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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

99 DEC -3 AM 8:11

NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Case No. 97-17568
)	
KARL EDWARD SLOAN,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
LAUREN A. HELBLING,)	Adversary Proceeding No. 99-1266
)	
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
)	
KARL EDWARD SLOAN,)	
)	
Defendant.)	

Lauren A. Helbling, Trustee (the "Trustee"), filed a Complaint to revoke the discharge of the Debtor, Karl Sloan, under 11 U.S.C. § 727(d)(3) on the ground that the Debtor failed to comply with an Order of this Court to turnover funds belonging to the bankruptcy estate. After the discovery period ended, the Trustee filed a Motion for Summary Judgment, which is unopposed. (Docket 8).¹

¹ The Adversary Case Management Scheduling Order entered on September 9, 1999 established dates for the submission of dispositive motions. (Docket 6). The Trustee's Motion was timely filed under that Order and the deadline for filing a brief in opposition to the Motion has passed.

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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)(A), (J) and (O).

FACTS AND DISCUSSION

I.

These are the undisputed material facts based on the evidence offered in connection with the summary judgment motion, the admissions in the Debtor's Answer (Docket 7), and the Chapter 7 documents:

This case was filed on October 30, 1997 and the Debtor received a discharge on February 24, 1998. (Case No. 97-17568, Docket 1, 11). On August 11, 1998, the Court entered an Order directing the Debtor to turnover the estate's share of a tax refund to the Trustee. (Case No. 97-17568, Docket 22). The Trustee and the Debtor then entered into an agreement for the Debtor to make payments over time. (Answer, Docket 7). The Debtor defaulted under that agreement (Answer) and so there are still funds owed to the estate under the Court's Order.

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. Federal Rule of Civil Procedure 56(c), made applicable by Federal Rule of Bankruptcy Procedure 7056; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986);

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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).

III.

11 U.S.C. § 727(d)(3)

Bankruptcy Code § 727(d)(3) provides that:

(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.

Section 6(A) applies where:

(6) the debtor has refused, in the case –

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

The Trustee has demonstrated that the Debtor has refused to obey a lawful court order.

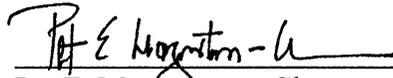
The Debtor has not identified any material fact that must be tried. As refusal to obey the Court’s

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Order is grounds for revoking the Debtor's discharge, the Trustee is entitled to judgment as a matter of law. The motion for summary judgment will, therefore, be granted.

A separate order will be entered granting the Trustee's motion for summary judgment and revoking the Debtor's discharge.

Date: 3 Dec 1999



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Lauren Helbling, Esq.
Herbert Adrine, Esq.

By: Joyce L Gordon, Secretary

Date: 12/3/99

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LAUREN A. HELBLING,)	Adversary Proceeding No. 99-1266
)	
Plaintiff,)	
)	
v.)	<u>JUDGMENT</u>
)	
)	
KARL EDWARD SLOAN,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date, the Plaintiff's Motion for Summary Judgment is granted and the debtor's discharge is revoked.

IT IS SO ORDERED.

Date: 3 Dec 1999

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

Served by mail on: Lauren Helbling, Esq.
Herbert Adrine, Esq.

By: Joyce L. Gordon, Secretary

Date: 12/3/99