

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-00660

ADVERSARY PROCEEDING NO: 07-80112

JUDGMENT

The relief set forth on the following pages, for a total of 2 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
02/13/2009



Entered: 02/17/2009

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re,

Susan Diane Hendricks,

Debtor(s).

Randy A. Skinner, Trustee,

Plaintiff(s),

v.

Susan Diane Hendricks,

Defendant(s).

C/A No. 07-00660

Adv. Pro. No. 07-80112

Chapter 7

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law as stated in the Order of the Court entered herewith, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff/Trustee's Motion for Summary Judgment is granted;
2. That the sum of \$115,280.58 received by Ms. Hendricks is property of the estate pursuant to 11 U.S.C. § 541 and must be turned over to the Plaintiff/Trustee pursuant to 11 U.S.C. § 542;
3. That the Plaintiff/Trustee is hereby awarded a judgment against Ms. Hendricks in the amount of \$115,280.58, to be administered and distributed in this case pursuant to applicable law and future orders of this court;
4. That the Plaintiff/Trustee has shown adequate grounds justifying an award of reasonable expenses, costs and attorneys' fees in an amount to be determined by future order of the court; and
5. That should the funds be recovered by the Plaintiff/Trustee in this matter in an amount sufficient to pay all claims in full, including administrative claims, the court will revisit the issue of additional monetary sanctions on motion of any party in interest.

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-00660

ADVERSARY PROCEEDING NO: 07-80112

ORDER

The relief set forth on the following pages, for a total of 9 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
02/13/2009



Entered: 02/17/2009

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re,

Susan Diane Hendricks,

Debtor(s).

Randy A. Skinner, Trustee,

Plaintiff(s),

v.

Susan Diane Hendricks,

Defendant(s).

C/A No. 07-00660

Adv. Pro. No. 07-80112

Chapter 7

**ORDER GRANTING
PLAINTIFF/TRUSTEE'S MOTION
FOR SUMMARY JUDGMENT**

This matter comes before the Court upon the Plaintiff/Trustee's Motion for Summary Judgment and Motion for Award of Attorneys Fees, Costs and Sanctions.

UNDISPUTED FACTS

Ms. Hendricks filed her voluntary Chapter 7 petition, schedules, and statements on February 7, 2007. Her schedules indicated ownership of minimal assets including some land and a mobile home, a 2003 Toyota Truck, and various personal items. Ms. Hendricks scheduled secured debts of \$93,554.00, and unsecured debts of \$76,519.16. Ms. Hendricks' father passed away on January 19, 2007 and as a result she received \$115,280.58 from her father's life insurance policies as follows: AARP/New York Life Insurance paid Ms. Hendricks \$50,339.94 on February 21, 2007, and RBC Liberty Life Insurance paid her \$50,151.00 and \$14,789.64 on February 26, 2007. These assets were not listed in the bankruptcy schedules and were not claimed as exempt.

At her 11 U.S.C. § 341 meeting of creditors held on April 3, 2007, Ms. Hendricks and her counsel advised the Chapter 7 Trustee of the life insurance proceeds and also of a small parcel of real estate omitted from her schedules. The Trustee requested an amendment to add these assets and declared this an asset case, triggering notice to creditors to file proofs of claim.

Thereafter, despite demand, the schedules were not amended and no portion of the insurance proceeds was remitted to the Trustee. On August 23, 2007, the Trustee filed a separate adversary proceeding (A/P No. 07-80113) seeking to deny Ms. Hendricks' discharge pursuant to § 727, and also filed this action demanding turnover of estate property pursuant to 11 U.S.C. § 542. Before answering the complaint, Ms. Hendricks filed a Motion to dismiss her Chapter 7 case without the assistance of her counsel, and her attorney filed a Motion to withdraw as her counsel. The dismissal request was denied and the withdrawal was allowed.

On September 18, 2007, Ms. Hendricks filed her initial *pro se* Answer to the complaints, which consisted of various documents that appear to provide information about the omitted realty. Ms. Hendricks later filed an Amended Answer on October 15, 2007, requesting that "any form of bankruptcy be stopped" and also stating that the life insurance proceeds were for the care of her deceased father's widow.

