

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	)	
	)	
TRACY RIDGWAY,	)	CASE NO. 02-30358 (ASD)
	)	
Debtor.	)	CHAPTER 7
TRACY RIDGWAY,	)	
	)	
Plaintiff	)	
vs.	)	ADV. PRO. NO. 02-3092
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant	)	Re: DOC. I.D. NO. 37

APPEARANCES:

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**MEMORANDUM OF DECISION
ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

¹ Appearance entered August 7, 2007. Doc. I.D. No. 48.

ALBERT S. DABROWSKI, Chief United States Bankruptcy Judge

I. INTRODUCTION

This Memorandum of Decision considers whether the Plaintiff/Debtor in the instant adversary proceeding is entitled to a determination of dischargeability under Bankruptcy Code Section 523(a)(1)(B) as a matter of law. This question is presented in the wake of the Court's serial denials of the Defendant United States of America, Internal Revenue Service's (hereafter, the "Defendant") motions (i) for summary judgment, (ii) to revise the order denying summary judgment, and, (iii) for relief from a stipulation of facts in connection with the Defendant's motion for summary judgment. The matter is now before the Court on a motion for summary judgment filed by the Plaintiff. For the reasons which follow, the Plaintiff's motion for summary judgment shall be granted.

II. JURISDICTION

The United States District Court for the District of Connecticut has subject matter jurisdiction over the instant adversary proceeding by virtue of 28 U.S.C. § 1334(b); and this Court derives its authority to hear and determine this matter on reference from the District Court pursuant to 28 U.S.C. §§ 157(a), (b)(1). This is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2)(I).

III. PROCEDURAL AND FACTUAL BACKGROUND

The Debtor was granted a discharge on May 7, 2002. The Debtor subsequently reopened the case and, on July 31, 2002, commenced this adversary proceeding by the filing of a complaint to determine the dischargeability of 1991 and 1992 federal income tax debts pursuant to Section 523(a)(1)(B). On January 16, 2004, the Defendant filed a

Motion for Summary Judgment (hereafter, the "Defendant's Motion for Summary Judgment"), Doc. I.D. No. 13, alleging, *inter alia*, that the preparation of a "substitute for return" by the Defendant on behalf of the Debtor did not constitute the filing of a tax return for purposes of 11 U.S.C. 523(a)(1)(B)(i), that the Debtor therefore had failed to file requisite tax returns, and, as a consequence, the Debtor's 1991 and 1992 federal income tax liabilities were not dischargeable.

The following facts recite verbatim facts agreed between the parties in a Joint Stipulation of Facts (hereafter, the "Stipulation"), Doc. I.D. No. 15:

1. The debtor did not file a tax return for his 1991 tax year.
2. The debtor did not file a tax return for his 1992 tax year.
3. As a result of the debtor's failure to file a tax return for his 1991 tax year, and pursuant to 26 U.S.C. Sec. 6020(b), the Secretary of the Treasury from his own knowledge and from such other information as he could obtain through testimony or otherwise, prepared a substitute for return for the debtor for his 1991 tax year.
4. Proper notice of the 1991 tax deficiency was sent to the debtor pursuant to 26 U.S.C. Sec. 6212. The debtor did not respond to the notice of deficiency.
5. After expiration of the period provided in 26 U.S.C. Sec. 6213(a), the Secretary of the Treasury, pursuant to 26 U.S.C. Sec. 6213(c), properly made an assessment against the debtor in the amount of \$38,060.00 for unpaid tax liabilities and in the amount of \$11,542.83 for accrued interest on the unpaid tax liabilities of the debtor for his 1991 tax year.
6. Despite notice and demand for payment, the debtor's 1991 tax liability remains unpaid.
7. As a result of the debtor's failure to file a tax return for his 1992 tax year, and pursuant to 26 U.S.C. Sec. 6020(b), the Secretary of the Treasury from his own knowledge and from such other information as he could obtain through testimony or otherwise, prepared a substitute for return for the debtor for his 1992 tax year.

8. Proper notice of the 1992 tax deficiency was sent to the debtor pursuant to 26 U.S.C. Sec. 6212. The debtor did not respond to the notice of deficiency.

