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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

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CLERK, U.S.
BANKRUPTCY COURT
TOLEDO, OHIO

In Re:)	Case No. 03-39468
)	Chapter 7
Troy LaCourse)	
Karen LaCourse,)	Adv. Pro. No. 04-3472
)	Hon. Mary Ann Whipple
Debtors.)	
)	
Patricia A. Kovacs, Trustee,)	
)	
Plaintiff,)	
)	
v.)	
)	
Troy LaCourse)	
Karen LaCourse,)	
)	
Defendants.)	

MEMORANDUM OF DECISION AND ORDER

This adversary proceeding is before the court upon Plaintiff Trustee's "Complaint for Turnover of Property, or, in the Alternative Complaint to Revoke Discharge" ("Complaint") [Doc. #1]. On December 15, 2004, the Clerk issued a summons and notice of pre-trial conference [Doc. #4]. The return on service [Doc. #6] shows that the summons and Complaint were properly served on Defendants, who are appearing pro se, at the address set forth in their petition. The summons required an answer or other response to the Complaint to be filed by January 14, 2005, and scheduled a pretrial conference for January 26, 2005. Prior to the pretrial conference, Defendants contacted court staff and requested a continuance, which oral request was confirmed by motion as required by the court. Therefore, the pretrial conference was rescheduled to February 22, 2005, notice of which was duly and properly given to Defendants.

On February 22, 2005, the court held the pre-trial scheduling conference. Plaintiff appeared in person. There was no appearance by or on behalf of Defendants. [Doc. #13]. No answer or other

response to the Complaint had been served and filed as of the date of the pretrial conference. Plaintiff was ordered to file a motion for default judgment, [Doc. #14], and did so on March 10, 2005. [Doc. #17]. The Motion was served by first class mail on Defendants at the address set forth in their bankruptcy petition. Accordingly, the court scheduled a hearing on the Motion and notice of this hearing was also properly served on Defendants, at the address set forth in the petition.. [Doc. ##19, 20].

On April 5, 2005, the court held a hearing on the Motion. Plaintiff appeared through counsel. There was no appearance by or on behalf of Defendants, and a review of the record shows that no answer or other response to the Complaint or Motion has ever been filed. Therefore, pursuant to Fed. R. Civ. P. 55, made applicable by Fed. R. Bankr. P. 7055, Plaintiff's Motion for Default Judgment will be **GRANTED**.

Law:

The legal basis for the Complaint is 11 U.S.C. § 727(d)(2), which provides that a debtor who acquires property of the estate and fails to deliver or surrender such property to the Trustee shall have his discharge revoked. The property in issue, alleged to have been dissipated, is 2003 state and federal tax returns and related income tax refunds, which constitute property of the debtor on a pre-petition basis and property of the estate on a post-petition basis. Johnston v. Hazlett (In re Johnston), 209 F.3d 611, 613 (6th Cir. 1999); In re Walker, 279 B.R. 544 (Bankr. W.D.Mo. 2002). .

The court has jurisdiction over the Defendants/ Debtors' underlying Chapter 7 bankruptcy case. 28 U.S.C. § 1334. The case and all related proceedings, including this adversary proceeding, have been referred to this court for decision. 28 U.S.C. § 157(a) and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This adversary proceeding is a core proceeding in which this court can make a final determination because it involves a determination as to a debtor's right to a discharge. 28 U.S.C. § 157(b)(2)(J).

Findings of Fact:

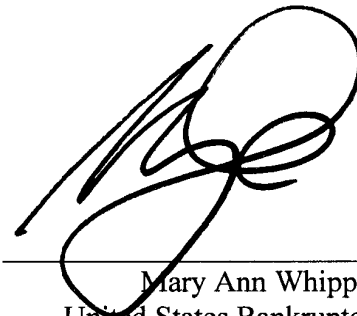
The court finds that notice, including the initial service of the summons and complaint pursuant to Fed. R. Bankr. P. 7004(b)(9), has been duly and properly served upon Defendants at all stages of this adversary proceeding and in the underlying chapter 7 case. In further support that due and proper notice has occurred, none of the court's notices have been returned as undeliverable. The court therefore finds that Defendants have failed to appear, plead, or otherwise defend this action as required by the applicable rules of procedure.

The court finds that the well-pleaded allegations of the Complaint constitute a valid cause of action under 11 U.S.C. § 727(d)(2), and deems them as true. In the absence of evidence to the contrary, the court finds that Defendants' actions and inactions constitute grounds for revocation of their discharge under 11 U.S.C. § 727(d)(2). As alleged in the Complaint, the Trustee had previously demanded and the court ordered in the underlying Chapter 7 that Defendants surrender copies of their 2003 tax returns and non-exempt refunds. [Complaint, Doc. #1, ¶ 11]. Defendants have failed to turnover the non-exempt portions of the tax refunds that are property of the estate, so the discharge they received in the underlying main case shall be revoked.

Conclusion:

Based on the foregoing reasons and authorities, Plaintiff's Motion for Default Judgment [Doc. #17] is hereby **GRANTED**. The court hereby directs that a separate, final judgment against Defendants in accordance with this Memorandum of Decision and Order shall be entered by the clerk.

IT IS SO ORDERED.



Mary Ann Whipple
United States Bankruptcy Judge