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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
30 APR 16 AM 11:22
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 01-14252
)
MARK A. CANFIELD,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
_____)
)
VIRGIL E. BROWN, JR., TRUSTEE,) Adversary Proceeding No. 02-1365
)
Plaintiff,)
)
v.) **MEMORANDUM OF OPINION**
)
MARK A. CANFIELD,)
)
Defendant.)

Virgil E. Brown, Jr., Trustee (the “Trustee”) filed a Complaint to revoke the discharge of the Debtor-Defendant, Mark Canfield, under 11 U.S.C. § 727(d) on the ground that the Debtor failed to comply with a Court order to appear for a Bankruptcy Rule 2004 examination. The Trustee filed a Motion for Summary Judgment, which is unopposed. (Docket 15).¹

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)(J).

¹ The Adversary Case Management Scheduling Order entered on January 17, 2003 established dates for the submission of dispositive motions. (Docket 14). The Trustee timely filed his Motion and the deadline for filing a brief in opposition to the Motion has passed.

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FACTS AND DISCUSSION

I.

These are the undisputed material facts based on the Chapter 7 file and the evidence offered in connection with the summary judgment motion, including the Debtor's Answer (Docket 12) and the parties' Joint Pretrial Statement (Docket 13):

The Debtor filed his Chapter 7 case on May 4, 2001 and received a discharge on October 3, 2001. (Case No. 01-14252, Docket 1, 14). On August 27, 2001, this Court entered an Order (at the Trustee's request) directing the Debtor to appear for examination (the "Rule 2004 Order"). (Case No. 01-14252, Docket 11). The Trustee requested the examination to obtain the Debtor's 2000 tax returns and bank statements. (Joint Pretrial Statement, Docket 13). The Debtor did not appear for the examination and did not produce the requested documents. *Id.*

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. *See* 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*

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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.

11 U.S.C. § 727(d)(3). Section (a)(6) 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[.]

11 U.S.C. § 727(a)(6)(A).

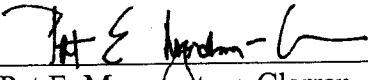
The Trustee has demonstrated that the Debtor refused to obey the Rule 2004 Order. The Debtor has not identified any material fact that must be tried. As refusal to obey the Court's Rule 2004 Order is grounds for revoking the Debtor's discharge, the Trustee is entitled to judgment as a matter of law. The motion for summary judgment will, therefore, be granted.

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CONCLUSION

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

Date: 16 April 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served on: Virgil Brown, Jr., Esq. (court box)
Steven Helfgott, Esq. (court box)

By: Joyce L. Gordon, Secretary

Date: 4/16/03

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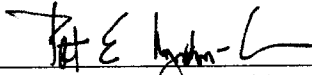
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Debtor.)	Judge Pat E. Morgenstern-Clarren
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)	
VIRGIL E. BROWN, JR., TRUSTEE,)	Adversary Proceeding No. 02-1365
)	
Plaintiff,)	
)	
v.)	<u>JUDGMENT</u>
)	
MARK A. CANFIELD,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date, the Plaintiff-Trustee's Motion for Summary Judgment is granted. (Docket 15). As a result, the Plaintiff-Trustee is granted judgment under 11 U.S.C. § 727(d)(3) and the Defendant-Debtor's discharge is revoked.

IT IS SO ORDERED.

Date: 16 Apr 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served on: Virgil Brown, Jr., Esq. (court box)
Steven Helfgott, Esq. (court box)

By: Joyce L. Gordon, Secretary
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