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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 01-15826
)
AVIS SCOTT,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
_____)
)
LAUREN HELBLING, TRUSTEE,) Adversary Proceeding No. 02-1030
)
Plaintiff,)
)
v.) **MEMORANDUM OF OPINION**
) **AND ORDER**
)
AVIS SCOTT, et al.,)
)
Defendants.)

The Chapter 7 Trustee filed a Complaint objecting to the Debtor's discharge and requesting turnover of insurance proceeds as property of the estate. She now moves for summary judgment on those issues. (Docket 25). The Debtor has not filed any opposition to the Trustee's motion.¹

JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered 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)(E) and (J) .

FACTS

After the Debtor Avis Scott filed her Chapter 13 case, she experienced a fire at her residence that caused property damage. She later converted her case to one under Chapter 7 of

¹ The Debtor's brief in opposition was due on November 15, 2002. (Docket 32).

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the Bankruptcy Code. The Chapter 7 Trustee filed this Adversary Proceeding challenging the Debtor's bankruptcy disclosures as inadequate and asserting that insurance proceeds associated with the fire are property of the estate. The Trustee's Complaint requests that: (1) the Debtor's discharge be denied based on her failure to disclose assets both before and after the filing; and (2) the insurance proceeds be turned over to the Trustee as property of the Chapter 7 estate. The Debtor and Allstate Insurance Co. are named as defendants. When Allstate did not appear, a default judgment was entered against it. (Docket 23).

The Trustee and the Debtor have stipulated that:

This case was filed as a chapter 13 case on June 15, 2001. The petition listed, in schedule B, "miscellaneous household goods and furnishings" valued at \$1,000 and "clothing" valued at \$100. On September 21, 2001 a fire loss was incurred by the Debtor in her residence. The case was converted to a chapter 7 case on November 1, 2001. Lauren A. Helbling is the duly appointed chapter 7 trustee. On November 1, 2001 Debtor filed a Rule 1019 statement indicating no new debts, no new assets and no new executory contracts. The Debtor appeared for her 341 exam on December 19, 2001. At the 341 exam the [D]ebtor disclosed she had a fire loss but that all proceeds of the insurance had gone towards repairs to her home or to pay expenses for temporary housing and replacement of personal property. There was no disclosure that an additional claim for approximately \$40,000 was still being pursued by the Debtor from her insurer. Additional claim moneys being held by Allstate Insurance Company total \$42,834.35.

See Trustee's Motion with Joint Pretrial Statement attached. Despite their agreement as to these facts, the Trustee and the Debtor disagree as to whether the Debtor's actions warrant denial of her discharge, whether the insurance proceeds (both those received by the Debtor and those held by Allstate) are property of the estate, and whether the property for which the Debtor claimed the insurance loss was hers or another person's property. *Id.*

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In addition to the stipulated facts, the Trustee submitted the affidavit of Nichole Novak to support her summary judgment request. Novak is the Allstate claim representative handling the Debtor's fire loss claim. The affidavit refers to an appended Personal Property Damage Estimate, which includes a claim summary which shows that the Allstate policy is a "Deluxe Homeowner" policy and the Debtor is the "customer". The Estimate indicates a total loss and damage payable associated with the fire of \$103,990.98 (less deductible) and includes a multi-page inventory of personal property damaged in the fire.

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 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); *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).

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DISCUSSION

The Trustee argues, based on the parties' stipulation and the Novak affidavit, that there are no genuine issues of fact and she should be granted judgment as a matter of law on both her turnover request as to the Debtor and her objection to the Debtor's discharge.

A. Turnover of the Insurance Proceeds

The Trustee asserts that the insurance proceeds which Allstate paid to the Debtor are an asset of the estate and should be turned over under Bankruptcy Code § 542(a). That section requires turnover of any property which the trustee may use, sell, or lease under 11 U.S.C. § 363 (or which a debtor may exempt), unless the property is of inconsequential value or benefit to the estate. *See* 11 U.S.C. § 542(a). *See also* 11 U.S.C. § 521(4) (requiring a debtor to surrender estate property to the trustee). The property which a trustee may use, sell, or lease under § 363 is property of the estate. 11 U.S.C. § 363(b)(1). Property of a Chapter 7 bankruptcy estate generally consists of all of the debtor's legal and equitable interests in property as of the commencement of the case. *See* 11 U.S.C. § 541(a). The estate may also include certain property that is acquired after the filing. *Id.* In a case such as this which was commenced as a Chapter 13 and then converted to Chapter 7, property of the estate consists of the property of the estate (as of the filing date) that remains in the possession or control of the debtor on the date of the conversion. *See* 11 U.S.C. § 348(f)(1). Alternatively, if a debtor converts a Chapter 13 case in bad faith, then the property of the estate in the converted case consists of the property of the estate as of the date of the conversion. *See* 11 U.S.C. § 348(f)(2).

The Trustee moves for summary judgment to require the Debtor to turnover the insurance proceeds that were paid to her. This request must be denied because the Trustee has not demonstrated the absence of genuine issues of fact regarding the status of those insurance

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proceeds as property of the estate. The stipulated facts and affidavit which the Trustee submitted do not establish who owned the insurance policy, the terms of that policy, or who owned the personal property for which the insurance payment was made. Summary judgment is, therefore, not appropriate.

B. 11 U.S.C. § 727

The Bankruptcy Code provides that an individual debtor is entitled to a discharge of her debts with certain exceptions. The Trustee requests that the Debtor be denied a discharge under the exception set out in § 727(a)(4)(A)² which states:

(a) The court shall grant the debtor a discharge, unless –

* * *

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

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

11 U.S.C. § 727(a)(4)(A). The Trustee’s burden of proof is a preponderance of the evidence. *Keeney v. Smith (In re Keeney)*, 227 F.3d 679 (6th Cir. 2000). *See also* FED. R. BANKR. P. 4005. To meet this standard, the Trustee must prove that: “1) the debtor made a statement under oath; 2) the statement was false; 3) the debtor knew the statement was false; 4) the debtor made the statement with fraudulent intent; and 5) the statement related materially to the bankruptcy case.” *Keeney*, 227 F.3d at 685 (citation omitted).

The Trustee asserts that the Debtor misrepresented the value of her clothing and household goods when she filed her case and failed to disclose estate assets at her second

² While the Trustee’s Complaint also cites other parts of § 727(a)(4) and § 727(a)(2)(B) as a basis to deny the Debtor’s discharge, her summary judgment request appears to be limited to § 727(a)(4)(A).

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meeting of creditors and in the Bankruptcy Rule 1019 Statement which she filed on the conversion of her case. Section 727(a)(4)(A), however, as noted above, requires proof of the Debtor's intent and summary judgment is generally not appropriate where the issue of intent is involved. *See Kand Medical, Inc. v. Freund Medical Prods.*, 963 F.2d 125, 127 (6th Cir. 1992). Additionally, the Trustee has not established that there are no genuine issues of fact regarding the status of the clothing, household goods, and the insurance proceeds as property of the estate. Summary judgment on this issue is, therefore, not appropriate.

CONCLUSION

For the reasons stated, the Trustee's Motion for Summary Judgment is denied. A separate order will be entered setting further dates to govern these proceedings.

IT IS SO ORDERED.

Date: 5 Dec 2002



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Lauren Helbling, Esq.
Steven Helfgott, Esq.

By: Joyce L. Gordon, Secretary

Date: 12/5/02