

IT IS SO ORDERED.

Dated: 11:21 AM February 19 2010



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 07-54039
)	
LUDOVIT KRAJCOVIK, SR.,)	CHAPTER 7
)	
DEBTOR.)	
)	
UNITED STATES TRUSTEE,)	ADVERSARY NO. 08-5185
)	
PLAINTIFF,)	JUDGE MARILYN SHEA-STONUM
)	
vs.)	MEMORANDUM OPINION RE:
)	PLAINTIFF'S MOTION FOR
LUDOVIT KRAJCOVIK, SR.,)	SUMMARY JUDGMENT
)	[DOCKET ## 26 & 27]
DEFENDANT.)	
)	

On December 31, 2008, the United States Trustee for Region 9 (“UST”) filed a complaint objecting to the discharge of Ludovit Krajcovic, Sr. (the “Defendant” or “Debtor”) pursuant to § 727(a)(2) and (4)(A) of the Bankruptcy Code. The Court granted the UST leave to file a motion for summary judgment and the Defendant leave to file a response thereto

[docket #24]. The UST's motion for summary judgment [docket ## 26 & 27] was timely filed. The Defendant has not filed any response to that motion. After the expiration of the filing deadlines, the matter was taken under advisement.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (J) over which this Court has jurisdiction pursuant to 28 U.S.C. §§1334(b), 157(a) and 157(b).

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); FED. R. BANKR. P. 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 non-moving 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). However, the ultimate burden of demonstrating the existence of a genuine issue of material fact lies with the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Even though the Defendant failed to file a response to the UST's motion for summary judgment, that motion cannot be granted simply for Defendant's failure to respond. *See The Huntington Nat'l Bank v. Parton (In re Parton)*, 137 B.R. 902, 905 (Bankr. S.D. Ohio 1991). Instead, this Court must review the motion for summary judgment to determine whether the UST has discharged its burden relative to that pleading. *Id.* However, where a non-moving

party fails to respond to a motion for summary judgment, the court need not search the record to establish an absence of a genuine issue of material fact. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989). Rather, the court may rely upon the facts presented and designated by the movant, *Guarino v. Brookfield Township Trs.*, 980 F.2d 399, 404 (6th Cir. 1992), bearing in mind that any inferences drawn from these facts still must be considered in the light most favorable to the non-movant. *In re Parton*, 137 B.R. 902, 905 (Bankr. S.D. Ohio 1991).

In support of its motion, the UST requests that the Court find the facts set forth in his requests for admission directed to the Defendant to be admitted for the purposes of this adversary proceeding. Pursuant to Federal Rule of Civil Procedure 36, as made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7036, a defendant's failure to respond to the plaintiff's requests for admissions results in the admission of those matters set forth in the requests and conclusively establishes those matters for the purposes of the adversary proceeding. *Fed. R. Civ. P. 36*; see also *McGraw v. Fox (In re Bell & Beckwith)*, 50 B.R. 419, 421 (Bankr. N.D. Ohio 1985); and *Sicherman v. Rivera (In re Rivera)*, 2007 WL 1110749, *4 ("A party's failure to respond to a request for admissions, under rule 36, may result in a material fact being deemed admitted and subject the party to an adverse grant of summary judgment.").

The UST is seeking summary judgment against the Defendant pursuant to § 727(a)(2)(B) and § 727(a)(4)(A).¹ In support of its motion for summary judgment, the UST

¹ This equates to a request for summary judgment on Counts 1, 3, and 4 of the UST's complaint. Count 2 requests the denial of the Defendant's discharge pursuant to § 727(a)(3); Count 5 requests the denial of the Defendant's discharge pursuant to § 727(a)(4)(D). No request has been made for the entry of summary judgment with respect to count 2 or 5.

relies on the requests for admission served upon the Defendant on November 20, 2009 and attached as Exhibit A to the UST's motion for summary judgment. Because the Defendant has failed to respond to the requests for admission, the facts set forth therein are undisputed and are deemed admitted. The Court incorporates the facts set forth in the Request for Admissions by this reference.

Based on the undisputed facts in this adversary proceeding, the Court finds there is no genuine issue of material fact and as a matter of law, even considering the facts in the light most favorable to the Defendant, the Defendant's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2) and 727(a)(4).

Section 727(a) provides, in pertinent part:

The court shall grant the debtor a discharge, unless. . .

(2) the debtor, with the intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed –

(A) property of the debtor, within one year before the date of filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

. . .

(4) the debtor knowingly and fraudulently, or in connection with this case -

(A) made a false oath or account. . .

To establish a claim for denial of discharge under § 727(a)(2)(B), the United States Trustee must prove that the Debtor (1) . . . concealed property of his bankruptcy estate, (2) with actual intent to hinder, delay, or defraud a creditor or an officer of the estate, (3) after the Petition Date. *See In re Rivera*, 338 B.R. 318, 328 (Bankr. N.D. Ohio 2006). “The intent of Section 727(a)(2)(B) is to deny discharge to a debtor who fails to disclose

transactions regarding his assets subsequent to filing his petition in bankruptcy.” *Id.*

Debtor has admitted each element in the *In re Rivera* test. The Debtor refused to provide copies of the statements for the Money Management Account (as defined in the Summary Judgment Motion). He did so with the intent to conceal the transactions in the money management account from the trustee.

727(a)(4)

“A party objecting to a debtor’s discharge pursuant to § 727(a)(4)(A) must establish that, (1) the debtor made a statement while under oath, (2) the statement was false, (3) the statement related materially to the bankruptcy case, (4) the debtor knew the statement was false, and (5) the debtor made the statement with fraudulent intent.” *In re Hamo*, 233 B.R. 718, 725 (6th Cir. BAP (Ohio) 1999). “[A] fact is material if it ‘concerns discovery of assets, business dealings or [the] existence or disposition of property.’” *Id.* “Knowledge may be shown by demonstrating that the debtor knew the truth, but nonetheless failed to give the information or gave contradictory information.” *Id.* In the case at bar, all of the foregoing elements and indicia are undisputed and have been deemed admitted by the Debtor.

For the reasons set forth above, summary judgment is granted to the United States Trustee on Counts 1, 3 and 4, and the Debtor’s discharge is denied.

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cc: (via Electronic Mail)
Ronna Jackson, counsel for UST
(via U.S. Mail)
Ludovit Krajcovic, Sr.