

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 14-11974)
)
LISA ANN MCFARLAND)
)
Debtor)
)
)
YVETTE GAFF KLEVEN, TRUSTEE)
)
Plaintiff)
)
vs.)
)
LISA ANN MCFARLAND)
)
Defendant)

Not for Publication

PROC. NO. 15-1039

DECISION ON MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on August 18, 2015

By this adversary proceeding, the plaintiff/trustee seeks to have the debtor’s discharge revoked as a result of her refusal to comply with the court’s order of February 4, 2015. See, 11 U.S.C. § 727(a)(6)(A), (d)(3). That order required the debtor to turnover bank statements showing receipt of her 2013 state and federal income tax refunds. The matter is before the court on the plaintiff’s motion for summary judgment.

There has been no response to this motion within the time required by the local rules of this court. See, N.D. Ind. L.B.R. B-7007-1(a). Consequently, the court may decide the motion based upon the proposition that “the facts as claimed and supported by admissible evidence . . . exist without controversy” N.D. Ind. L.B.R. B-7056-1. This does not mean, however, that the motion should be granted merely because it is unopposed. “[T]he party moving for summary

judgment has the burden to show that he is entitled to judgment under established principles; and, if he does not discharge that burden, he is not entitled to judgment.” Adickes v. S.H. Kress and Co., 398 U.S. 144, 161, 90 S. Ct. 1598, 1610 (1970). Thus, an unopposed motion cannot be granted automatically. Instead, the court is required to go beyond the lack of opposition and make the further finding that given the undisputed facts, summary judgment is proper as a matter of law. Weinco, Inc. v. Katahn Associates, Inc., 965 F.2d at 565, 568 (7th Cir. 1992).

The trustee served a request for admissions upon the debtor/defendant on May 29, 2015. The debtor was asked to:

- 1) Admit that the Bankruptcy Court’s Turnover Order dated February 4, 2015, ordered you to turn over to the Bankruptcy Trustee a copy of the bank statements showing the receipt of your 2013 State and Federal income tax refunds within thirty (30) days of the date of the Order or no later than March 6, 2015;
- 2) Admit that you have refused to obey the Bankruptcy Court’s Turnover Order dated February 4, 2015, because you have not supplied the Bankruptcy Trustee with a copy of the bank statements showing the receipts of your 2013 State and Federal income tax refunds, and
- 3) Admit that you have refused to obey the Bankruptcy Court’s Turnover Order dated February 4, 2015, because you have taken no action from and after February 4, 2015, to supply the Bankruptcy Trustee with a copy of the bank statements showing the receipt of your 2013 State and Federal income tax refunds.

Despite having been served with these requests, the debtor did not respond to them. She did not object to the request, admit or deny any of the factual statements it contained, or ask for more time to do so. As a result, those facts were deemed admitted. See, Fed. R.Civ. P. Rule 36(a).

The motion for summary judgment is based upon the facts which had been “conclusively established,” Fed. R. Civ. P. Rule 36(b), by the debtor’s failure to respond to the request for admissions. By failing to respond, the debtor admits that the court ordered her to turn over to the

trustee a copy of her bank statement showing receipt of her 2013 federal and state income tax refunds, that she has refused to obey that order, and that, to date, she has not supplied the trustee with a copy of her bank statement showing receipt of her 2013 federal and state income tax refunds.

Thus, having considered the motion, together with the materials submitted in support thereof, the court concludes that there is no genuine issue of material fact and the plaintiff/trustee is entitled to the entry of judgment in her favor as a matter of law.

Plaintiff's motion for summary judgment will be granted. The debtor/defendant's discharge will be revoked.

Judgment will be entered accordingly.

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