

IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DANIEL REYNOLDS GILL and
JERRI LYNN GILL,

Debtors.

CASE NUMBER 05-84430

ANDREW W. SUHAR, TRUSTEE,

Plaintiff,

ADVERSARY NUMBER 07-4148

vs.

DANIEL REYNOLDS GILL and
JERRI LYNN GILL,

Defendants.

THE HONORABLE KAY WOODS

SUPPLEMENT TO MEMORANDUM OPINION
REGARDING MOTION FOR SUMMARY JUDGMENT

This is a supplement to the Memorandum Opinion Regarding Motion for Summary Judgment (Doc. # 17) ("Opinion") entered by the Court on November 26, 2008, which is incorporated in its entirety by reference herein.

Plaintiff/Trustee Andrew W. Suhar ("Trustee") filed Motion for Turnover (Main Case Doc. # 43) on November 15, 2006, requesting Debtors Daniel Reynolds Gill and Jerri Lynn Gill ("Debtors") to turn over (i) Debtors' 2002 Pontiac Sunfire automobile; (ii) the amount of \$3,206.11 on deposit in Debtors' checking account at the time of their bankruptcy filing; (iii) copies of Debtors' 2005 federal and state income tax returns; and (iv) Debtors' 2005 federal and state income tax refunds (collectively, "Estate Property"). The Court granted the Motion for Turnover by Order entered December 19, 2006, but Debtors did not turn over the Estate Property.

Trustee then initiated this Adversary Proceeding on November 3, 2007, by filing Complaint (Doc. # 1) seeking, in Count I, revocation of Debtors' discharge pursuant to 11 U.S.C. § 727(d)(3), and in Count II, "judgment against [Debtors] pursuant to 11 U.S.C. § 542(a), in the amount to be determined at trial plus interest and costs[.]" (Compl. at 3). Trustee filed Plaintiff's Motion for Summary Judgment and Memorandum of Points and Authority ("Motion for Summary Judgment") (Doc. # 14) on October 29, 2008. In addition to revocation of Debtors' discharge, the Motion for Summary Judgment also requests judgment against Debtors "in the amount of \$11,135.11 (as set forth in Exhibit 'A')[.]" (Mot. Summ. J. at 5).

The Opinion dealt only with Count I of the Complaint and found summary judgment in favor of Trustee concerning revocation of Debtors' discharge. The Opinion failed to address Trustee's request for summary judgment on Count II, which the Court addresses herein. The Court finds that summary judgment is appropriate

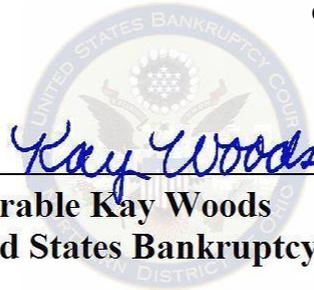
regarding Debtors' liability to Trustee on Count II, but not the amount of such judgment. Exhibit A to the Motion for Summary Judgment, Trustee's Affidavit, indicates that Trustee estimates that \$11,135.11 is the collective value of the Estate Property. Because this amount is based on Trustee's estimates, rather than Trustee's personal knowledge, of both the fair market value of the Sunfire and the amount of the Tax Refunds, the Court cannot find that there is no genuine issue of material fact regarding the amount of the judgment in favor of Trustee. As a consequence, the Court will conduct an evidentiary hearing to determine the (i) value of the Estate Property; (ii) amount of interest and Trustee's costs, if any, to be paid by Debtors; and (iii) total amount of the judgment to be entered against Debtors on Count II.

Trustee may contact the Courtroom Deputy to obtain a hearing date.

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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| IN RE: | * | |
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| DANIEL REYNOLDS GILL and | * | |
| JERRI LYNN GILL, | * | |
| | * | CASE NUMBER 05-84430 |
| Debtors. | * | |
| ***** | | |
| | * | |
| ANDREW W. SUHAR, TRUSTEE, | * | |
| | * | ADVERSARY NUMBER 07-4148 |
| Plaintiff, | * | |
| | * | |
| vs. | * | |
| | * | |
| DANIEL REYNOLDS GILL and | * | |
| JERRI LYNN GILL, | * | |
| | * | THE HONORABLE KAY WOODS |
| Defendants. | * | |
| | * | |

ORDER GRANTING SUMMARY JUDGMENT, IN PART,
AND REVOKING DISCHARGE

The Order Granting Summary Judgment and Revoking Discharge, entered on November 26, 2008, is hereby vacated.

For the reasons set forth in this Court's Supplement to Memorandum Opinion entered this date, the Motion for Summary Judgment filed by Trustee Andrew W. Suhar is granted, in part, and

denied in part. The discharge of Debtors Daniel Reynolds Gill and Jerri Lynn Gill ("Debtors"), previously entered on August 9, 2006, is hereby revoked. Moreover, Trustee is granted summary judgment on Count II of the Complaint regarding Debtors' liability, but not the amount of the judgment. Debtors are liable to Trustee for (i) the amount of \$3,206.11 on deposit in Debtors' checking account at the time of their bankruptcy filing; (ii) the value of Debtors' 2002 Pontiac Sunfire automobile as of their Petition Date; (iii) the amount of Debtors' 2005 federal and state income tax refunds; and (iv) such interest and Trustee's costs, if any, as may be determined by the Court (collectively, "Judgment Value"). The total amount of the Judgment Value shall be determined following an evidentiary hearing.

IT IS SO ORDERED.

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