The court held various status conferences and hearings in this case to receive reports on the progress of discovery and to discuss pending controversies. Ms. Hendricks appeared promptly at each scheduled hearing. In March of 2008, Ms. Hendricks sent a letter to the court requesting that her bankruptcy case be "discharged or converted to a Chapter 13," and that all adversary proceedings be dismissed. That Motion was denied.

Although she attended a November 12, 2007 deposition and gave some testimony in response to the Plaintiff/Trustee's questions, Ms. Hendricks continually refused to provide full testimony about the life insurance proceeds and failed to provide certain subpoenaed documents to the Plaintiff/Trustee. Therefore, the court entered an order in both adversary proceedings granting the Plaintiff/Trustee's Motions to Compel Discovery.

Ms. Hendricks failed to comply with the Order compelling her to testify and provide documents. As a result, the Plaintiff/Trustee filed a Motion for Contempt in both adversary proceedings, requesting that the court enter an order denying her discharge due to her refusal to testify about her assets and failure and refusal to turnover any such assets to the Plaintiff/Trustee, and demanding that she be placed in custody until she complied with the court's Order. As a result, the court entered an Order on July 29, 2008 denying Ms. Hendricks' discharge in A/P No. 07-80113 and, after discussions on the record with Ms. Hendricks about complying with discovery requests, continued the hearing as to all remaining issues.

On August 28, 2008, the Plaintiff/Trustee amended his Motion for Contempt in this adversary. At the October 2, 2008 hearing on that Motion, Ms. Hendricks reported that she would testify about the insurance proceeds. The court thereafter entered an Order allowing the Plaintiff/Trustee to examine Ms. Hendricks pursuant to Federal Rule of Bankruptcy Procedure 2004 in the courtroom, providing that if any disputes arose during the examination, the court would be available to immediately reconvene the hearing on the Plaintiff/Trustee's Amended Motion for Contempt. Ms. Hendricks subsequently participated in that 2004 exam in October of 2008.

Ms. Hendricks appeared at the hearing on this matter held January 29, 2009, but did not offer any opposition. The Motion and its accompanying exhibits provide a thorough breakdown of both the history of the adversary and Ms. Hendricks' various representations to the court. These exhibits were received into evidence without objection. In summary, the evidence indicates that Ms. Hendricks knew that the life insurance benefits were estate property that should be turned over to the Plaintiff/Trustee. Ms. Hendricks stated in her November 12, 2007 deposition and in proceedings before the court that she used \$10,000 of the insurance proceeds to pay for her father's funeral, \$10,000 to her father's church, that much of the money was for the benefit of her deceased father's widow, and that others took the remainder of the insurance money and she did not know what happened to it. However, in her testimony given at her October 2008 deposition, it is clear that much of the money was not spent as she initially explained. That testimony indicates that she knew where the money was, used it, loaned it to others, and gave it away. The evidence indicates that Ms. Hendricks spent some of the money on repairs, remodeling, new furniture, a security system, and for repairs to a second mobile home on her property where one of her sons resides (including money spent on a contractor that took the money and never provided services). Ms. Hendricks also purchased a drum set for her son, an electronic keyboard for herself, a Honda vehicle for herself, a vehicle for an "unofficially adopted son" (which was later wrecked), and purchased a Chevrolet truck for her son. She also gave money to personal friends, a neighbor, acquaintances, and relatives of her ex-husband, spent money hiring two companies to create a website to help start her career as a motivational speaker, and paid her son's legal fees. Ms. Hendricks also anonymously gave the Glenwood Wesleyan Church \$10,000 on two different occasions. She testified that she kept insurance proceeds in a

closet at her house, making the money available to her son and ex-husband. She believes the son and ex-husband both took the money for drugs and alcohol. The ex-husband admitted to taking approximately \$5,000.00 of the money.

As noted above, the claims bar date has passed and claims filed thus far total \$32,412.09. The Plaintiff/Trustee indicates that there may be as much as \$44,000.00 in unfiled potential claims based on a review of the Debtor's schedules. In addition, the Plaintiff/Trustee has incurred significant expenses and fees in the pursuit of basic information about estate assets, greatly increased due to Ms. Hendricks' lack of cooperation.

