

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
ROSE SHEETS)	CASE NO. 14-31506 HCD
)	CHAPTER 7
DEBTOR)	
)	
)	
REBECCA HOYT FISCHER)	
)	
PLAINTIFF)	
vs.)	PROC. NO. 15-3023
)	
ROSE SHEETS)	
)	
DEFENDANT)	

Appearances

Rebecca Hoyt Fischer, Esq., 401 East Colfax, Suite 305, South Bend, Indiana 46617, for Plaintiff.

Rose Sheets, 205 North Roosevelt Road, Knox, Indiana 46534, pro se Defendant.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 3, 2015.

Now before the court is the Motion for Summary Judgment filed by the Plaintiff, Rebecca Fischer. Fischer is the chapter 7 trustee of the estate of Rose Sheets, the Defendant in this adversary proceeding. For the reasons discussed below, the court grants the Motion. 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. Venue is proper pursuant to 28 U.S.C. §1409(a). The court has

determined that this matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A and E).

Background

Sheets filed for relief under chapter 7 of the Bankruptcy Code on June 4, 2014. The court notes that Sheets had previously filed an asset chapter 7 case, number 02-30056, on January 8, 2002. Sheets received a discharge in that case on May 24, 2002. In the same 2002 case, the chapter 7 trustee collected assets and disbursed more than \$153,000, and on January 10, 2006, the court closed the case.

Fischer filed this adversary proceeding on May 14, 2015. In it she asks the court to revoke Sheets' discharge pursuant to 11 U.S.C. § 727(a)(6) and § 727(d)(3). Section 727(a)(6) bars the discharge of a debtor who has refused "to obey any lawful order of the court." Section 727(d)(3) authorizes the court to revoke the granting of a discharge where the debtor has refused to obey a lawful order of the court.

Fischer bases her complaint on Sheets' failure to turnover tax documents and tax refunds for the year 2014. On August 6, 2014, Fischer advised Sheets at the § 341 meeting of creditors that a portion of her 2014 tax refund could be property of the chapter 7 estate. Sheets signed a "Debtor Acknowledgment Concerning Tax Refunds" at that meeting. The Acknowledgment detailed Sheets' responsibilities concerning her tax refund. Sheets did not fully comply with Fischer's requests for tax information. Responding to Fischer's motion for turnover, the court

entered an Order for Turnover on April 2, 2015 [ECF No. 18 in bankruptcy case 14-31506]. Fischer states Sheets made an insufficient response to this order.

In her complaint in this adversary proceeding, Fischer noted that Sheets only provided a one page “tax document” that reflected the amount of federal and state income tax refunds. Fischer also stated that Sheets provided a handwritten note advising her that all refunds had been spent and that the debtor had married. The trustee maintains the minimal information provided to her makes it impossible for her to determine “what portion of the tax refunds are property of the estate and what portion is exempt.” See Complaint, at ¶6. The court notes Fischer’s certificate of service in this adversary proceeding shows proper service of process on Sheets and her bankruptcy attorney. Sheets’ handwritten answer to the complaint simply explains that she cannot “turn over tax returns they were spent. I didn’t file taxes husband did that now married to.”[*sic*].

In her motion for summary judgment, Fischer asserts that she is entitled to a judgment “because there is no genuine issue of material fact” and she is entitled to judgment as a matter of law. As support for her position, Fischer has attached an Affidavit of Non-Military Service to her summary judgment motion, an Affidavit of the Trustee in Support of Motion for Summary Judgment, and other documentation detailing her attempts to get appropriate tax information from Sheets. In the Affidavit of the Trustee, Fischer states that Sheets received tax refunds for 2014. Due to Sheets’ failure to properly comply with her turn over demand, Fischer stated it is “impossible for me to determine how much of the refund

could be exempt.” Sheets’ response to Fischer’s summary judgment consists of a narrative describing her lack of funds and her inability to make payment on her bills. Sheets does not reference any facts in dispute or suggest any authority that might allow here to keep the entire tax refund.,

Discussion¹

In this adversary proceeding Sheets is a pro se litigant. A document filed pro se is “to be liberally construed,” and pro se submissions “ ‘however inartfully pleaded,’ must be held to ‘less stringent standards than formal pleadings drafted by lawyers.’ ” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal citation omitted). “The purpose of this more solicitous review is to insure that pro se pleadings are given ‘fair and meaningful’ consideration.” *Ricketts v. Midwest Nat. Bk.*, 874 F.2d 1177, 1183 (7th Cir. 1989). In considering the question of summary judgment now before it, the court will give due consideration to the fact that Sheets is proceeding pro se.

