

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:	)	CASE NO. 95-50818	
VERNON OATLEY	)		
KATHLEEN OATLEY	)	CHAPTER 7	
	)		
MARC P. GERTZ, TRUSTEE	)	JUDGE	MARILYN
SHEA-STONUM	)		
PLAINTIFF	)		
	)	ADVERSARY NO. 95-5100	
v.	)		
	)		
KATHLEEN OATLEY	)	<b>ORDER</b>	<b>GRANTING</b>
<b>PLAINTIFF'S</b>	)		
DEFENDANT	)	<b>MOTION FOR SUMMARY</b>	
<b>JUDGMENT</b>	)		

**PROCEDURAL BACKGROUND**

On September 1, 1995, the Plaintiff-Trustee, Marc Gertz (the "Plaintiff"), filed a Complaint objecting to the discharge of Debtor-Defendant, Kathleen Oatley (the "Defendant"), pursuant to 11 U.S.C. §727(a)(5). Thereafter, Plaintiff filed a Motion for Summary Judgment. No response to that motion was filed by

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At the October 11, 1995, pre-trial of this matter, counsel indicated to the Court that the matter might best be resolved by the filing of dispositive motions. After that pre-trial the Court entered a scheduling Order requiring that the parties file joint stipulations of fact on or before November 10, 1995. That Order also required that dispositive motions be filed by December 11, 1995, with any response to such motion(s) being due within the Bankruptcy Rule response time.

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Defendant.<sup>1</sup> This matter is therefore before the Court on Plaintiff's motion and it arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is determined to be a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (B) over which this Court has jurisdiction pursuant to 28 U.S.C. §§1334(b), 157(a) and 157(b)(2)(J).

**STIPULATED FACTS**

On December 13, 1995, the parties filed a joint Stipulation of Facts. That stipulation stated, *inter alia*, that:

The Defendant pled guilty to and was convicted of one count of bank embezzlement under Title 18 U.S.C. §657 in the U.S. District Court, Northern District of Ohio, Case No. 5-95CR19 on February 6, 1995. This conviction resulted from Defendant's activities while she was an employee of TransOhio Federal Savings Bank from July, 1991 through November 10, 1994. During that period of time, the Defendant embezzled the sum of Seventy Eight Thousand One Hundred Sixty Two Dollars (\$78,162.00) from the bank, which had come under here [sic] care and control by virtue of her position as an employee.

Stip. of Facts, para. 5 (Docket #8). Further, the stipulation indicated that:

The Defendant has failed to satisfactorily explain the loss of said misappropriated funds or the deficiency of funds to meet her liabilities to either the Plaintiff, the Federal Bureau of Investigation or the U.S. Probation Officer.

Stip of Facts, para. 6 (Docket #8). For the purposes of this opinion, the Court

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adopts such stipulations as findings of fact.

**DISCUSSION**

During the pendency of this chapter 7 case, Defendant has failed to explain to the trustee or to her creditors the whereabouts of the embezzled funds. Pursuant to 11 U.S.C. §727(a)(5), the Court shall grant the debtor a discharge unless "the debtor has failed to explain satisfactorily, before determination of denial of discharge..., any loss of assets or deficiency of assets to meet the debtor's liabilities." 11 U.S.C. §727(a)(5). Once a party objecting to the discharge has produced enough evidence to establish a basis for the objection, the ultimate burden of persuasion is placed on the debtor to provide a satisfactory explanation regarding the loss or deficiency of any of debtor's assets. *In re Dolin*, 799 F.2d 251, 253 (6th Cir. 1986); *In re Gobllick*, 93 B.R. 771, 775 (Bankr. M.D. Fla. 1988). In this case, the Defendant, by her own admission, has failed to meet that burden.

A court shall grant a party's motion for summary judgment "if...there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); B.R. 7056. The party moving for summary judgment bears the initial burden of showing the court that there is an absence of a genuine dispute over any material fact, *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)), and, upon review, all facts and inferences must be viewed in the light most favorable to the nonmoving party. *Searcy v. City of Dayton*, 38 F.3d 282, 285 (6th Cir. 1994); *Boyd v. Ford Motor Co.*, 948 F.2d 283, 285 (6th Cir. 1991), *cert. denied*, 503 U.S. 939 (1992). Given that the material

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facts regarding whether Defendant has satisfactorily accounted for the embezzled funds are not in dispute, judgment as a matter of law is appropriate.

**CONCLUSION**

Pursuant to 11 U.S.C. §727(a)(5), a debtor shall be granted a discharge unless she is unable to satisfactorily explain a loss or deficiency in her assets. Given that the debtor in this case has stipulated to the fact that she has not offered a satisfactory explanation regarding the whereabouts of over \$78,000.00 in funds nor has she taken any steps to correct that omission, the Court finds that an exception to discharge is warranted.

Based upon the foregoing, the Court finds that no genuine issues of material fact exist in this case. Thus, the court hereby grants Plaintiff's Motion for Summary Judgment.

**IT IS SO ORDERED.**

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MARILYN SHEA-STONUM  
Bankruptcy Judge

**DATED: 3/29/96**