

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 12-12885)	
)	
MICHELLE D. LEE)	
)	
Debtors)	
)	
)	
YVETTE GAFF KLEVEN, Trustee)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 13-1067
)	
MICHELLE D. LEE)	
)	
Defendant)	

**DECISION AND ORDER DENYING MOTION
FOR RELIEF FROM DEFAULT JUDGMENT**

At Fort Wayne, Indiana, on August 20, 2013.

The debtor’s discharge was revoked by a default judgment entered on June 27, 2013. Now, nearly two months later, the debtor has asked the court for relief from that judgment. This request, which has been filed pursuant to Rule 60(b), Fed. R. Bankr. P. Rule 9024, states that the debtor failed to amend her schedules and statement of financial affairs and turnover the information requested by the trustee at the 341 meeting, because she did not understand what the trustee was requiring of her and had difficulty obtaining some of the documents the trustee requested.

The motion is premised upon Rule 60(b) of the Federal Rules of Civil Procedure and apparently Rule 60(b)(1) which authorizes relief from a judgement due to a mistake, inadvertence, surprise or excusable neglect. The court has wide discretion in deciding motions under Rule 60(b)(1). Zuelzke Tool & Engineering Co. v. Anderson Die Castings, Inc., 925 F.2d 226, 228-29 (7th Cir. 1991). To begin with, the motion must be filed within a reasonable time. Then, where the

judgment has been entered by default, the moving party has the burden of showing:

- 1) good cause for the default;
- 2) quick action to correct the default, and;
- 3) a meritorious defense. Zuelzke, 925 F.2d at 229. See also, Nelson v. City Colleges of Chicago, 962 F.2d 754, 755-56 (7th Cir. 1992).

All of these requirements must be met or the motion may be denied. Pretzel & Stouffer v. Imperial Adjusters, Inc., 28 F.3d 42, 46-47 (7th Cir. 1994). The debtor has failed to do so.

The request does not demonstrate good cause for the default – her failure to answer the complaint. To do so, the debtor “must show a good faith reason for failing to appear, ‘meaning that we will grant relief only where the actions leading to the default were not willful, careless, or negligent.’” Swaim v. Moltan Co., 73 F.3d 711, 721 (7th Cir.1996) (quoting Johnson v. Gudmundsson, 35 F.3d 1104, 1117 (7th Cir. 1994)). Inattentiveness to litigation is not excusable and missing a deadline because of slumber can be fatal, Matter of Plunkett, 82 F.3d 738, 742 (7th Cir. 1996); yet, that is all the debtor appears to offer here. The debtor was properly served with the summons and complaint, but nothing was done to respond to it. Neither does she offer any explanation for her failure to respond.

The debtor has not demonstrated a meritorious defense to the trustee’s claim. The action was based upon the debtor’s failure to comply with the court’s order directing the debtor to turnover to the trustee copies of her 2011 state and federal tax returns and pay stubs and an order to file amended schedule A and B and an amended Statement of Financial Affairs. The first order required the debtor to turnover the tax returns and pay stubs was entered on January 16, 2013, after the debtor had been given notice of the trustee’s motion and at least twenty-one days to file any objections to it; no objections were ever filed. As for the order to file amended schedules and an amended Statement of Financial Affairs, that was issued after a hearing held on the trustee’s motion to compel those

amendments – a hearing the debtor failed to attend. The court’s order of February 26, 2013, gave the debtor fourteen days to file amended Schedules A and B and an amended Statement of Financial Affairs. As best the court can tell, the debtor does not deny failing to comply with the court’s orders but tries to justify that non-compliance by contending she did not understand what was expected of her. Yet, that should have prompted the debtor to respond in some fashion to the trustee’s motions: object to them, ask for clarification or reconsideration, try to comply, or, at least, attend the hearing on the trustee’s motion to compel. Instead, the debtor did nothing at all. If there is a reason – any reason – a debtor should not deliver property or financial records to the trustee, see, 11 U.S.C. §§ 521(a)(4), 542(a), the debtor must file an objection to a motion for turnover. And, if there is a reason why the debtor should not be compelled to file amended schedules and statements of financial affairs, 11 U.S.C. § 521(a)(1)(B), the debtor must object to the motion. A debtor cannot ignore such motions, allow them to be granted, and then, when called to task for failing to comply with the court’s orders, advance an argument that could and should have been raised in opposition to the original request. United States v. Rylander, 460 U.S. 752, 756-57, 103 S.Ct. 1548, 1552 (1983); Maggio v. Zeitz, 333 U.S. 56, 69, 68 S.Ct. 401, 408 (1948). Neither can it delay compliance until after revocation of the discharge and use that belated compliance as a reason to be relieved of the judgment. In re Mrozinski, 489 B.R. 818 (Bankr. N.D. Ind. 2013).

The debtor/defendant’s motion for relief from judgment is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court