

THIS OPINION IS NOT INTENDED
FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
99 MAR 22 PM 3:32
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Case No. 98-11222
)	
SCOTT K. ISAACSON and BARBARA M. ISAACSON,)	Chapter 7
)	
Debtors.)	Judge Pat E. Morgenstern-Clarren
<hr style="width: 40%; margin-left: 0;"/>		
)	
SAUL EISEN, TRUSTEE,)	Adversary Proceeding No. 98-1386
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
SCOTT ISAACSON, et al.,)	
)	
Defendant.)	

The Plaintiff, Saul Eisen, Trustee (“the Trustee”) filed this Complaint to Revoke and Deny Discharge against the Debtors Scott and Barbara Isaacson (“the Debtors”) under 11 U.S.C. § 727(d) and § 727(a)(6). The Trustee has now moved for summary judgment on his Complaint and the Debtors filed a response. (Docket 7, 8).

JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered in this District on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

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FACTS

These are the undisputed material facts based on admissions in the pleadings:

By letter dated April 15, 1998, the Trustee asked the Debtors to provide him with copies of their 1997 federal and state tax returns. When time passed and they had not complied, the Trustee moved for and obtained an order directing the Debtors to appear for examination and produce the returns. The Trustee postponed the examination three times because the Debtors said they had not yet filed their returns as they were waiting for a W-2 from an employer. The examination finally took place on October 20, 1998, at which time Mr. Isaacson appeared and said that he still did not have the W-2. The Trustee advised him to file an estimated return and to appear for further examination on November 3, 1998. Neither of the Debtors appeared on that date.

The Debtors were granted a discharge on June 18, 1998. (Answer ¶ 1 admitting ¶¶ 1-12 of the Complaint). (Docket 4). The Trustee filed his Complaint to revoke and deny their discharge on November 13, 1998.

DISCUSSION

I.

The Positions of the Parties

The Trustee's Motion for Summary Judgment recites the admitted facts from his Complaint and asks that the discharge be revoked because the Debtors failed to obey a lawful order of the Court. In response, counsel for the Debtors states that he has repeatedly attempted to communicate to the Debtors the importance of complying with the Trustee's request, but has been unable to reach them. This leaves their counsel in the position of being unable to respond substantively to the motion.

II.

Summary Judgment Standard

Summary judgment is appropriate only where 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), made applicable by Fed. R. Bankr. P. 7056; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden then is on the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves” *Celotex Corp. v. Catrett*, 477

U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng’g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989).

DISCUSSION

The Bankruptcy Code provides:

§ 727. Discharge

- (a) The court shall grant the debtor a discharge, unless –
- (6) the debtor has refused, in the case –

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- (A) to obey any lawful order of
the court, other than an order
to respond to a material
question or to testify;

* * * * *

- (d) On request of the trustee, . . . after notice and a
hearing, the court shall revoke a discharge granted
under subsection (a) of this section if –

- (3) the debtor committed an act specified
in subsection (a)(6) of this section.

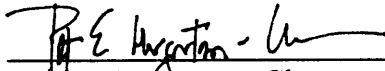
The Trustee may make this request at any time before the later of (1) one year after the granting
of the discharge; and (b) the date the case is closed. 11 U.S.C. § 727(e)(2).

The Debtors admitted that they did not appear for the continued examination and produce
their 1997 federal and state tax returns. They were required to do so by a lawful court order.
The Trustee filed a timely complaint, proved his case, and is entitled to summary judgment in his
favor.

CONCLUSION

For the reasons stated, summary judgment will be entered in favor of the Plaintiff Saul
Eisen, Trustee and against the Defendant-Debtors Scott and Barbara Isaacson. A separate order
will be entered in accordance with this decision revoking and denying the Debtors' discharge.

Date: 22 Mar 1999



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Saul Eisen, Esq.
Michael Ibold, Esq.

By: Joyce L. Gordon, Secretary

Date: 3/22/99

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Debtors.)	Judge Pat E. Morgenstern-Clarren
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SAUL EISEN, TRUSTEE,)	Adversary Proceeding No. 98-1386
)	
Plaintiff,)	
)	
v.)	<u>JUDGMENT</u>
)	
SCOTT ISAACSON, et al.,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this date, summary judgment is granted in favor of the Plaintiff Saul Eisen, Trustee and against the Defendant-Debtors Scott and Barbara Isaacson. The Debtors' discharge is revoked and denied.

IT IS SO ORDERED.

Date: 22 Mar 1999

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Saul Eisen, Esq.
Michael Ibold, Esq.

By: Joyce L. Gordon, Secretary

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