

IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	* CASE NO. 06-40941
	*
STEVE LEE FARKAS and	*
RONNELLE ELAINE FARKAS,	* CHAPTER 7
	*
Debtors.	*
	*
*****	*
UNITED STATES TRUSTEE,	* ADVERSARY NUMBER 08-04004
	*
Plaintiff,	*
	*
vs.	*
	*
RONNELLE ELAINE FARKAS and	* HONORABLE KAY WOODS
STEVE FARKAS,	*
	*
Defendants.	*

MEMORANDUM OPINION

Not Intended for National Publication

The following Memorandum Opinion is not intended for national publication and carries limited precedential value. The

availability of this opinion by any source other than www.ohnb.uscourts.gov is not the result of direct submission by this Court. The opinion is available through electronic citation at www.ohnb.uscourts.gov pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

This cause is before the Court on Motion for Summary Judgment ("Motion") filed by United States Trustee for Region 9 Habbo G. Fokkenna ("UST") on March 5, 2008. Debtors Steve Farkas and Ronnelle Farkas ("Debtors") did not file a response to the Motion.

Debtors filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on June 29, 2006 ("Petition Date"). On November 9, 2007, Debtors filed Notice of Conversion, voluntarily converting their chapter 13 case to one under chapter 7 pursuant to 11 U.S.C. § 1307(a). UST filed Complaint Objecting to Discharge Under 11 U.S.C. Section 727 ("Complaint") on January 11, 2008. Debtors filed Answer [to Complaint] on January 21, 2008, wherein they admitted all of the allegations in the Complaint.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). The

following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

I. STANDARD FOR REVIEW

The Motion for Summary Judgment may be treated as a Rule 12(c) motion for judgment on the pleadings.¹ "A Court may . . . grant judgment on the pleadings *sua sponte* when, 'after the pleadings are closed,' the court determines that there is no material issue of fact presented and that one party is clearly entitled to judgment." *Bajenski v. Chivatero*, 818 F. Supp. 1083, 1085 (N.D. Ohio 1993) (citing *Flora v. Home Federal Sav. and Loan Ass'n*, 685 F.2d 209 (7th Cir. 1982)).

The test for evaluating a 12(c) motion for judgment on the pleadings is the same as that applicable to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). 'Judgment on the pleadings is appropriate where material facts are undisputed and where a judgment on the merits is possible merely by considering the contents of the pleadings.'

Scope, Inc. v. Pataki, 386 F. Supp. 2d 184, 190 (W.D. N.Y. 2005) (citation omitted) (refusing to convert motions on the pleadings to ones for summary judgment because no matters outside the pleadings had been submitted). In determining if a material issue of fact exists, the Court must construe the complaint in the light most favorable to the non-moving party, and take all well-pleaded

¹FED. R. CIV. P. 12(c) is made applicable to bankruptcy proceedings pursuant to FED. R. BANKR. P. 7012.

material facts of the non-moving party as true. *Estill County Board of Education v. Zurich Insurance Co.*, 84 Fed. Appx. 516, 518 (6th Cir. 2003). However, since Debtors in the instant case admit all allegations in the Complaint, there is no question that the Court may consider all allegations in the Complaint as true.

II. ANALYSIS

Section 727 of the Bankruptcy Code governs discharge of debts in a petition filed pursuant to Chapter 7, and provides that:

(a) The court shall grant the debtor a discharge, unless -

. . . .

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition[.]

11 U.S.C. 727(a)(8) (Lexis 2008).

Debtors admit that they filed a voluntary chapter 7 petition on June 29, 2000, which commenced case number 00-41888 ("Prior Case"). They further admit that they received a discharge in the Prior Case on November 29, 2000, which is approximately five years and seven months prior to the Petition Date. Accordingly, pursuant to § 727(a)(8), this Court is precluded from granting Debtors a discharge in the instant case.

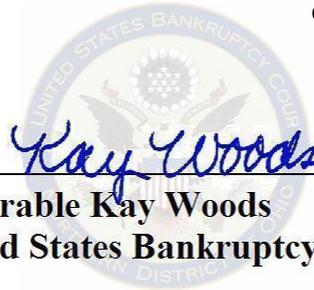
III. Conclusion

Based on the pleadings, the Court finds that Debtors received a discharge in a "case commenced within 8 years before the date of the filing of the petition" in the instant case. Accordingly, pursuant to 11 U.S.C. § 727(a)(8), the Court cannot grant Debtors a discharge; Debtors' discharge is denied.

An appropriate order will follow.

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IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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RONNELLE ELAINE FARKAS and	* HONORABLE KAY WOODS
STEVE FARKAS,	*
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Defendants.	*

ORDER DENYING DISCHARGE

For the reasons stated in the Memorandum Opinion entered on this date, the Court finds that, pursuant to 11 U.S.C.

§ 727(a)(8), Debtors are not entitled to receive a discharge in this case. Accordingly, Debtors are denied a general discharge. After the Chapter 7 Trustee files his final report, the case will be closed without discharge.

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