

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF INDIANA
 HAMMOND DIVISION

IN RE:)	
)	
RICARDO ROCHA,)	CASE NO. 04-60482 JPK
)	Chapter 7
Debtor.)	

TRAVELERS PROPERTY CASUALTY)	
COMPANY OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 04-6077
)	
RICARDO ROCHA,)	
)	
Defendant.)	

JUDGMENT

This adversary proceeding was initiated by complaint filed on May 14, 2004. Service of process upon the defendant was effected, and on August 26, 2004, the defendant, by counsel, filed an answer and counterclaim. The plaintiff filed a response to the counterclaim on August 31, 2004. On October 27, 2004, the plaintiff's Amended Motion to Dismiss Counterclaim filed on September 14, 2004 was granted, without prejudice to the rights of the bankruptcy estate of the defendant/debtor, by and through the Chapter 7 Trustee appointed with respect to that estate, to assert claims in the adversary proceeding. By docket order entered on January 18, 2005, it was ordered that the Chapter 7 Trustee would determine appropriate actions to be taken independently of the adversary proceeding regarding the debtor's/defendant's claims against his former employer. As stated in the Court's order entered on May 19, 2005, the defendant's counsel was suspended from practice, and after that date, proceedings in this case were undertaken with the defendant, *pro se*, without representation by counsel.

As stated in the Court's docket order entered on August 24, 2005, beginning with that

conference the plaintiff's counsel and the defendant advised the Court that they were proceeding with settlement negotiations. As the record in this case establishes, the settlement negotiations extended over a long period of time, and the Court and the plaintiff's counsel extended every possible accommodation to the defendant to facilitate the settlement of this case. Finally, when settlement had not been effected, by order entered on February 5, 2007, the Court scheduled a final pre-trial conference for March 9, 2007. This order stated "This pre-trial conference is subject to the provisions of Fed.R.Bankr.P. 7016/Fed.R.Civ.P. 16, including the provisions of Fed.R.Civ.P. 16(f) which provides for sanctions for a party's failure to attend a final pre-trial conference. Among those sanctions are those included in Fed.R.Civ.P. 37(b)(2)(C), the most significant of which is the entry of a default judgment against the party who fails to appear at a pre-trial conference and fully participate in that conference." The final pre-trial conference was held on March 9, 2007; plaintiff appeared by counsel; the defendant failed to appear, despite having received notice of the pre-trial conference.

In its order entered on March 28, 2007, the Court rendered judgment by default on the substantive allegations of the plaintiff's complaint, determining that the indebtedness owed by the defendant to the plaintiff was excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) and pursuant to 11 U.S.C. § 523(a)(4). This order directed the plaintiff to file with the Court evidence, pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(2), in order to liquidate and finally determine the amount of the nondischargeable indebtedness owed by the defendant to the plaintiff.

Pursuant to the March 28, 2007 order, the plaintiff filed its submission on June 28, 2007 with respect to the amount of the claim of the plaintiff sought to be excepted from discharge.

The Court finds that the evidence submitted by affidavit on June 28, 2007, as docket record entry #64, establishes the plaintiff's entitlement to judgment against the defendant in the amount of \$231,322.33.

IT IS ORDERED, ADJUDGED AND DECREED that an indebtedness in the amount of \$231,322.33 owed by the defendant Ricardo Rocha to the plaintiff Travelers Property Casualty Company of America is excepted from discharge by operation of 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(4).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment shall be binding upon the defendant Ricardo Rocha in any action undertaken by the plaintiff Travelers Property Casualty Company of America to assert or collect the indebtedness subject to this adversary proceeding.

Dated at Hammond, Indiana on August 29, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorney for Plaintiff
Defendant