

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re)	
)	Case No. 04-44189-172
Kevin S. Satkus)	
)	Adv. No. 04-4201-172
Debtor.)	
)	
James S. Cole, Trustee)	Chapter 7
)	
Plaintiff,)	
)	
vs.)	
)	
Kevin S. Satkus)	
)	
Defendant.)	

MEMORANDUM

The Trustee filed this Adversary Complaint against the Debtor requesting turnover of certain non-exempt personal property, and revocation of the Debtor's discharge. The Trustee seeks turnover of the Debtor's 1999 Ford Escort, VIN 3FAKP1132XR232392 ("Vehicle"), turnover of 2003 Tax Refunds, turnover of the balance in the Debtor's bank account at First Community Credit Union as of the commencement of the case ("Bank Balance") in the amount of \$184.55, turnover of household goods in the amount of \$2,000.00, and turnover of collectibles in the amount of \$500.00. The Trustee argued that the Debtor's refusal to turn over this property is grounds for revoking his discharge under 11 U.S.C. § 727(d)(2).

The Debtor filed an answer to the Trustee's complaint for turnover stating that the Vehicle is not titled to the Debtor and is subject to an executory contract and not a security interest. The Debtor argued that the remaining items listed by the Trustee were of minimal value and should be abandoned by the Trustee as burdensome.

This is a core proceeding pursuant to Section 157(b)(2)(E) of Title 28 of the United States Code. The Court has jurisdiction over the parties and this matter pursuant to 28 U.S.C. Sections 151, 157 and 1334, and Rule 81-9.01 of the Local Rules of the United States District Court for the Eastern District of Missouri.

The Parties agreed that this matter may be determined upon the record as a whole, including a joint stipulation of facts, and the Plaintiff's Memoranda of Law In Support of Plaintiff's Complaint, without a trial. This Memorandum and the accompanying Order are the final determinations and order of the Bankruptcy Court in this matter.

Facts

The facts set out herein are drawn from the Parties' Joint Stipulation of Facts (File Document No. 8), and a consideration of the record as a whole. The Debtor commenced a case under Chapter 7 on March 31, 2004. Prior to the filing, on March 16, 2004, the Debtor purchased the Vehicle from Lisa Steggmann (Seller). A Bill of Sale was signed by the Seller reflecting the Debtor's purchase of the Vehicle. The Debtor obtained possession of the Vehicle on or about March 16, 2004 (prior to commencement of this case), and was in possession of the Vehicle at the time of this Adversary Proceeding. Neither the Seller nor the Debtor filed an Application for Title for the Vehicle with the Missouri Department of Revenue after the sale. The Seller did not file a Notice of Lien. The agreement between the Debtor and Seller was that the Debtor would make monthly payments of \$300.00 to the Seller, and upon the payment of the total sum of \$3,200.00, title to the Vehicle would be transferred to the Debtor.

In a separate Adversary Proceeding, the Chapter 7 Trustee successfully prosecuted an avoidance action against the Seller, thus preserving the security interest solely for the benefit of the Estate. The Seller was ordered to turn over the Certificate of Title to the Trustee. The Trustee has demanded the Debtor turn over the Vehicle, but the Debtor has not done so.

The remainder of the personal property that the Trustee seeks to recover here was property listed on the Debtor's Schedules and Statements that was not claimed as exempt in the Chapter 7 case. The Debtor has not turned over any of the items or cash to the Trustee.

Discussion

Property of the estate consists of a debtor's interests in property as of the commencement of the case. **11 U.S.C. § 541.** Upon the commencement of the bankruptcy case, the Trustee succeeded to the property interests of the debtor as defined by state law. **In re Schauer**, 835 F. 2d 1222, 1225 (8th Cir. 1987). The Judgment for the Trustee against the Seller in Adversary Proceeding No. 04-4196-172 avoided any security interest in the Vehicle, and required the Seller to assign the title to the Trustee. (File Document No. 9, Adversary 04-4196-172).

A debtor has a duty to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties. This cooperation includes the obligation to surrender property to the trustee for administration in the estate. **11 U.S.C. § 521.** The trustee has the duty to collect and reduce to money the property of the estate. **11 U.S.C. §704.** To the extent that the Debtor here attempted to reject the agreement with the Seller and retain possession of the Vehicle, such an act after commencement of this case would be ineffective as a matter of law and would not demonstrate good faith.

