

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
FEB 11 2015
CLERK OF COURT
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 04-30770
) Chapter 7
Brian A. Sampson)
Kimberly Sampson,) Adv. Pro. No. 04-3435
)
Debtors.) Hon. Mary Ann Whipple
)
Ericka S. Parker, Trustee,)
)
Plaintiff,)
)
v.)
)
Brian A. Sampson,)
)
Defendant.

MEMORANDUM OF DECISION AND ORDER

This adversary proceeding is before the court upon Plaintiff Trustee's "Complaint to Revoke Discharge Pursuant to 11 U.S.C. § 727(d)(3) and (a)(6)(A)" ("Complaint") [Doc. #1]. The Defendant is Debtor Brian A. Sampson, only. On November 19, 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 Defendant, at the address set forth in the petition and at another address, and on his attorney by ordinary first class mail. The summons required an answer or other response to the Complaint to be filed by December 20, 2004.

On January 26, 2005, the court held a pre-trial scheduling conference. Plaintiff appeared in person. There was no appearance by or on behalf of Defendant. [Doc. #10]. 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. #11], and did so on February 8, 2005. [Doc. #13]. The Motion was served by first class mail on Defendant at the address set forth in his

bankruptcy petition and an additional address, and also transmitted to the office of his attorney, who had disclaimed any responsibility for further representation in this adversary proceeding. [Doc. #7]. 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. [Doc. ##14, 15].

On April 12, 2005, the court held a hearing on the Motion. Plaintiff appeared in person. 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. Plaintiff certified in an Affidavit filed on April 11, 2005, that Defendant is not known to be in military service to the best of Plaintiff's knowledge. 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 the non-exempt portion of Debtor Brian Sampson's 2003 state and federal 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 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 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 been 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 or Trustee's mailings 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. § 727(d)(2), and deems them as true. In the absence of evidence to the contrary, the court finds that Defendant's actions and inactions constitute grounds for revocation of his discharge, only, 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 Defendant surrender copies of his 2003 tax returns and non-exempt refunds. [Complaint, Doc. #1, ¶¶ 5-7]. The documents were turned over. However, as reported by the Trustee at the hearing, Defendant has failed to turnover the non-exempt portions of the tax refunds that are property of the estate, in the amount of \$3,896.00, so the discharge he received in the underlying main case shall be revoked.

Conclusion:

Based on the foregoing reasons and authorities, Plaintiff's Motion for Default Judgment [Doc. #13] is hereby **GRANTED**. The court hereby directs that a separate, final judgment against Defendant 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