

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 03-22506
)	
JOHN JOSEPH MASCARO,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
RICHARD A. BAUMGART, TRUSTEE,)	Adversary Proceeding No. 05-1343
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
JOHN JOSEPH MASCARO,)	
)	
Defendant.)	

The chapter 7 trustee filed a complaint to revoke and deny a discharge to the debtor John Mascaro under bankruptcy code §§ 727(d)(3) and (a)(6)A) alleging that the debtor failed to comply with a court order to turnover \$16,888.62 to the trustee. The trustee now moves for summary judgment on the ground that there is no genuine issue of material fact and he is entitled to judgment as a matter of law. The debtor did not respond to the motion and the time for doing so has expired. For the reasons stated below, the motion is granted.

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)(A) and (J).

FACTS

These are the undisputed facts based on the facts admitted in the debtor's answer to the complaint¹ and the evidence submitted to support the summary judgment motion:²

The debtor filed his chapter 7 case on September 19, 2003 and received a discharge of debt on April 21, 2004. On April 25, 2005, this court entered an order requiring the debtor to turnover \$16,888.62 to the trustee because the funds are property of the chapter 7 estate. The debtor has failed to comply with the order

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).

Once a movant has met its 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 summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c),

¹ Docket 8.

² Affidavit of Lisa Vardzel, exhibit to motion.

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). “The fact that both parties make motions for summary judgment . . . does not require the Court to rule that no fact issue exists.” *Bayer Corp. v. MascoTech, Inc. (In re Autostyle Plastics, Inc.)*, 269 F.3d 726, 735 (6th Cir. 2001).

DISCUSSION

Bankruptcy code § 727(d)(3) provides that:

(d) On request of the trustee, a creditor, or the United States trustee, and 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;

Subsection (a)(6) provides that a debtor is not entitled to a discharge if:

* * *

(6) the debtor has refused, in the case –

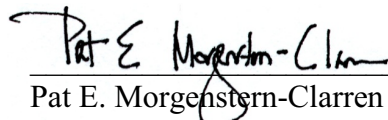
(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

11 U.S.C. § 727(a)(6)(A).

The trustee established that the debtor failed to turn over estate funds to the trustee as ordered by this court. The debtor had notice and an opportunity to be heard, but did not provide evidence to contradict the trustee's case. As a result, the debtor's discharge is revoked under 11 U.S.C. § 727(a)(d)(3) and is then denied under § 727(a)(6)(A).

CONCLUSION

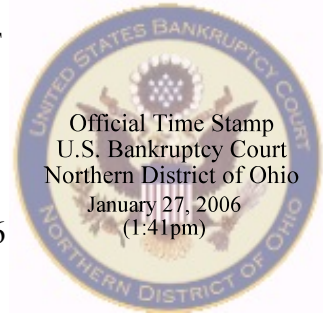
A separate order will be entered granting the trustee's motion for summary judgment, revoking the debtor's discharge, and denying the debtor a discharge.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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RICHARD A. BAUMGART, TRUSTEE,)	Adversary Proceeding No. 05-1343
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Plaintiff,)	
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v.)	<u>ORDER</u>
)	
JOHN JOSEPH MASCARO,)	
)	
Defendant.)	

For the reasons stated in the memorandum of opinion filed this same date, the chapter 7 trustee's motion for summary judgment against the debtor John Mascaro is granted. The debtor's discharge is revoked under 11 U.S.C. § 727(d)(3) and denied under 11 U.S.C. § 727(a)(6)(A).

IT IS SO ORDERED.



 Pat E. Morgenstern-Clarren
 United States Bankruptcy Judge