

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
SHANE A. WRIGHT,)	CASE NO. 13-30171 HCD
)	CHAPTER 7
DEBTOR.)	
)	
)	
REBECCA HOYT FISCHER, TRUSTEE,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 13-3056
)	
SHANE A. WRIGHT,)	
)	
DEFENDANT.)	

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 debtor Shane A. Wright (“defendant” or “debtor”). The Trustee had commenced this adversary proceeding by filing a Complaint To Revoke Discharge For Failure To Cooperate with the Trustee pursuant to 11 U.S.C. § 727(a)(6) and § 727(d)(3). The defendant did not answer the plaintiff’s Complaint or the instant Motion. For the reasons stated below, the court grants the Motion for Default Judgment.¹

The court finds that the plaintiff has followed the criteria set forth in the rules governing defaults, Rule 55 of the Federal Rules of Civil Procedure and Rule 7055 of the Federal Rules of Bankruptcy Procedure. First, the Trustee duly served the summons and Complaint upon the defendant and the bankruptcy counsel pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(9) and 7004(g). Second, she complied with Rule 55(a) by establishing the defendant’s default and by requesting the Clerk’s Entry

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).

of Default. *See Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008). Because the plaintiff showed, by affidavit, proper service of process on the defendant and the defendant's failure to respond, the Clerk of the Court entered default against the defendant.

The plaintiff now requests that the court enter a judgment by default, in accordance with Rule 55(b). Attached to the Motion for Default Judgment are an Affidavit of Non-Military Status and an Affidavit of the Trustee, filed in support of her Motion. The first affidavit verifies that, according to the Trustee's personal knowledge and to the report of the Department of Defense Manpower Data Center (properly appended to the Affidavit), the defendant is not on active duty in the military or naval service of this country. The second affidavit is the Trustee's personal testimony concerning the facts relevant to the bankruptcy case of Shane A. Wright, which she was charged to administer as the authorized Trustee.

The court finds that the plaintiff's Affidavit of Non-Military Status verified that the defendant was not an infant, an incompetent person, or an active military servicemember, as confirmed by 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.

It further determines that the second Affidavit of the Trustee provided sufficient facts to demonstrate that the underlying allegations in the Complaint justified the Trustee's request that the debtor's discharge be revoked. Attached to the Affidavit were a copy of the court's Order for Turnover of the debtor's 2012 tax returns and the Clerk's Entry of Default of the debtor. The court finds that the defendant was unresponsive throughout this adversary proceeding.

In the exercise of its discretion, before entering a default judgment, a bankruptcy court requires that a plaintiff make 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) (“[B]efore a litigant is

awarded the relief it seeks when the opposing party fails to respond, the court needs to satisfy itself that the facts before it demonstrate a *prima facie* entitlement to that relief.”). The court has evaluated the plaintiff’s Complaint and finds that it presented well-pled allegations of the defendant’s continuing failure to respond to the Trustee’s numerous requests for turnover, her Motion to Compel, and the court’s Order for Turnover, allegations that were sufficient to state a legitimate claim for relief. *See In re Redmond*, 399 B.R. at 633. The Trustee demonstrated a *prima facie* case for revocation of the debtor’s discharge by providing competent evidence of willful refusal to turn over the requested returns and grounds for entitlement to a judgment under § 727(d)(3) and § 727(a)(6) of the Bankruptcy Code. The court notes that the Complaint did not merely recite the elements of the cause of action; it proffered factual allegations that plausibly supported an entitlement to relief. *See In re Ryan*, 2012 WL 1144333 at *10 (Bankr. E.D. Va. Apr. 4, 2012). In addition, the Affidavit of the Trustee thoroughly supplemented the admitted allegations.

Accordingly, having found compliance with the requirements of Rules 7055 and 55(a) and (b), and having found that the Complaint’s allegations supported the relief sought and that the defendant has not offered any response to them, the court determines that a judgment by default is proper. The plaintiff has demonstrated by competent evidence that the debtor’s refusal to present to the Trustee the 2012 federal and state tax returns, and to obey the lawful order of this court demanding the turnover of those documents, are appropriate grounds for the revocation of the defendant’s discharge. The debtor’s act of refusing to obey this court’s order constitutes a violation of 11 U.S.C. § 727(a)(6), and it provides the ground for revoking the debtor’s discharge under 11 U.S.C. § 727(d)(3). Therefore, the court grants the Trustee’s Motion for Default Judgment against the debtor and grants the relief sought in the Complaint, revocation of the debtor’s 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 defendant Shane A. Wright is granted. The relief requested in the plaintiff's Complaint pursuant to 11 U.S.C. § 727(a)(6) and § 727(d)(3) is granted. The discharge of Shane A. Wright, entered on May 13, 2013, is now revoked pursuant to 11 U.S.C. § 727(a)(6) and § 727(d)(3).

SO ORDERED.

/s/ HARRY C. DEES, JR.

HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT