAMBERT,	:	ADVERSARY CASE NUMBER
	:	**07-05001-MGD**
Plaintiff,	:	
v.	:	CHAPTER 7
	:	
SALLIE MAE SERVICING CORP., YALE UNIVERSITY, KENTUCKY HIGHER EDUCATIONAL ASSISTANCE AGENCY, and EDUCATIONAL CREDIT MANAGEMENT CORPORATION.	:	
	:	
Defendants.	:	
_____	:	

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

The above-styled adversary proceeding is before the Court on Nicole F. Evans-Lambert's

("Plaintiff" or "Debtor") Request for Reconsideration of March 24, 2008 Order Granting Defendants' Motion for Summary Judgment ("Motion") and Defendants' Responses thereto. (Docket Nos. 40, 41, and 42). For the reasons set forth herein, Debtor's Motion is **DENIED**.

On March 24, 2008, the Court entered an Order granting Sallie Mae, Inc. ("Sallie Mae"), Kentucky Higher Educational Assistance Agency ("KHEAA"), and Education Credit Management Corporation's ("ECMC") (collectively "Defendants") motions for summary judgment and holding that Debtor's student loans are not dischargeable pursuant to 11 U.S.C. § 523(a)(8). On April 3, 2008, Debtor filed her request for reconsideration indicating that "circumstances materially affecting Debtor's financial obligations have occurred that may have a bearing on the outcome of this case." Debtor's Motion is brought pursuant to Federal Rule of Civil Procedure 60(b), made applicable herein by Federal Rule of Bankruptcy Procedure 9024. Debtor does not seem to allege that the Court has made any mistake of law, but asserts that the Court relied upon "misinformation" in reaching its decision. Based on Debtor's arguments that her circumstances have changed and that the Court relied on "misinformation," it appears that Debtor is moving for reconsideration pursuant to F.R.C.P. 60(b)(1) or 60(b)(6). The Court notes that because Debtor's Motion was filed within ten days of the entry of the subject Order, it would have been properly brought pursuant to F.R.C.P. 59(e) and Bankruptcy Rule 9023. Nevertheless, the result is the same.

A motion for reconsideration serves the limited function of correcting manifest errors of law or fact, *In re Ionosphere Clubs*, 103 B.R. 501, 503 (Bankr. S.D.N.Y. 1989), and should not be used by a disappointed party to introduce new arguments or legal theories which could have been raised before the subject judgment was issued, *O'Neal v. Kennamer*, 958 F.2d 1044, 1047

(11th Cir. 1992). Motions for reconsideration cannot be used to relitigate issues previously decided. *Britt's Home Furnishing, Inc. v. Hollowell (In re Hollowell)*, 242 B.R. 541, 542-43 (Bankr. N.D. Ga. 1999) (Murphy, J.).

Though not stated as a basis for reconsideration, the Court will address Debtor's concern with the fact that no hearing was held on Defendants' Motions for Summary Judgment prior to the Court issuing its ruling. Pursuant to Bankruptcy Local Rule 7056-1(c), "[a] motion for summary judgment will be decided without a hearing unless the Bankruptcy Court directs otherwise." No party, including Debtor, requested a hearing at any time during the pendency of this adversary proceeding and the Court did not consider a hearing necessary to decide the Defendants' Motions for Summary Judgment. While the Court may be more likely to schedule hearings on similar matters involving *pro se* litigants, the *pro se* plaintiff in this case is an attorney who practices in federal court in this district. She is charged with knowledge of the local rules, which are available on the court website and unambiguously state that motions for summary judgment may be decided without a hearing. Debtor filed responses to the Motions for Summary Judgment and to the Defendants' Statements of Uncontested Material Facts and, accordingly, the Court concluded that Debtor had submitted all of the facts, evidence, and arguments she wished to submit to the Court for consideration.

