

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:	)	Case No. 05-26812
)	
DONALD BAILEY,	)	Chapter 7
)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
LAUREN A. HELBLING, TRUSTEE,	)	Adversary Proceeding No. 07-1101
)	
Plaintiff,)	
)	
v.)	
)	
DONALD BAILEY,	)	<u>MEMORANDUM OF OPINION</u>
	)	(NOT FOR COMMERCIAL PUBLICATION)
Defendant.)	

The chapter 7 trustee filed a complaint to revoke the discharge of defendant-debtor Donald Bailey.¹ The trustee asserts that the debtor’s discharge should be revoked because he failed to comply with a court order to turn over the sum of \$7,412.64. For the reasons stated below, the trustee’s motion for judgment on the pleadings is granted.²

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered in this district 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).

¹ This case was filed before October 17, 2005, the effective date of most of the provisions of the Bankruptcy Abuse Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. All citations are, therefore, to the bankruptcy code as it existed before that date.

² This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

DISCUSSION

I.

Judgment on the Pleadings

Federal rule of civil procedure 12(c) provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c) (made applicable by FED. R. BANKR. P. 7012(b)). “[A] Rule 12(c) motion is designed to provide a means of disposing of cases when the material facts are not in dispute between the parties and a judgment on the merits can be achieved by focusing on the content of the competing pleadings, exhibits thereto, matters incorporated by reference in the pleadings, whatever is central or integral to the claim for relief or defense, and any facts of which the . . . court will take judicial notice.” 5C C. Wright & A. Miller, Federal Practice and Procedure: Civil § 1367 (2007).

II.

The Trustee’s Motion

The debtor filed a chapter 13 case on October 3, 2005 and voluntarily converted the case to chapter 7 on October 8, 2005. The debtor received his discharge on June 20, 2006.³ On February 9, 2007, this court entered an order granting the trustee’s motion to turn over funds, which required the debtor to turn over the non-exempt portion of his tax refund (\$7,412.64).⁴ In this adversary proceeding, the trustee’s complaint alleges that the debtor failed to comply with this order. The debtor’s answer admits all of the trustee’s allegations.⁵

³ Case No. 05-26812, docket 39.

⁴ Case No. 05-26812, docket 37, 48.

⁵ Docket 6.

The trustee then filed a motion for judgment on the pleadings, to which the debtor did not reply.⁶ The trustee and the debtor appeared at a pretrial held on May 17, 2007 and it was agreed that the court would withhold ruling on the trustee's motion for 60 days to allow the debtor to provide the trustee with the full amount owed to the estate.⁷ The trustee was instructed to notify the court as to whether the debtor provided the funds. On July 19, 2007, the trustee filed an affidavit stating that the debtor has not paid the funds to the estate as required by this court's order.⁸

III.

Revocation of Discharge

The court may revoke the discharge of a chapter 7 debtor if the debtor refuses to obey a lawful order of the court. 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). In turn, subsection (a)(6) of § 727 provides that a debtor's discharge shall be denied when the debtor has refused "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).

Based on the pleadings, the debtor has admitted all of the facts alleged by the trustee and the trustee's affidavit proves that the debtor has refused to turn over estate property to the trustee as ordered by this court. The debtor had notice and an opportunity to respond to the trustee's motion, but did not oppose the requested relief. Additionally, the court withheld ruling on the

⁶ Docket 7.

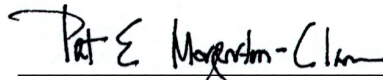
⁷ Docket 10.

⁸ Docket 12.

trustee's motion to give the debtor additional time to comply with the order and the debtor failed to provide the trustee with the funds. As a result, the trustee's motion for judgment on the pleadings is granted and the debtor's discharge is revoked under 11 U.S.C. § 727(d)(3).

CONCLUSION

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



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

NOT FOR COMMERCIAL PUBLICATION


UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:	)	Case No. 05-26812
)	
DONALD BAILEY,	)	Chapter 7
)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
LAUREN A. HELBLING, TRUSTEE,	)	Adversary Proceeding No. 07-1101
)	
Plaintiff,)	
)	
v.)	
)	
DONALD BAILEY,	)	JUDGMENT
	)	(NOT FOR COMMERCIAL PUBLICATION)
Defendant.)	

For the reasons stated in the memorandum of opinion filed this same date, plaintiff-trustee's motion for judgment on the pleadings is granted. (Docket 7). As a result, the plaintiff is granted judgment under 11 U.S.C. § 727(d)(3) and the defendant-debtor's discharge is revoked.

IT IS SO ORDERED.



 Pat E. Morgenstern-Clarren
 United States Bankruptcy Judge