9. After expiration of the period provided in 26 U.S.C. Sec. 6213(a), the Secretary of the Treasury, pursuant to 26 U.S.C. Sec. 6213(c), properly made an assessment against the debtor in the amount of \$11,238.00 for unpaid tax liabilities and in the amount of \$2,184.65 for accrued interest on the unpaid tax liabilities of the debtor for his 1992 tax year.

10. Despite notice and demand for payment, the debtor's 1992 tax liability remains unpaid.

11. On January 24, 2002, the debtor filed a Chapter 7 Bankruptcy Petition.

Upon careful analysis of the statutory language of Section 523(a)(1)(B) as well as its legislative history, and based upon the Stipulation and the accompanying memorandum of law filed by the Defendant (in which it conceded that it sends notice to the taxpayer "on the day it files on his behalf a substitute for return (SFR)" (see, Def.'s Mem., Doc. I.D. No. 14, at 4)), this Court concluded that, as a matter of law, the preparation of a "substitute for return" in this proceeding constitutes the filing of a return, and on March 14, 2005, entered its Memorandum of Decision on Motion for Summary Judgment (hereafter, the "Memorandum of Decision"), Doc. I.D. No. 19, and related Order, Doc. I.D. No. 20, denying the Defendant's Motion for Summary Judgment. While the Memorandum of Decision apparently resolved the sole dispute between the parties, the Court therein observed that, given that the Debtor had not then filed a cross-motion for summary judgment, *inter alia*, judgment could not enter in his favor on the existing record. (Mem. of Decision at 30-32.) Following the Memorandum of Decision the Defendant in serial fashion filed motions asking the Court for relief from certain purported misstatements of law and fact relied on by the Court in denying the Defendant's Motion for Summary Judgment. More specifically,

on March 23, 2005, the Defendant filed a Motion to Revise Order Denying Summary Judgment (hereafter, the "Motion to Revise"), Doc. I.D. No. 23, requesting the Court to reconsider the Memorandum of Decision and grant summary judgment for the Defendant on the basis, *inter alia*, that "an inadvertent misstatement of law by [Defendant's] counsel in its memoranda of law was "not a judicial admission and is not conclusively binding" and, therefore, the Court's reliance thereon was inappropriate. The Court, on March 5, 2005, denied the Motion to Revise. (See Mem. and Order on Mot. to Revise, Doc. I.D. No. 27.)

On June 15, 2005, the Defendant filed a Motion for Relief from Stipulation of Facts (hereafter, the "Motion for Relief"), Doc. I.D. No. 32, seeking authority to redact from the Stipulation a fact relied on by the Court - that "a substitute for return was prepared by the Secretary of the Treasury pursuant to 26 U.S.C. Sec. 6020(b)" - arguing that the relevant part of the Stipulation "incorrectly states the facts." (Mot. for Relief at 1.) The Court, on March 31, 2006, denied the Motion to Revise. (See Mem. and Order on Mot. for Relief, Doc. I.D. No. 45.)

On June 23, 2005, the Debtor/Plaintiff filed a Motion for Summary Judgment (hereafter, the "Plaintiff's Motion for Summary Judgment"), Doc. I.D. No. 37, and a Memorandum in Support of Motion for Summary Judgment (hereafter, the "Plaintiff's Memorandum"), Doc. I.D. No. 38, alleging that, by virtue of the Memorandum of Decision denying the Defendant's Motion for Summary Judgment, and the absence of any other material facts in genuine dispute, the Plaintiff is entitled to judgment as a matter of law that his federal income tax liabilities for 1991 and 1992 are dischargeable pursuant to 11 U.S.C. 523(a)(1)(B). While the Plaintiff did not annex to the motion the Local Rule 56(a)1 Statement (setting forth in separately numbered paragraphs a concise statement of each

material fact as to which the movant contends there is no genuine issue to be tried) required by D. Conn. L. R. 56(a)1, the Plaintiff represented that "[b]oth parties have agreed since the beginning that the issue presented was the narrow issue [decided in the Memorandum of Decision]." (Pl.'s Mem. at 3.) The Defendant, in its response, filed April 13, 2006,² concedes that in light of the Memorandum of Decision, and the denial of its Motion to Revise and Motion for Relief, "it has no basis under which to contest the entry of summary judgment for the plaintiff in this adversary proceeding." (Def.'s Resp., Doc. I.D. No. 47, at 2.)