CONCLUSIONS OF LAW

Summary Judgment Standard

Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also In re Ducane Gas Grills, Inc., 320 B.R. 341, 348 (Bankr. D.S.C. 2004) ("summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."). "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue

of material fact." In re Grisard-Van Roey, C/A No. 06-00576-jw, Adv. Pro. No. 06-80178-jw, slip op. at 5 (Bankr. D.S.C. Apr. 27, 2007). Upon the moving party making such a showing, "the burden shifts to the non-moving party to come forward with specific facts demonstrating that a genuine issue exists for trial." In re Ducane Gas Grills, Inc., 320 B.R. 341, 349 (citing Matsushita Elec. Indus. Co., v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)); see also Fed. R. Civ. P. 56(e). "If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party." Fed. R. Civ. P. 56(e)(2).

The undisputed facts indicate that the insurance funds are clearly within the scope of 11 U.S.C. § 541, and are therefore property of the estate subject to the Plaintiff/Trustee's turnover demands pursuant to §§ 521 and 542. Ms. Hendricks has offered no sustainable defense to this requested relief. There is no genuine issue of material fact in this matter and the Plaintiff/Trustee is entitled to summary judgment as a matter of law for turnover of the funds.

Sanctions and Attorney's Fees

It has been two years since the bankruptcy case was filed and since Ms. Hendricks cashed the checks for the insurance money. Despite demand, Ms. Hendricks failed to deliver any portion of the funds to the Plaintiff/Trustee, concealed the location of the funds, and failed to account for such funds prior to the Motion for Contempt. The Plaintiff/Trustee seeks sanctions against Ms. Hendricks in an amount equal to the reasonable attorneys fees and costs incurred by counsel and, if appropriate, for additional punitive monetary sanctions. The Plaintiff/Trustee submitted evidence of legal work and expenses that would have been unnecessary but for Ms. Hendricks' lack of cooperation.

Based on the claims filed in this case, it appears that had Ms. Hendricks initially complied with the law, all creditors in this case could have been paid in full and she may have received funds in return thereafter. Instead, she used and disposed of property of the estate to the exclusion of creditors and professionals in this case. It therefore appears that the Motion for Award of Attorneys Fees, Costs, and Sanctions should be granted. However, there is no evidence of the amount of fees incurred thus far, and fees and costs will continue beyond the date of this order, so an award at this time appears premature. Further, the Trustee and his counsel are entitled to fair and reasonable compensation in this matter until the conclusion of the case, pursuant to 11 U.S.C. §330 in an amount to be determined in the future upon application to the court in the Chapter 7 case after notice and the opportunity for a hearing. The court will consider the appropriate amount of such fees and costs upon application at the appropriate time. The attorney for the Trustee has been employed on an hourly basis. It is therefore noted that such future fees and costs may be minimized by Ms. Hendricks' future cooperation in turnover of property of the estate to the Trustee.

Although the request for additional sanctions is substantially supported by the record, the primary goal of this bankruptcy and adversary proceeding is the payment of creditors in full. The addition of a monetary sanction—above and beyond attorney's fees and costs—would not further that goal at this time. However, should funds be recovered by the Trustee in this matter in an amount sufficient to pay all claims in full, including administrative claims, the court will revisit the issue of monetary sanctions on motion of any party in interest.

IT IS THEREFORE, ORDERED:

1. That the Plaintiff/Trustee's Motion for Summary Judgment is granted;

2. That the sum of \$115,280.58 received by Ms. Hendricks is property of the estate pursuant to 11 U.S.C. § 541 and must be turned over to the Plaintiff/Trustee pursuant to 11 U.S.C. § 542;
3. That the Plaintiff/Trustee is hereby awarded a judgment against Ms. Hendricks in the amount of \$115,280.58, to be administered and distributed in this case pursuant to applicable law and future orders of this court;
4. That the Plaintiff/Trustee has shown adequate grounds justifying an award of reasonable expenses, costs and attorneys' fees in an amount to be determined by future order of the court; and
5. That should the funds be recovered by the Plaintiff/Trustee in this matter in an amount sufficient to pay all claims in full, including administrative claims, the court will revisit the issue of additional monetary sanctions on motion of any party in interest.

AND IT IS SO ORDERED.