This brings the Court to address the crux of Debtor's motion, which is that because the Court did not have the benefit of certain details of or changes in Debtor's financial situation when it issued its ruling, the Court should reconsider its previous Order and deny Defendants' Motions for Summary Judgment. Debtor's failure to submit evidence to the Court, however, is not a proper basis for reconsideration. Pursuant to F.R.C.P. 56(e)(2), made applicable herein by

Bankruptcy Rule 7056, "an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must– by affidavits or as otherwise provided in this rule– set out specific facts showing a genuine issue for trial." Again, as a practicing attorney, Debtor is charged with knowledge of the rules, including Federal Rule 56. Even without referencing the rule, as an attorney, Debtor should have known that her responses to Defendants' motions were her opportunity to prove to the Court that disputed facts existed necessitating a trial or, at a minimum, to submit evidence to the Court demonstrating that she should have prevailed as a matter of law. Debtor disputed only one fact set forth in Defendants' Statements of Undisputed Facts, which Defendants subsequently stipulated to and which the Court did not find material in any event. Further, Debtor submitted no evidence to the Court in support of her claims. Debtor's attempt to submit previously available evidence to the Court and to relitigate the issues decided on summary judgment is precisely what the case law on motions for reconsideration prohibits. Debtor points to no mistake of law or fact by the Court, but to her own mistakes in not timely and properly submitting such evidence and argument to the Court for its consideration. Debtor is simply attempting to take a second bite at the proverbial apple and her Motion is therefore denied.

Though the Court finds Debtor's Motion to be without merit, the Court will address the substantive arguments in Debtor's Motion. Debtor cites a number of "materially changed circumstances" including new employment and increased expenses in support of her Motion. Many of these "changes" occurred prior to the Court's ruling on the Motions for Summary Judgment. Though Debtor did not state exactly when she changed employment or when her mortgage payment increased due to a recalculation of her escrow account, the pay advice and

mortgage statements attached to Debtor's Motion were issued in February 2008. Debtor's Motion also indicates that her mother-in-law moved into her home in June 2007 and that she had to replace a family vehicle a "few short months" after it was paid off in April 2007. The Court's Order at issue was entered on March 24, 2008, so it does not appear that any of these "changes" occurred after the Court entered its Order and that they occurred before the Motions for Summary Judgment were filed or while the Court had the motions under advisement, during which time Debtor could have filed supplemental pleadings for the Court's consideration if she deemed such changes relevant.

As pointed out by Defendants in their Responses to Debtor's Motion, many of these "changes" mitigate against any argument Debtor may have in favor of a hardship discharge. Debtor's income is now nearly $20,000 per year more than her income at the time she filed her bankruptcy petition and her housing, family, and vehicle expenses have increased significantly. Debtor seems to offer this information in response to the Court's finding that Debtor has failed to maximize her income and minimize her expenses as required. Though Debtor may have maximized her income,[1] this increase in income should provide Debtor with more money to repay her student loan creditors, not simply cover new expenses including a new vehicle. Debtor continues to live in a home requiring mortgage payments of $2,619 per month in a county where

[1] As to Debtor's statement that "it appears Debtor's choice of an occupation in public service is being highly disparaged by this Court," the Court will remind Debtor that Bankruptcy Judges and their staff are all federal government employees, many of whom have left private practice to serve the Court. Any suggestions that this Court does not hold federal government employees and other public servants in the highest regard is outrageous and unfounded. Whether such public servants have sought to maximize their income, however, is a different question and that is the question that this Court is required to consider under the *Brunner* test, which is the law in this circuit.

the IRS housing allowance standards currently range from $864 per month for a family of two to $1,016 per month for a family of four. Since filing for bankruptcy Debtor has purchased a full sized, luxury SUV with a loan balance in excess of $26,000. These facts are not "new financial hardships" and do not demonstrate any effort on the part of Debtor to minimize her expenses. The Court cannot begin to fathom the grief that Debtor continues to suffer after losing her newborn son and further recognizes the emotional burden of caring for an ailing mother-in-law. Though these burdens also come with expenses, Debtor has not demonstrated, at summary judgment or now, that her necessary expenses are such that she will not be able to maintain a minimal standard of living if forced to repay her student loans.