IV. DISCUSSION

A. *Summary Judgment Standards.*

Federal Rule of Civil Procedure 56(c), made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 7056, directs that summary judgment enter when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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." See also The Andy Warhol Foundation for Visual Arts, Inc. v. Hayes (In re Hayes), 183 F.3d 162, 166 (2d Cir. 1999).

When ruling on motions for summary judgment "the judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

² The [Defendant's] Agreed Motion for Enlargement of Time to File Response/Cross Motion for Summary Judgment, Doc. I.D. No. 42, requesting the Court *inter alia*, to enlarge its time to respond to the Plaintiff's Motion for Summary Judgment until 14 days after the entry of the Court's decision on the Motion for Relief, was granted. *See* Doc. I.D. No. 43.

The moving party has the burden of showing that there are no material facts in dispute and all reasonable inferences are to be drawn, and all ambiguities resolved, in favor of the non-moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). See also Novak v. Blonder (In re Blonder), 246 B.R. 147, 150 (Bankr. D. Conn. 2000) (Krechevsky, J.). On a motion for summary judgment, the moving party must still demonstrate a prima facie case that the party is entitled to judgment as a matter of law before the burden shifts to the non-movant to show genuine issues of material fact in dispute. See Vermont Teddy Bear Co. Inc. v. 1-800 Beargram Co., 373 F.3d 241, 246 (2d Cir. 2004).

Rule 56(a) of the Local Civil Rules of the United States District Court for the District of Connecticut (hereafter, the "Local Rule(s)"), made applicable to this proceeding by D.Conn. LBR 1001-1(b), supplements Rule 56(c) by requiring statements of material fact from each party to a summary judgment motion.³ Specifically, the Local

³ Local Rule 56(a), entitled "Motions for Summary Judgment", applicable to this proceeding by D. Conn. LBR 1001-1(b), states in pertinent part as follows:

1. There shall be annexed to a motion for summary judgment a document entitled "Local Rule 56(a)1 Statement", which sets forth in separately numbered paragraphs a concise statement of each material fact as to which the moving party contends there is no genuine issue to be tried. All material facts set forth in said statement will be deemed admitted unless controverted by the statement required to be filed and served by the opposing party in accordance with Local Rule 56(a)2.
2. The papers opposing a motion for summary judgment shall include a document entitled "Local Rule 56(a)2 Statement," which states in separately numbered paragraphs corresponding to the paragraphs contained in the moving party's Local Rule 56(a)1 Statement whether each of the facts asserted by the moving party is admitted or denied. The Local Rule 56(a)2 Statement must also include in a separate section entitled "Disputed Issues of Material Fact" a list of each issue of material fact as to which it is contended there is a genuine issue to be tried.
3. Each statement of a material fact by a movant in a Local Rule 56(a)1 Statement or by an opponent in a Local Rule 56(a)2 Statement, and each denial in an opponent's Local Rule 56(a)2 Statement, must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial. The affidavits, deposition testimony, responses to discovery requests, or other documents containing such

Rule requires a party moving for summary judgment to annex to the motion a document entitled "Local Rule 56(a)1 Statement" asserting the allegedly undisputed facts on which that party relies, together with citation to the admissible evidence of record supporting each such fact. See Local Rule 56(a)1, 3. However, as noted herein, no Local Rule 56(a)1 Statement was annexed to the Plaintiff's Motion for Summary Judgment.

B. *Dischargeability of Federal Income Tax Obligations - Section 523(a)(1)(B).*

A debtor in a Chapter 7 case receives a discharge of debts under the authority of Section 727(b) of the Bankruptcy Code, which provides, in relevant part, that "[e]xcept as provided in section 523 of this title, a discharge . . . discharges the debtor from all debts that arose before the date of the order for relief under this chapter" This adversary proceeding concerns the applicability of an exception to discharge for tax debt, Bankruptcy Code Section 523(a)(1), which provides in pertinent part as follows:

(a) A discharge under section 727. . . of this title does not discharge an individual debtor from any debt—

(1) for a tax

(A) of the kind and for the periods specified in section . . . 507(a)(8) [⁴] of this title

(B) with respect to which a return, if required--

(i) was not filed; or

(ii) was filed after the date on which such return was last due,

evidence shall be filed and served with the Local Rule 56(a)1 and 2 Statements in conformity with Fed. R. Civ. P. 56(e). Counsel and pro se parties are hereby notified that failure to provide specific citations to evidence in the record as required by this Local Rule may result in sanctions, including, when the movant fails to comply, an order denying the motion for summary judgment, and, when the opponent fails to comply, an order granting the motion.