An Order of Discharge was entered in this case on June 29, 2004. This Adversary Complaint was filed by the Trustee on July 15, 2004. The court shall revoke a discharge if the discharge was obtained through the fraud of the debtor, if the debtor acquired property that is property of the estate and failed to deliver or surrender the property to the trustee, or if the debtor committed an act specified in Section 727(a)(6). **11 U.S.C. § 727(d).**

The Court finds and concludes that the Vehicle became an asset of the bankruptcy estate as of the commencement of this case. The Debtor has repeatedly refused to deliver or surrender

the Vehicle to the Trustee. As a result of the Trustee's separate Adversary Proceeding No. 04-4196-172, the Vehicle is an unencumbered asset with a value of \$3,200.00 as of the commencement of the case. As property of the estate, in the custody or under the control of the Debtor, the Debtor had a duty to surrender the Vehicle to the Trustee. His repeated refusal to do so was knowing and fraudulent.

The remainder of the personal property sought by the Trustee has a non-exempt value, as scheduled by the Debtor, of \$2,836.55. This is not an insignificant amount, and the Debtor has presented no grounds to justify his refusal to surrender the property, or the value of the property, to the Trustee. The Court has determined further that the record does not otherwise provide a basis upon which the Debtor may refuse to surrender the property. His repeated refusal to deliver or surrender the property was knowing and fraudulent. In these circumstances, the Debtor's failure to deliver or surrender property of the estate to the Trustee is so egregious as to warrant revocation of his discharge under 11 U.S.C. § 727(d)(2). **See Vockner v. Battley**, 122 F. 3d 1076 (9th Cir. 1997), **In re Yonikus**, 794 F. 2d 901, 904-905 (7th Cir. 1992).

Judgment will be entered in favor of the Plaintiff/Trustee and against the Debtor/Defendant. The Debtor is to turn over the Vehicle, the 2003 Tax Refunds of \$152.00, the Bank Balance of \$184.55, the household goods valued at \$2,000.00, and the hobby equipment and collectibles valued at \$500.00 or the value of the personal property in the amount of \$6,036.55. In addition, the Debtor's discharge will be revoked pursuant to 11 U.S.C. § 727(d)(2).

DATED: February 15, 2005

St. Louis, Missouri



James J. Barta
Chief U. S. Bankruptcy Judge

Copy mailed to:

Office of the United States Trustee
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 6.353
St. Louis, MO 63102

Pamela B. Leonard
Attorney for Defendant
1034 S. Brentwood Blvd., Ste 1830
St. Louis, MO 63117

David G. Wasinger
Murphy Wasinger, L.C.
Attorney for Plaintiff/Trustee
1401 South Brentwood Blvd., Suite 550
Saint Louis, MO 63144

Kevin S. Satkus
Debtor/Defendant
16408 Balsam Ridge Drive, Apt. B
Ballwin, MO 63011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re)	
)	Case No. 04-44189-172
Kevin S. Satkus)	
)	Adv. No. 04-4201-172
Debtor.)	
)	
James S. Cole, Trustee)	Chapter 7
)	
Plaintiff,)	
)	
vs.)	
)	
Kevin S. Satkus)	
)	
Defendant.)	

ORDER

Upon consideration of the record as a whole, and consistent with the determinations in the Memorandum entered herewith,

IT IS ORDERED that this matter is concluded; and that judgment is entered in favor of the Trustee, Plaintiff herein, and against Kevin S. Satkus, Defendant, as set out here; and that the Defendant is to immediately turn over to the Trustee the 1999 Ford Escort, VIN 3FAKP1132XR232392, 2003, Tax Refunds in the amount of \$152.00, the Bank Balance of \$184.55, household goods valued at \$2,000.00, and hobby equipment and collectibles valued at \$500.00, or the value of such personal property in the total amount of \$6,036.55; and

That the Defendant's Order of Discharge entered on June 29, 2004 is revoked pursuant to 11 U.S.C. § 727(d)(2); and that the Defendant's debts are not discharged in this case; and

That all other requests in this proceeding are denied.

DATED: February 15, 2005

St. Louis, Missouri



James J. Barta
Chief U. S. Bankruptcy Judge

Copy mailed to:

Office of the United States Trustee
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 6.353
St. Louis, MO 63102

Pamela B. Leonard
Attorney for Defendant
1034 S. Brentwood Blvd., Ste 1830
St. Louis, MO 63117

David G. Wasinger
Murphy Wasinger, L.C.
Attorney for Plaintiff/Trustee
1401 South Brentwood Blvd., Suite 550
Saint Louis, MO 63144

Kevin S. Satkus
Debtor/Defendant
16408 Balsam Ridge Drive, Apt. B
Ballwin, MO 63011