

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 04-21735
)	
RONNETTA HARRIS-ROSADO,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
LAUREN HELBLING, TRUSTEE,)	Adversary Proceeding No. 05-1470
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
RONNETTA HARRIS-ROSADO,)	
)	
Defendant.)	

The chapter 7 trustee filed a complaint to revoke the discharge of the debtor-defendant Ronnetta Harris-Rosado under 11 U.S.C. §§ 727(a)(2)(B) and (d)(2) because the debtor failed to comply with a court order to turnover \$3,255.32 to the trustee. The trustee moved for judgment on the pleadings based on the debtor’s admissions in her amended answer. (Docket 10, 12).

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).

FACTS AND DISCUSSION

I.

Judgment on the Pleadings Standard

Federal rule of civil procedure 12(c) provides that a party may move for judgment on the pleadings after the pleadings are closed but within such time that it does not delay the trial. FED. R. CIV. P. 12(c) (incorporated by FED. R. BANKR. P. 7012). If there is no counterclaim or cross-claim, the pleadings are closed after the defendant answers. *See* FED. R. CIV. P. 7(a) (incorporated by FED. R. BANKR. P. 7007). The legal standard is similar to that applied on a federal civil rule 12(b)(6) motion; i.e., all well pleaded allegations made by the non-moving party are to be taken as true and all inferences are drawn in favor of the non-moving party as well. *See Equal Employment Opportunity Comm. v. J.H. Routh Packing Co.*, 246 F.3d 850, 851 (6th Cir. 2001).

II.

These are the undisputed material facts based on the chapter 7 case file, the trustee's adversary proceeding complaint, and the debtor's amended answer to the complaint:

The debtor filed her chapter 7 case on September 14, 2004 and received a discharge on December 22, 2004. (Case No. 04-21735, docket 1, 9). On September 2, 2005, this court entered an order granting the trustee's request for turnover of funds, which required the debtor to turn over \$3,255.32 from her federal and state tax refund and funds on deposit because the monies were property of the bankruptcy estate. (Case No. 04-21735, docket 13). The debtor has not complied with the order.

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). Subsection (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).

IV.

The Motion

The debtor admits in her amended answer that she was ordered to turn over \$3,255.32 to the trustee and that she has not done so. The pleadings, therefore, establish that the debtor refused to obey a lawful court order and that, as a result, the debtor's discharge should be revoked.

CONCLUSION

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

Date: 8 November 2005



Pat E. Morgenstem-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center

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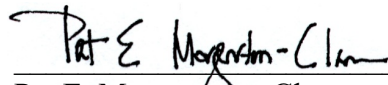


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LAUREN HELBLING, TRUSTEE,)	Adversary Proceeding No. 05-1470
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Plaintiff,)	
)	
v.)	<u>JUDGMENT</u>
)	
RONNETTA HARRIS-ROSADO,)	
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Defendant.)	

For the reasons stated in the memorandum of opinion filed this same date, the chapter 7 trustee's motion for judgment on the pleadings is granted and the discharge granted to debtor Ronetta Harris-Rosado in case no. 04-21735 on December 22, 2004 is revoked. (Docket 12).

IT IS SO ORDERED.

Date: 8 November 2005



 Pat E. Morgenstern-Clarren
 United States Bankruptcy Judge

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