⁴ This cross-reference is to the Bankruptcy Code's priority claim provisions.

under applicable law or under any extension, and after two years before the date of the filing of the petition;

* * *

11 U.S.C. § 523(a)(1) (2002).

C. *Analysis of the Plaintiff's Motion for Summary Judgment.*

In the Memorandum of Decision the Court held that, as a matter of law, the Defendant was not entitled to judgment in this proceeding because the United States Treasury Secretary's creation of substitute returns constitutes the filing of tax returns for purposes of Section 523(a)(1)(B), yet refrained from entering judgment in favor of the Plaintiff due to procedural and limited substantive deficiencies – that the Plaintiff had not yet filed a cross-motion for summary judgment, and that the Stipulation did not permit the Court to definitively conclude that all other requisites of 523(a)(1)(B) had been satisfied in favor of the Plaintiff. Now, before the Court is that “cross-motion for summary judgment” attended by statements from both parties that it was their intention and agreement to litigate this proceeding on the sole disputed issue resolved against the Defendant in the Memorandum of Decision.

The Court, having now reviewed the files and records of this proceeding, including the Plaintiff's Motion for Summary Judgment, and the Defendant's Response indicating the Defendant does not contest⁵ entry of Summary Judgment in favor of the Plaintiff at the present time, and having fully considered the arguments of the parties thereon, determines that there now remain no genuine issues as to material facts in this proceeding and that the Plaintiff has demonstrated an entitlement to judgment as a matter of law.

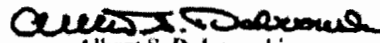
⁵ Subject to a reservation of its “rights to appeal any/and all of the Court's interlocutory rulings” (Def.'s Response, p. 3.)

V. CONCLUSION

For the foregoing reasons, this Court reiterates its prior finding and conclusion that the Treasury Secretary's Substitute Returns are filed "returns" within the meaning of Bankruptcy Code Section 523(a)(1)(B). Accordingly, the Plaintiff's Motion for Summary Judgment (Doc I.D. No. 37) is **GRANTED**. A separate Judgment consistent with this Memorandum of Decision shall issue this same date.

Dated: October 6, 2009

BY THE COURT



Albert S. Dabrowski
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	)	
TRACY RIDGWAY,	)	CASE NO. 02-30358 (ASD)
	)	
Debtor.	)	CHAPTER 7
TRACY RIDGWAY,	)	
	)	
Plaintiff	)	
vs.	)	ADV. PRO. NO. 02-3092
UNITED STATES OF AMERICA,	)	
	)	
Defendant	)	Re: DOC. I.D. NO. 37

JUDGMENT

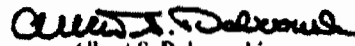
The above-captioned Plaintiff's Motion for Summary Judgement (hereafter, the "Motion"), Doc. I.D. No. 37, came before the Court following its issuance of a Memorandum of Decision, Doc. I.D. No.19, and on an otherwise stipulated record. The sole material fact in dispute having been resolved against the Defendant in the Memorandum of Decision, and there presently remaining no material fact in genuine dispute for trial, and the Defendant concurring that summary judgment in favor of the Plaintiff is therefore proper, subject to its reservation of any and all rights to appeal the Memorandum of Decision and related rulings, and the Court having now fully considered the entire record of this proceeding, and having issued this day its *Memorandum of Decision on Plaintiff's Motion for Summary Judgment*, in accordance with which –

IT IS HEREBY ORDERED that the Motion is **GRANTED** – judgment shall enter in this adversary proceeding in favor of the Debtor-Plaintiff, Tracy Ridgway. Any debt arising

from Plaintiff Tracy Ridgway's federal income tax liabilities to the Defendant United States of America, Internal Revenue Service for the years 1991 and 1992, as described in the Plaintiff's Complaint, is dischargeable under 11 U.S.C. 523(a)(1)(B).

Dated: October 6, 2009

BY THE COURT



Albert S. Dabrowski
Chief United States Bankruptcy Judge