The court notes that Sheets has previously been a debtor in an asset case under chapter 7. In view of this earlier filing and Debtor Acknowledgment Concerning Tax Refunds signed in this case, the court must presume that Sheets,

¹The court observes at the outset that Fischer has not complied with this court’s local rules. Local Bankruptcy Rule B-7007-1(a) states “Any motion filed within a contested matter or an adversary proceeding ... shall be accompanied by a separate supporting brief.” Fischer has not provided a supporting brief for her summary judgment motion. The court also notes Fischer’s failure to provide a statement of material facts as dictated by Local Bankruptcy Rule B-7056-1(a). Sheets has not suggested that she has been prejudiced by these omissions. Given the uncomplicated and uncontested facts in this adversary proceeding, and with an eye toward minimizing administrative expenses and maximizing any recovery for the benefit of creditors, the court in its discretion will dispense with requiring Fischer’s strict compliance with these local rules.

even though she is pro se, is aware of the obligations of a debtor to cooperate with the case trustee and to turn over property in response to a court order.

As chapter 7 trustee, Fischer has the statutory duty to “collect and reduce to money the property of the estate.” 11 U.S.C. § 704(a)(1). “Property of the bankruptcy estate is defined to include ‘all legal and equitable interests of the debtor in property as of the commencement of the case.’ ” *In re Meyers*, 616 F.3d 626, 628 (7th Cir. 2010); 11 U.S.C. § 541(a)(1); See *In re Marvel*, 372 B.R. 425, 430 (Bankr. N.D. Ind. 2007) (citing *In Matter of Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993)). The broad definition of “property of the estate” includes income tax refunds. See, e.g., *In re Vazquez*, 516 B.R. 523, 525 (Bankr. N.D. Ill. 2014) (trustee is entitled to any portion of the debtor’s tax refund attributable to prepetition earnings); *In re Ascuntar*, 487 B.R. 319, 321 (Bankr. S.D. Fla. 2013). (“A tax refund received postpetition is property of the estate if it is attributable to wages earned and withholding payments made during prepetition years.”)

Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (“moving party is ‘entitled to a judgment as a matter of law’ because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof”); *Dick ex rel. Amended Hilbert Residence Maintenance Trust v. Conseco, Inc.*, 458 F.3d 573, 577 (7th Cir. 2006) (“Summary judgment should not be granted unless there is no genuine issue of material fact and

the moving party is entitled to judgment as a matter of law.”); *Archdiocese of Milwaukee v. Doe*, 743 F.3d 1101, 1105 (7th Cir. 2014). In considering a summary judgment motion, the court must construe the facts and draw inferences in favor of the non movant. *In re United Air Lines, Inc.*, 438 F.3d 720, 727 (7th Cir. 2006). The non movant, however, is free from responsibilities in a summary judgment situation. Under Rule 56(e), the non moving party must set forth specific facts showing there is a genuine issue for trial. *Sky v. City of Chicago*, 194 F.3d 788, 798 (7th Cir. 1999).

As the court has noted above in its review of the background of this adversary proceeding, a case trustee such as Fischer, may have an interest in some portion of Sheets’ tax refund attributable to prepetition income and withholding. *See Vazquez*, 516 B.R. at 525. Fischer has alleged that Sheets has failed to comply with this court’s order to turn over property. Sheets has neither challenged this assertion, or pointed to any disputed facts that require trial. The court finds that Fischer has established the lack of any genuine issue as to any material fact. The court also finds that as a debtor in a chapter 7 case, Sheets has a statutory obligation under 11 U.S.C. § 521(a)(3) to cooperate with Fischer as necessary in order that Fischer may fulfill her duties as trustee. As noted above, one of Fischer’s duties is to collect and reduce to money property of the estate. 11 U.S.C. § 704(a)(1). By failing to provide Fischer with pertinent tax information Sheets has failed to fulfill her obligation to cooperate with Fischer. In failing to turn over the items requested, Sheets has violated this court’s order of April 2, 2015. As a matter of law, 11 U.S.C. § 727(d)(3) requires the revocation of Sheets’ discharge.

Conclusion

The court finds that the Defendant in this adversary proceeding, Rose Sheets, having failed to turn over tax documents to the Plaintiff, Rebecca Fischer, is in violation of this court's order of April 2, 2015. This failure is grounds to revoke Sheets' discharge under 11 U.S.C. § 727(d)(3). The discharge of Rose Sheets entered on September 15, 2014, is hereby revoked.

SO ORDERED.

/s/ HARRY C. DEES, JR. _____
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT