

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD L. SWANSON,

Defendant.

No. 13 C 3123

Magistrate Judge Mary M. Rowland

**MEMORANDUM OPINION AND ORDER**

On April 25, 2013, the United States of America filed a complaint against Defendant Donald L. Swanson for his failure to pay a student loan. (Dkt. 1). For the following reasons, the United States of America's motion for summary judgment [12] is granted.

**I. STANDARD**

Summary judgment is warranted when “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); *DeKeyser v. Thyssenkrupp Waupaca, Inc.*, 735 F.3d 568, 570 (7th Cir. 2013). Once “a properly supported motion for summary judgment is made,” the nonmoving party bears the burden to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (internal quotation marks and citation omitted). Any party asserting that a fact is or is not genuinely disputed must cite “to particular parts of

materials in the record,” or show that “an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A). Thus, “a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading.” *Anderson*, 477 U.S. at 256; *Seng-Tiong Ho v. Tafllove*, 648 F.3d 489, 497 (7th Cir. 2011).

## **II. FACTS**

On October 23, 1974, Mr. Swanson executed a promissory note in the amount of \$2,500 pursuant to Title IV-B of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1071 *et seq.* (34 C.F.R. Part 682). (Dkt. 1, ¶ 3; Dkt. 13-1). On April 25, 2013, the United States filed a complaint seeking judgment against Mr. Swanson for his failure to pay. (Dkt. 1). The complaint attaches the promissory note and a Certificate of Indebtedness. The complaint states that, “[a]lthough demand has been made for payment, there remains due and owing the principal sum of \$2,543.74, plus interest to April 25, 2013, in the sum of \$4,705.19 at 7.000% per annum.” (Dkt. 1, ¶ 4). Mr. Swanson filed an Answer on June 20, 2013 denying that he owes these sums. (Dkt. 5).

Status hearings were held on September 10, 2013 and October 22, 2013, and on both occasions Mr. Swanson failed to appear. (Dkt. 8; Dkt. 11). On April 23, 2014, the United States filed a motion for summary judgment (Dkt. 12) and a statement of facts pursuant to Local Rule 56.1. (Dkt. 13). A motion hearing was held on April 30, 2014, and Mr. Swanson failed to appear. (Dkt. 15). No response to the motion has been filed, and the motion is ripe for this Court’s review.

### III. DISCUSSION

To recover on a promissory note the government must first make a *prima facie* showing that (1) the defendant signed it, (2) the government is the present owner or holder, and (3) the note is in default. *United States v. Tartt*, No. 12 C 1416, 2013 WL 2151543, at \*3 (N.D. Ill. May 16, 2013) (citing *United States v. Petroff-Kline*, 557 F.3d 285, 290 (6th Cir. 2009); *United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001)). A sworn Certificate of Indebtedness, such as the one filed here, suffices to make out a *prima facie* case that the note is in default. *Petroff-Kline*, 557 F.3d at 290. Once a *prima facie* case is established, the defendant has the burden of proving the nonexistence, extinguishment or variance in payment of the obligation. *Id.* Given the fact that Mr. Swanson has failed to contest any of the government's asserted facts and has not submitted any evidence to the Court that in any way casts doubt on his indebtedness and failure to pay, summary judgment on the note is warranted.

**WHEREFORE**, the United States of America's motion for summary judgment (Dkt. 12) is **GRANTED** in favor of the United States in the amount of \$7,248.93 as of April 25, 2013, plus interest to the date of judgment and post-judgment interest thereafter, as set forth in the Certificate of Indebtedness. (Dkt. 13, ¶ 5; Dkt. 13-1 at 5).



Dated: January 14, 2015