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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

03 MAY 20 AM 10:09

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Case No. 01-21446
)	
DEBBIE A. DAVIS,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
VIRGIL E. BROWN, JR., TRUSTEE,)	Adversary Proceeding No. 02-1492
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
DEBBIE A. DAVIS,)	
)	
Defendant.)	

The debtor, Debbie Davis, received her Chapter 7 discharge on March 15, 2002. By Order entered August 19, 2002 under Bankruptcy Rule 2004, she was directed to appear for examination by the Chapter 7 trustee and produce documents. (Main case; Docket 8). Plaintiff Virgil Brown, who is the Chapter 7 trustee, filed this complaint under Bankruptcy Code § 727(a) and (d) seeking to revoke and deny the debtor's discharge because she did not appear or produce the documents as required by the Court Order. The debtor answered the complaint and denied the allegations. (Docket 7).

The trustee now moves for summary judgment. (Docket 8). In support of his motion, the trustee attached his affidavit, verifying that an Order had been entered directing the debtor to

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appear for examination with certain documents and that the Debtor failed to appear. The debtor had the opportunity to oppose the motion, but did not do so. (Docket 6, ¶ 5).

I.

JURISDICTION

Jurisdiction exists 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)(J).

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. Summary judgment “shall be rendered . . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact[.]” FED. R. CIV. P. 56(c). Affidavits submitted in support of a summary judgment motion must be based on personal knowledge and sworn or certified copies of all papers referred to must be filed. *See* FED. R. CIV. P. 56(e).

If the movant meets his burden, the burden shifts to the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper

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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.

DISCUSSION

11 U.S.C. § 727

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 established through his affidavit 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

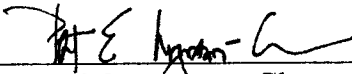
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Court's Order is grounds for revoking the debtor's discharge, the trustee is entitled to judgment as a matter of law. The motion for summary judgment will, therefore, be granted.

CONCLUSION

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

Date: 20 May 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Virgil Brown, Jr., Esq.
Richard Smith, Jr., Esq.

By: Joyce L. Gordon, Secretary

Date: 5/20/03

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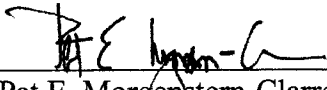
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VIRGIL E. BROWN, JR., TRUSTEE,)	Adversary Proceeding No. 02-1492
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Plaintiff,)	
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v.)	
)	<u>JUDGMENT</u>
DEBBIE A. DAVIS,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date, the plaintiff's Motion for Summary Judgment is granted. (Docket 8). As a result, the plaintiff is granted judgment under 11 U.S.C. § 727(d)(3) and the defendant-debtor's discharge is revoked.

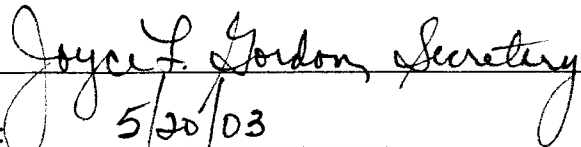
IT IS SO ORDERED.

Date: 20 May 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Virgil Brown, Jr., Esq.
Richard Smith, Jr., Esq.

By: 
Date: 5/20/03