

United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division

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Bankruptcy Caption: In re George S. Craig

Adversary Caption: Shelly Hartwick v. George S. Craig

Bankruptcy No. 03 B 31025

Adversary No. 03 A 4341

Date of Issuance: June 29, 2004

Judge: A. Benjamin Goldgar

Appearance of Counsel:

Attorney for Debtor: Ralanda Webb, Webb & Associates, Chicago, IL

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Chapter
	)	
GEORGE S. CRAIG,	)	No. 03 B 31025
	)	
Debtor.	)	
_____	)	
	)	
SHELLY HARTWICK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 03 A 4341
	)	
GEORGE S. CRAIG,	)	Judge Goldgar
	)	
Defendant.	)	

**ORDER IMPOSING SANCTIONS FOR  
VIOLATION OF FINAL PRETRIAL ORDER**

This adversary proceeding is currently set for trial on July 1, 2004. Neither party has complied with the court's final pretrial order, which required the filing of trial briefs. In her trial brief, plaintiff Shelly Hartwick has failed to discuss the claim in Count II of her adversary. Defendant George S. Craig, meanwhile, has filed no trial brief at all. For the reasons discussed below, the court imposes sanctions under Bankruptcy Rule 7016 for these violations. Count II of Hartwick's complaint is waived, and Craig is barred from presenting any evidence or participating at trial.

More than two months ago, when the trial date was set, the court entered a final pretrial order in the form the court customarily uses. It required, among other things, that

each party file a trial brief no later than June 17, 2004. The final pretrial order elaborated on this requirement, explaining that the trial brief “must (1) describe what the party believes the evidence at trial will show, (2) identify the salient legal issues, and (3) provide a thorough and complete legal argument, with citations to relevant legal authorities, supporting the party’s contentions on the merits.” (Emphasis added).

The final pretrial order also made clear that failure to comply with its terms would “result in the imposition of appropriate sanctions.” In particular, the order declared, any “legal claim theory or argument not raised and thoroughly discussed in a party’s trial brief with appropriate citations to legal authority will be deemed waived.” The order continued: “Failure to file a trial brief will bar a party from presenting any evidence or participating at trial.”

On June 17, 2004, defendant Craig filed pretrial materials consisting only of a witness list, an exhibit list, and a set of exhibits. No trial brief was filed. A check of the court’s records shows that Craig still has not filed a trial brief. Nor has Craig sought to file one. The next day, plaintiff Hartwick filed something called a “final pretrial statement” apparently meant to serve as her trial brief. The “statement” contains a single paragraph of legal discussion describing the elements of the section 523(a)(2)(A) claim in Count I of her two-count adversary complaint. Count II, evidently some form of common law rescission claim, is not mentioned at all.

This is unacceptable. The court depends on the trial briefs of the parties to describe the evidence the court will hear, to discuss the applicable law, and to clarify the

legal issues the court will be asked to decide. A proper plaintiff's trial brief describes what matters the plaintiff will prove and why under the law proving those matters will entitle him to win. A proper defendant's trial brief is the defensive counterpart, describing what the evidence will show and explaining what the plaintiff must prove but cannot. Without trial briefs, the court has to piece together from the other pretrial materials what the evidence is likely to be. Worse still, without trial briefs the court is left to guess at the parties' legal theories and whether the law supports them. Trial briefs assist the court in holding an orderly and efficiently trial. By confining the issues and educating the court, they prevent a free-for-all.

Because a pretrial order is a critical tool for "narrowing the issues and expediting the trial," *In re Maurice*, 21 F.3d 767, 773 (7th Cir. 1994), failure to comply with the court's final pretrial order is sanctionable under Rule 16(f). *See* Fed. R. Civ. P. 16(f) (made applicable by Fed. R. Bankr. P. 7016). Federal trial courts have broad (though admittedly not limitless) discretion in choosing a suitable sanction for a party's violation of a pretrial order. *Hatton v. Spencer (In re Hatton)*, 204 B.R. 477, 486 (E.D. Va. 1997); *Schilling v. O'Bryan*, 246 B.R. 271, 278 (Bankr. W.D. Ky. 1999).

One available sanction is an order barring the offending party from offering evidence at trial. Rule 16(f) incorporates Rule 37(b)(2)(B), which permits an order "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence." Fed. R. Civ. P. 37(b)(2)(B). In *Maurice*, the court approved just such a sanction, stating:

“When one party fails to comply with a court’s pre-hearing order without justifiable excuse, thus frustrating the purposes of the pre-hearing order, the court is certainly within its authority to prohibit that party from introducing witnesses or evidence as a sanction.” *Maurice*, 21 F.3d at 773; *see also People ex rel. Ryan v. Monahan (In re Monahan)*, 2000 WL 527753 at \*3-4 (Bankr. N.D. Ill. May 1, 2000); *Hatton*, 204 B.R. at 487; *Schilling*, 246 B.R. at 278.

An order of this kind against Craig is entirely appropriate here. Craig’s failure to file a trial brief means the court has only the vaguest idea what Craig will present as evidence and has no idea at all what Craig contends are the issues or what Craig believes the applicable law to be. Craig has placed the court at the very disadvantage the pretrial order was designed to avoid. Continuing the trial to permit Craig to rectify his omission, moreover, is not an option. Doing so would serve only to delay the trial and inconvenience Hartwick. Craig will therefore be barred from participating in or presenting evidence at trial.

Even when a trial brief has been filed, the court has the latitude to impose a lesser sanction on a party that fails to address an argument or defense not raised in pretrial materials. Because the parties and the court rely on the pretrial materials to define what is really in dispute, “the pretrial order is treated as superseding the pleadings and establishes the issues to be considered at trial.” *Gorlikowski v. Tolbert*, 52 F.3d 1439, 1444 (7th Cir. 1995) (quoting *Erff v. Marktton Indus., Inc.*, 781 F.2d 613, 617 (7th Cir. 1986)). A claim or theory not raised in the pretrial materials is therefore waived “and should not

be considered by the fact-finder.” *Id.*; see also *SNA Nut Co. v. Haagen-Dazs Co.*, 302 F.3d 725, 732 (7th Cir. 2002) (“a defense not raised in a pretrial order is deemed waived”).

An order of this kind is warranted in Hartwick’s case. Her “final pretrial statement,” so-called, nowhere discusses the rescission claim in Count II (if that is indeed what the claim is), much less cites any authority relating to it. Only Count I is discussed, and even that just barely. Because the parties’ pretrial materials define the issues for trial, and because Count II of Hartwick’s complaint is not discussed in her trial brief, the claim in that Count will be deemed waived. No evidence relating to that claim will be received.

These sanctions, finally, can come as no surprise to either party. The final pretrial order expressly said that a trial brief “must” be filed. It laid out what that trial brief had to contain. And it said on its face that sanctions would follow from the filing of an inadequate trial brief or the failure to file one at all. Craig and Hartwick were on notice that these sanctions would be the consequence of disobeying the final pretrial order.

For these reasons, then, IT IS HEREBY ORDERED:

1. Defendant George S. Craig is barred from participating in or presenting any evidence at trial.
2. The claim in Count II of plaintiff Shelly Hartwick’s adversary complaint is waived.

Dated: June 29, 2004

ENTER: \_\_\_\_\_  
A. Benjamin Goldgar  
United States Bankruptcy Judge