Debtor also asserts that the Court relied on "misinformation" regarding Debtor's student loan payment history in finding that Debtor's actions did not evidence a good faith effort to repay her student loans. In making such a finding, the Court was relying on the undisputed material facts before it on summary judgment. If the payment history detailed in Defendants' Statements of Undisputed Material Facts (and cited to in Part I of the Court's Order) was incorrect, it was Debtor's duty to submit her statement of disputed facts and to *timely* bring it to the Court's attention that Defendants' characterization of the payment history was inaccurate. Regardless, the Court did not rely solely on its finding that Defendant had not made a good faith effort to repay her loans in granting summary judgment to Defendants because the Court found that Debtor had failed all three prongs of the *Brunner* test. Thus, it is not necessary for the Court to reconsider its Order on this basis.

Debtor's Motion provides a detailed explanation and justification of her tithe to her church in response to the Court's statement that "it appears that Debtor no longer makes the $600

per month charitable contribution...listed on Schedule J." Debtor should not confuse this statement– or any criticism she has received from creditors regarding such contributions– as a judgment by the Court regarding the appropriateness of making charitable contributions before, during, or after filing for bankruptcy. It is well settled that debtors are generally entitled to continue to make charitable contributions, including tithing, throughout the bankruptcy process. In stating that Debtor was no longer making the contribution, the Court was simply comparing the expenses disclosed in Debtor's Schedules to the expenses as set forth by the Statements of Undisputed Facts and noting that Debtor no longer had certain expenses, including the charitable contribution, presumably freeing that money up for the payment of student loan debt. Again, Debtor should have submitted her statement of disputed facts and provided the Court with a correct accounting of her expenses, but this fact was not central to the Court's ruling and this expense alone does not impact Debtor's finances in a way that merits reconsideration of the Court's previous Order.

Finally, Debtor provides the Court with information and explanations regarding her choices in schools, housing, vehicles, telephone and internet service, and a variety of other choices and expenses that have brought Debtor to this point. That Debtor's monthly housing expense is less than what she and her husband spent on housing separately before they were married or that a used Mercedes may hold its value longer than some other make of vehicle is not relevant to the Court's determination of whether Debtor's student loans impose an undue hardship upon her. The Court recognizes the foreclosure crisis in this country, the ever rising amounts of debt that students incur to attend school, and the relative ease with which large mortgages and student loans are obtained. The law in this circuit however is clear. In order to be

eligible for a discharge of student loan debt, a debtor must demonstrate (1) that the debtor cannot maintain a minimal standard of living if forced to repay the loans, (2) that additional circumstances exist indicating that such hardship is likely to persist, and (3) that the debtor has made good faith efforts to repay the loans. *Hemar Ins. Corp. of Am. v. Cox (In re Cox)*, 338 F.3d 1238 (11th Cir. 2003) (citing *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987)). This Court, therefore, cannot take the reasons why Debtor has made certain financial choices into account, nor can it consider the emotional weight imposed on a debtor by being forced to repay her student loans. The Court can only determine whether a debtor's income, now and in the future, will allow her to repay her student loans while also funding the basic necessities for living. In their Responses to Debtor's Motion, Defendants ECMC and KHEAA note that Debtor may be eligible for the U.S. Department of Education's Public Service Loan Forgiveness Program. Perhaps this or a similar program can provide Debtor with relief that this Court cannot.

Debtor has failed to set forth a proper basis for reconsideration of this Court's Order Granting Defendants' Motions for Summary Judgment; the opportunity to submit evidence and to litigate the issues decided by the Court on summary judgment has passed. Regardless, none of the arguments or evidence submitted to the Court by Debtor merit a different result. Accordingly, it is

ORDERED that Debtor's Motion for Reconsideration is hereby **DENIED**.

The Clerk is directed to serve a copy of this Order on Plaintiff, Defendants, and counsel for Defendants.

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