

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
DON WAYNE LUCAS and)	CASE NO. 13-30189 HCD
VICTORIA DEE LUCAS,)	CHAPTER 7
)	
DEBTORS.)	
)	
)	
REBECCA HOYT FISCHER, TRUSTEE,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 13-3055
)	
DON WAYNE LUCAS and)	
VICTORIA DEE LUCAS,)	
DEFENDANTS.)	

DECISION and ORDER

At South Bend, Indiana, on January 29, 2014.

Before the court is the Motion for Default Judgment filed in this adversary proceeding by the plaintiff Rebecca Hoyt Fischer, chapter 7 Trustee (“plaintiff” or “Trustee”), against the chapter 7 debtors Don Wayne Lucas and Victoria Dee Lucas (“defendants” or “debtors”). The Trustee had commenced this adversary proceeding by filing a Complaint To Deny Discharge For Failure to Cooperate with the Trustee pursuant to 11 U.S.C. § 727(a)(6) and § 727(d)(3). The defendants did not answer the plaintiff’s Complaint or the instant Motion. For the reasons stated below, the court grants the Motion for Default Judgment and grants the relief sought in the Complaint.¹

The Certificate of Service reflects that the Trustee duly served the summons and Complaint upon the defendants, by first class mail and by publication, pursuant to Federal Rule of Bankruptcy Procedure

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

7004(b)(9).² Having established, by affidavit, proper service and the defendants' failure to respond, the court found that the plaintiff complied with the rules governing defaults, Rule 55 of the Federal Rules of Civil Procedure and Rule 7055 of the Federal Rules of Bankruptcy Procedure. *See Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008). Therefore the Clerk of the Court entered default against the defendants pursuant to Rule 55(a).

Before the court now is the Trustee's Motion for Default Judgment, governed by Rule 55(b). The court finds that the Trustee has properly verified that the defendants were not infants, incompetent persons, or active military servicemembers, as confirmed by the appended Report of the Department of Defense Manpower Data Center. That affidavit satisfied the requirements of Rule 55(b) and the Soldiers and Sailors Civil Relief Act, 50 U.S.C. App., § 501 *et seq.*, amended by the Servicemembers Civil Relief Act. *See United States v. Herzberg*, 2012 WL 523651, at *3 (E.D. Tenn. Jan. 25, 2012); *In re Redmond*, 399 B.R. at 632.

The Trustee also provided, by affidavit, sufficient facts to demonstrate that the underlying allegations in the Complaint made a *prima facie* showing on the merits of the case. *See In re Liebl*, 434 B.R. 529, 536 (Bankr. N.D. Ill. 2010); *In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003). The Complaint alleged the debtors' failure to respond to the Trustee's requests for turnover of their tax refunds and their subsequent failure to obey the court's Order for Turnover. It sought denial of the debtors' discharge. The Trustee's Affidavit supporting the Motion for Default Judgment presented, in a thorough case chronology, the underlying factual basis for the Motion's claim that the defendants violated § 727(a)(6)³. In it the Trustee described the numerous informal and formal requests for the debtors' tax refunds, the court's Order for Turnover of those refunds, and the debtors' agreement at their § 341 meeting that they would enter into a

² The defendants filed their voluntary chapter 7 petition without benefit of counsel.

³ Section 727(a)(6) provides that the court "shall grant the debtor a discharge, unless –

...
(6) the debtor has refused, in the case –
(A) to obey any lawful order of the court.

11 U.S.C. § 727(a)(6).

repayment plan with the Trustee. Thus, prior to commencing this adversary proceeding, the Trustee proffered to the debtors an Agreed Order providing a repayment plan by installments. However, the debtors neither signed the Agreed Order nor made any payments to the Trustee. The uncontested facts are *prima facie* evidence that the debtors intentionally failed to comply with the court's Order of Turnover despite the Trustee's attempts to facilitate their compliance.

The court determines that the plaintiff's Complaint presented well-pled allegations stating a legitimate claim for relief under § 727(a)(6) of the Bankruptcy Code. With further amplification of the underlying facts in the Motion for Default Judgment, the Trustee has demonstrated clearly, and without challenge, that the debtors refused to obey the court's Order for Turnover.

However, the court notes that the Trustee also relied upon § 727(d)(3), which allows a Trustee to seek revocation of discharge, rather than upon § 727(c)(1), which authorizes a trustee to object to the granting of a discharge under subsection (a). Because a discharge has not been entered for these debtors, a § 737(d)(3) request for revocation was inappropriate in this case. Nevertheless, the Trustee specifically asked for denial of discharge throughout this adversary proceeding. Because a debtor's discharge may be denied or revoked for refusal to comply with a court order, in violation of § 727(a)(6), the court finds that the Trustee's proof of the defendants' knowing and willful refusal to turn over tax refunds was a sufficient basis for a request of either denial or revocation of discharge. For that reason, the court will deem the Complaint's request for relief to be sought pursuant to § 727(a)(6) and § 727(c)(1).

The court therefore determines that the Trustee complied with the requirements of Rules 7055 and 55(a) and (b), that the Complaint's allegations supported the relief sought, and that the defendants have not offered any response to them. The court concludes that a judgment by default is proper.

The defendants, by default, have admitted their repeated and willful refusal to turn over to the Trustee the 2012 non-exempt federal and state tax returns and to obey the lawful order of this court demanding the turnover of those funds. Their conduct, in refusing to obey this court's order, constitutes a

violation of 11 U.S.C. § 727(a)(6), and it provides the ground for denying their discharge under 11 U.S.C. § 727(c)(1). Therefore, the court grants the Trustee's Motion for Default Judgment against the debtors and grants the relief sought in the Complaint, denial of the debtors' discharge.

CONCLUSION

For the reasons presented in this Decision and Order, the Motion for Default Judgment filed by the plaintiff Rebecca Hoyt Fischer, Trustee, against the defendants Don Wayne Lucas and Victoria Dee Lucas is granted. The relief requested in the plaintiff's Complaint is granted pursuant to 11 U.S.C. § 727(a)(6) and § 727(c)(1). The discharge of Don Wayne Lucas and Victoria Dee Lucas is now denied.

SO ORDERED.

/s/ HARRY C. DEES, JR.
Harry C. Dees, Jr., Judge
United States Bankruptcy Court