

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
ODYSSEY GROUP, LLC,)	CASE NO. 09-30111 HCD
)	CHAPTER 7
)	
DEBTOR.)	
)	
)	
REBECCA HOYT FISCHER,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 09-3048
)	
RTW ENTERPRISES, INC.,)	
)	
DEFENDANT.)	

Appearances:

Rebecca Hoyt Fischer, Esq., counsel for plaintiff, Laderer & Fischer, P.C., 112 West Jefferson Boulevard, Suite 310, South Bend, Indiana 46601; and

Jonathan A. Watson, Esq., counsel for defendant, Warrick & Boyn, LLP, 121 West Franklin Street, Suite 400, Elkhart, Indiana 46516.

MEMORANDUM OF DECISION

At South Bend, Indiana, on February 24, 2010.

Before the court is the Motion for Summary Judgment filed by plaintiff Rebecca Hoyt Fischer, Trustee of the chapter 7 debtor Odyssey Group, LLC, against the defendant RTW Enterprises, Inc. The defendant did not file a response to the Motion. For the reasons that follow, the court grants the Trustee's Motion for Summary Judgment.¹

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(a) and (b), and Northern District of Indiana Local Rule 200.1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E).

Background

The Trustee commenced this adversary proceeding by filing a Complaint for Turnover of Property of the Estate. In it, she alleged that the defendant owed \$41,763.86 to the bankruptcy estate for goods the debtor sold to the defendant. The Trustee demanded turnover of that property as property of the estate pursuant to 11 U.S.C. § 542. A copy of the debtor's account statement, verifying that sum, was attached to the Complaint.

The defendant filed an Answer to the Complaint, admitting that the Trustee had demanded payment of that amount but asserting that it was without sufficient knowledge or information as to the truth of the other averments in the Complaint. Following a pre-trial conference, the Plaintiff filed this Motion for Summary Judgment and an Affidavit in Proof of Damages, setting forth the debt in the sum of \$41,763.86. The Trustee declared that the estate was entitled to judgment in that amount as a matter of law. The defendant's response to the Motion, due by September 1, 2009, was never filed. The court took the Motion for Summary Judgment under advisement on September 15, 2009.

Discussion

A court renders summary judgment when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); *Tegtmeier v. Midwest Operating Eng'rs Pension Trust Fund*, 390 F.3d 1040, 1045 (7th Cir. 2004). The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *See Celotex*, 477 U.S. at 323. If the moving party satisfies its initial burden, then the nonmoving party must “go beyond the pleadings and by [its] own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)). The court neither weighs the evidence nor assesses the

credibility of witnesses. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). Summary judgment must be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

In this case, the defendant failed to file a response to the Trustee’s summary judgment motion. Without any objection to the Motion for Summary Judgment before the court, under this court’s local rules the court deems to be admitted all the material facts set forth by the Trustee and properly supported by evidence. *See* N.D. Ind. L.B.R. B-7056-1 (“In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy). *see also Waldridge v. American Hoechst Corp.*, 24 F.3d 918, 922 (7th Cir. 1994).

The defendant did not contest the Trustee’s facts concerning the debt owed to the bankruptcy estate. Aply represented by counsel, it was well aware of the requirement to respond timely. The court therefore deems the facts set forth by the Trustee to be admitted. Nevertheless, the court will not grant a motion for summary judgment merely because of the lack of response. It is required to determine that, “given the undisputed facts, summary judgment is proper as a matter of law.” *See* Fed. R. Civ. P. 56(e)(2) (“If the opposing party does not so respond, summary judgment should, *if appropriate*, be entered against that party.”) (emphasis added); *see also LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 391-92 (7th Cir. 1995) (citing cases).

The Trustee has sought turnover of a debt owed to the debtor under § 542 of the Bankruptcy Code, which requires “an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order” to pay that debt to the trustee. 11 U.S.C. § 542(b). It is generally the obligation of any party holding property of the debtor’s estate to deliver it (or its value) to the trustee. When an entity fails to do so, the trustee is obliged to enforce the duty through an adversary proceeding. *See* Fed.

R. Bankr. P. 7001(1); *see also Mason v. Crosby (In re Mason)*, 386 B.R. 715, 721 (Bankr. N.D. Ill. 2008) (setting forth trustee’s burden of proof in a turnover proceeding). The trustee first must demonstrate that the property at issue is “property of the estate,” under § 541: that is, that it was property in which the debtor had a legal or equitable interest at the commencement of its bankruptcy, and that it was held by the defendant. This Trustee did so by attaching the debtor’s account statement, which listed invoice numbers and amounts owed for prepetition debts by the defendant, in the total amount of \$41,763.86. The court finds that the Trustee has proven that the debt was property of the estate owed to the debtor at the commencement of the debtor’s bankruptcy case and that it was held by the defendant, not delivered to the Trustee.

The burden then shifted to the defendant; either it must comply with § 542 by delivering the property to the trustee or it must demonstrate why the turnover is not required. The defendant, by its nonresponse, has not shown that the debtor was not entitled to that payment. The court determines, therefore, that the Trustee, as the moving party, has succeeded in her burden of proof and that the defendant, as the nonmoving party, has failed to make a showing of a genuine issue for trial. *See* Fed. R. Civ. P. 55(e); N.D. Ind. L.B.R. B-7056-1; *Adler v. Glickman*, 87 F.3d 956, 959 (7th Cir. 1996); *In re Barker*, 236 B.R. 655, 663 (Bankr. N.D. Ind. 1998). It concludes that the plaintiff is entitled to judgment in the amount of \$41,763.86 as a matter of law.

Conclusion

For the reasons presented above, the court grants the Motion for Summary Judgment filed by Rebecca Hoyt Fischer, Trustee of the chapter 7 debtor Odyssey Group LLC, against the defendant RTW Enterprises, Inc. Judgment in favor of the Trustee and against the defendant is awarded in the amount of \$41,763.86.

SO ORDERED.

/s/ HARRY C. DEES, JR.

Harry C. Dees, Jr., Judge
United States Bankruptcy Court