

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 04-37897
) Chapter 7
Anthony R. Artino,)
)
Debtor.) Adv. Pro. No. 04-3487
) Hon. Mary Ann Whipple
)
Patricia A. Kovacs, Trustee,)
)
Plaintiff,)
)
v.)
)
Anthony R. Artino,)
)
Defendants.

MEMORANDUM OF DECISION AND ORDER

This adversary proceeding is before the court upon Plaintiff Trustee's "Complaint to Determine Dischargeability of Debts 11 U.S.C. § 523(a)(10)" ("Complaint") [Doc. #1]. On January 27, 2005, the Clerk issued a summons and notice of pre-trial conference [Doc. #5]. The return on service [Doc. #6] shows that the summons and Complaint were properly served on Debtor/Defendant, at the address set forth in his Chapter 7 petition, with a copy sent to his attorney, by ordinary first class mail. The summons required an answer or other response to the Complaint to be filed by February 7, 2005.

On February 22, 2005, the court held a pre-trial scheduling conference. Plaintiff appeared in person. There was no appearance by or on behalf of Defendant. [Doc. #7]. 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 ("Motion"), [Doc. #8], and did so on March 10, 2005. [Doc. #11]. The Motion was served by first class mail on Defendant at the address set forth in his

bankruptcy petition, and also sent to the office of his attorney. Accordingly, the court scheduled a hearing on the Motion and notice of this hearing was also properly served on Defendant, at the address set forth in the petition, and on counsel. [Doc. ##13, 14].

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 Defendant, 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. § 523(a)(10), which provides that any debts that were or could have been listed in a prior bankruptcy case in which a debtor was denied a discharge are excepted from discharge.

The court has jurisdiction over the Defendant's/ Debtor's 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 the dischargeability of particular debts. 28 U.S.C. § 157(b)(2)(I).

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 Defendant 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 Defendant has 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. § 523(a)(10), and deems them as true. The court also takes judicial notice of its records. Debtor filed a previous Chapter 7 case in this court, Case No. 02-30252. Defendant Debtor was denied a discharge in that Chapter 7 case because he failed to turn over to the Trustee certain property of the estate, specifically non-exempt income tax refunds for 2001. The court determined in Adv. Pro. 02-3094 that Debtor was not entitled to a discharge in his underlying Chapter 7 Case No. 02-30252. As a result, the plain terms of 11 U.S.C. § 523(a)(10) except all of the debts scheduled, or that could have been scheduled, in Case. No. 02-30252 from discharge in this case. Those debts and creditors are listed in the Complaint [Doc. #1, ¶ 4] and in Exhibit A to the Motion for Default Judgment, which documents are hereby incorporated herein.

Conclusion:

Based on the foregoing reasons and authorities, Plaintiff's Motion for Default Judgment [Doc. #9] 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