

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
PAUL M. MURRAY,)
)
DEBTOR.)

ROBERTA NAPOLITANO, TRUSTEE,)
)
PLAINTIFF)
)
vs.)
)
PAUL M. MURRAY,)
)
DEFENDANT.)

CASE NO. 04-30114(LMW)
CHAPTER 7
ADV. PRO. NO. 04-3189
DOC. I.D. NOS. 6, 26, 28

APPEARANCES

Roberta Napolitano, Esq.
P. O. Box 9177
Bridgeport, CT 06601

Chapter 7 Trustee and *Pro Se* Plaintiff

Paul M. Murray
63 Coolridge Road
Milford, CT 06460

Debtor and *Pro Se* Defendant

**BRIEF MEMORANDUM AND ORDER DENYING MOTION FOR DEFAULT
JUDGMENT, VACATING CLERK'S ENTRY OF DEFAULT, DEEMING
DOC. I.D. NO. 6 TO BE A TIMELY-FILED ANSWER TO THE COMPLAINT AND
ORDERING PLAINTIFF TO FILE AND SERVE A REVISED PRE-TRIAL ORDER**

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, the above-captioned adversary proceeding was commenced by the filing of a complaint (A.P. Doc. I.D. No. 1, the “Complaint”) by the above-referenced plaintiff (the “Trustee”) on December 30, 2004;

WHEREAS, the Complaint alleges a putative objection to the above-referenced debtor’s (the “Debtor”) discharge in this chapter 7 case;

WHEREAS, on January 24, 2005 there was filed in this case as Docket I.D. No. 6 (the “Appearance”) a certain letter deemed to be the Debtor’s *pro se* appearance in this adversary proceeding;

WHEREAS, among other things, the Appearance alleges putative defenses to the Complaint. A copy of the Appearance is annexed hereto as “Annex A;”¹

WHEREAS, on the Trustee’s motion the Clerk entered default (A.P. Doc. I.D. No. 15, the “First Default”) against the Debtor for failure to plead or otherwise defend on May 9, 2005;

WHEREAS, on June 10, 2005 the Trustee filed a motion for entry of default judgment in the adversary proceeding (A.P. Doc. I.D. No. 17, the “First Motion”);

WHEREAS, the First Motion came on for a hearing (the “First Hearing”) on July 6, 2005;

WHEREAS, the Debtor appeared at the First Hearing and expressed a strong desire to proceed on the merits. (*See* First Hearing Audio Record at 3:39:45 *et seq.* (the “Audio Record”));

WHEREAS, after the Hearing the court entered an order vacating the First Default (A.P. Doc. I.D. No. 21) and an order denying the First Motion (A.P. Doc. I.D. No. 20);

¹ The Appearance does not appear to have been served on the Trustee.

WHEREAS, at the First Hearing the court directed the Trustee to file and serve a revised proposed pre-trial order. (*See* Audio Record.) No mention was made of an answer to the Complaint. (*See* Audio Record.);

WHEREAS, on July 11, 2005 the Trustee filed a revised proposed pre-trial order. (*See* A.P. Docket entry for July 11, 2005.). That order was never entered by the court. (*See* A.P. Docket.);

WHEREAS, on August 2, 2005 the Trustee filed a second motion for default (A.P. Doc. I.D. No. 24) for failure to plead or otherwise defend;

WHEREAS, on October 27, 2005 the Clerk entered a second default in this proceeding. (*See* A.P. Doc. I.D. No. 26, the “Second Default.”);

WHEREAS, on February 9, 2006 the Trustee filed a second motion for default judgment. (*See* A.P. Doc. I.D. No. 28, the “Second Motion.”);

WHEREAS, the Second Motion came on for a hearing (the “Second Hearing”) on March 8, 2006 at which time the court took the Second Motion under advisement. The Debtor did not appear at the Second Hearing. (*See* A.P. Docket Entries for March 8, 2006.);²

WHEREAS, the court concludes that the Second Default should not have entered because no pre-trial order was in effect in this case;

WHEREAS, because of the severe consequences to the Debtor of a denial of discharge, the Debtor’s *pro se* status, the procedural irregularity mentioned above, the possibility that the Debtor may have been confused by the court’s remarks at the First Hearing and that the Appearance put the

² The Debtor relocated during the course of this adversary proceeding. All papers in respect of the Second Default and the Second Motion were served upon the Debtor at: 63 Coolridge Road, Milford, CT 06460 (his new address). The Debtor did not file objections to either the Second Default or the Second Motion. (*See* A.P. Docket.)

Trustee on notice of the Debtor's defenses, the court deems it appropriate to give the Debtor a final chance to proceed on the merits;

NOW, THEREFORE, it is hereby **ORDERED** that the Second Default is vacated; and it is further

ORDERED that the Second Motion is denied; and it is further

ORDERED that the Appearance is deemed to be a timely-filed answer to the Complaint; and it is further

ORDERED that the Trustee shall file and serve a revised pre-trial order on or before June 7, 2006; and it is further

ORDERED that the Clerk's Office shall serve this order (together with Annex A) by electronic means (if applicable, otherwise by first-class mail) upon the Debtor, the Trustee and the United States Trustee.

Dated: May 22, 2006

BY THE COURT


Lorraine Murphy Weil
United States Bankruptcy Judge