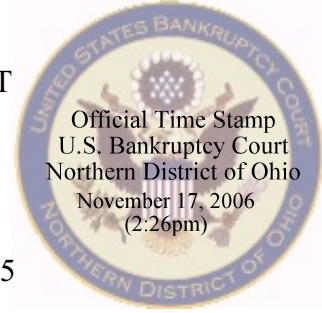


THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 05-90435
)	
JOHN R. BUSSERT and)	Chapter 7
MOLLY M. BUSSERT,)	
)	
Debtors.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
RICHARD A. BAUMGART, TRUSTEE,)	Adversary Proceeding No. 06-1520
)	
Plaintiff,)	
)	
v.)	
)	
JOHN R. BUSSERT, et al.,)	<u>MEMORANDUM OF OPINION</u>
)	
Defendants.)	

The chapter 7 trustee Richard Baumgart filed this adversary proceeding seeking under bankruptcy code §§ 727(a)(6)(A) and (d)(3) to revoke the debtors’ discharge on the ground that the debtors failed to comply with a court order. 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.¹ The debtors did not respond to the motion and the time for doing so has expired. For the reasons stated below, the motion is granted.

¹ Docket 11.

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 docket and the trustee's affidavit submitted in support of the motion:

The debtors filed their chapter 7 case on October 11, 2005.² On May 22, 2006, this court entered an order requiring the debtors to appear on June 7, 2006 for examination by the trustee and to produce documents on that same date, as provided for by Federal Rule of Bankruptcy Procedure 2004.³ The debtors failed to appear and failed to provide the documents.⁴ They received a discharge on February 15, 2006.⁵ They still have not provided the documents that were the subject of the court order.⁶

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);

² Because this case was filed before October 17, 2005, the applicable law is the law in effect before BAPCPA.

³ Docket 18.

⁴ Affidavit ¶¶ 4,7.

⁵ Main case docket 9.

⁶ Trustee's affidavit in support of summary judgment motion ¶ 7.

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), 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).

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;

11 U.S.C. § 727(d)(3).

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

* * *

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

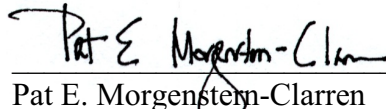
(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

11 U.S.C. § 727(a)(6)(A). While failure to comply with an order to testify cannot on its own justify denying the debtor a discharge, the complete failure to comply with an order directing the debtor to appear for examination that includes an order to provide documents may be grounds for revoking and denying a discharge. *See In re Rivera*, 338 B.R. 318, 329-30 (N.D. Ohio 2006).

The debtors were served with the order directing them to appear for examination and to produce documents. They had notice of the order and did not move to reconsider or otherwise vacate it. They still have not produced the required documents. Moreover, they have not provided any explanation or legal excuse for this failure in response to the motion for summary judgment. The trustee has, therefore, met his burden of proving that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law.

CONCLUSION

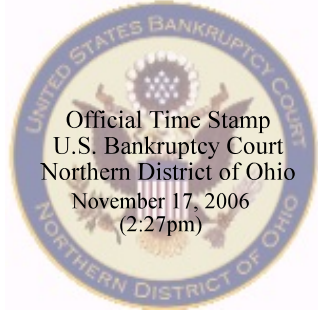
The trustee's motion for summary judgment is granted and the debtors' discharge is revoked and denied. A separate order will be entered reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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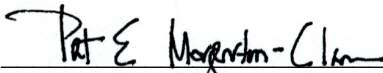
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Plaintiff,)	
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v.)	
)	
JOHN R. BUSSERT, et al.,)	<u>ORDER</u>
)	
Defendants.)	

For the reasons stated in the memorandum of opinion filed this same date, the trustee's motion for summary judgment is granted and the discharge previously granted to both debtors is revoked and denied.

IT IS SO ORDERED.



 Pat E. Morgenstern-Clarren
 United States Bankruptcy Judge