United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Melvin J. Tieszen and Nancy H. Tieszen

Bankruptcy No. 98 B 27403

Adversary Caption: John S. Clark v. Melvin J. Tieszen and Nancy H. Tieszen]

Adversary No. 98 A 02087

Date of Issuance: August 24, 1999

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff: Jody Ann Lowenthal, Esq., 208 Racquet Club Ct., Hinsdale, IL 60521

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: MELVIN J. TIESZEN and NANCY H. TIESZEN, Debtors.	)	Chapter 7 Bankruptcy No. 98 B 27403 Judge John H. Squires
JOHN S. CLARK, Plaintiff, v.	)	Adversary No. 98 A 02087
MELVIN J. TIESZEN and NANCY H. TIESZEN, Defendants.	)	

MEMORANDUM OPINION

This matter comes before the Court on the motion of the Plaintiff, John S. Clark ("Clark") for summary judgment pursuant to Federal Rule of Bankruptcy Procedure 7056. For the reasons set forth herein, the Court denies the motion.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and General Rule 2.33(A) of the United States District Court for the Northern District of Illinois. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

II. FACTS AND BACKGROUND

Many of the facts are undisputed. John S. Clark ("Clark") lent money to the Debtors, Melvin H. Tieszen and Nancy M. Tieszen (the "Debtors"). He subsequently obtained a judgment against them for non-payment. In April 1996, the Debtors had supplied Clark with a financial declaration, more than two years pre-petition. See Exhibit C to Clark's Statement of Material Facts. That declaration included the following assets: (1) Prudential life insurance policy no. 28201267; (2) Fort Dearborn life insurance policies nos. 0000907080 and 0000907090; (3) jewelry with a value of $4,500.00, subject to a loan of $2,100.00 and equity of $2,400.00; and (4) stock in Golden Flavor Foods, Inc. Id.

The Debtors filed a Chapter 7 petition on September 1, 1998. Thereafter, Brenda Porter Helms was appointed Trustee of the Debtors' estate (the "Trustee"). The Debtors' Petition and Schedules failed to list the following assets and liabilities: (1) Prudential life insurance policy no. 28201267; (2) Fort Dearborn life insurance policies nos. 0000907080 and 0000907090; (3) stock in Golden Flavor Foods, Inc. and Sesame Marketing, Inc; (4) a medical trust funded by patents; (5) a cause of action against Judy Ann Lowenthal pending in the Circuit Court of Cook County; (6) Clark was not scheduled as a creditor of the Debtors; and (7) attorneys' fees in excess of $11,618 owed to Eliot Landau. To date, the Debtors have not amended their Petition or the Schedules.

On December 16, 1998 Clark filed the instant adversary proceeding in a single count complaint against the Debtors. Clark objects to the Debtors receiving a discharge on the basis that they knowingly and fraudulently made false oaths by failing to list the debts owed

to Clark and Landau and by failing to list certain assets. In addition, Clark alleges that the Debtors have failed to cooperate with the Trustee in that they failed to purchase the equity in an automobile listed on their Schedules or turn over the vehicle to the Trustee, and failed to provide the Trustee with records of patents and a medical trust in which they allegedly have some interest.

In the parties' Joint Pre-Trial Statement, the Debtors admitted that as of March 5, 1999, they failed to turn over to the Trustee: (1) either the automobile or a negotiable instrument for its non-exempt value; (2) any documents regarding the medical trust, the life insurance policies, and the patents (which the Debtors now claim are "recipes" and "formulas" not patents); and (3) an assignment to Eliot Landau of the cause of action against Jody Ann Lowenthal. Further, the Debtors admitted that on May 31, 1996, they filed an affidavit in the Circuit Court of Cook County, Illinois stating that no trusts existed. However, at the § 341 meeting of creditors, the Debtors stated that they were owners of a medical trust and had been owners of the medical trust for more than five years.

Clark filed the instant motion for summary judgment on June 14, 1999. He requests that the Court deny the Debtors a discharge pursuant to 11 U.S.C. §727(a)(4)(A), § 727(a)(4)(D) and §727(a)(6)(A). Specifically, Clark alleges that the Debtors have failed to cooperate with the Trustee in that they have not provided her with documentation regarding the medical trust and the life insurance policies, and have failed to comply with Court ordered discovery. Further, Clark alleges that the Debtors have failed to disclose and turn over assets.

In support of his motion, Clark submitted the affidavit of the Trustee, Brenda Porter Helms. The Trustee states that as of March 5, 1999, the Debtors failed to either purchase the equity of the automobile listed on their Schedules or to turn over the vehicle to the Trustee. Further, she states that they failed to provide to her records of patents, the medical trust and the life insurance policies in which they have an interest. They also failed to provide her with an itemized list or appraisal of any jewelry. Finally, they failed to advise her of any transfer of assets to Eliot Landau.

The Debtors admit that there were omissions in the Schedules. They contend, however, that there was no intent to deceive and that this is an issue of fact which precludes the entry of summary judgment. They also contend that they have produced requested documentation relating to the medical trust, the assignment of the cause of action to Eliot Landau and information concerning the cash surrender values of three life insurance policies. Trial on this matter is scheduled to commence on September 24, 1999.

III. APPLICABLE STANDARDS

A. Motion for Summary Judgment

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. Rule 56(c) reads in part:

> [T]he judgment sought shall be rendered forthwith if 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 a judgment as a matter of law.

Fed. R. Civ. P. 56(c). See also Dugan v. Smerwick Sewerage Co., 142 F.3d 398, 402 (7th Cir. 1998). The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute. Trautvetter v. Quick, 916 F.2d 1140, 1147 (7th Cir. 1990); Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmen's Federal Sav. & Loan Ass'n of Indianapolis, 806 F.2d 146, 149 (7th Cir. 1986)). Where the material facts are not in dispute, the sole issue is whether the moving party is entitled to a judgment as a matter of law. ANR Advance Transp. Co. v. International Bhd. of Teamsters, Local 710, 153 F.3d 774, 777 (7th Cir. 1998).

In 1986, the United States Supreme Court decided a trilogy of cases which encourage the use of summary judgment as a means to dispose of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Electric Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, 477 U.S. at 248; Matsushita, 475 U.S. at 585-86; Celotex, 477 U.S. at 322.

All reasonable inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. Parkins v. Civil Constructors of Ill., Inc.,

163 F.3d 1027, 1032 (7th Cir. 1998). The existence of a material factual dispute is sufficient only if the disputed fact is determinative of the outcome under applicable law. Anderson, 477 U.S. at 248; Frey v. Fraser Yachts, 29 F.3d 1153, 1156 (7th Cir. 1994). "Summary judgment is not an appropriate occasion for weighing the evidence; rather the inquiry is limited to determining if there is a genuine issue for trial." Lohorn v. Michal, 913 F.2d 327, 331 (7th Cir. 1990).

Rule 56(d) provides for the situation when judgment is not rendered upon the whole case, but only a portion thereof. The relief sought pursuant to subsection (d) is styled partial summary judgment. Particularly pertinent here is the point that partial summary judgment is available only to dispose of one or more counts of the complaint in their entirety. Commonwealth Ins. Co. v. O. Henry Tent & Awning Co., 266 F.2d 200, 201 (7th Cir. 1959); Biggins v. Oltmer Iron Works, 154 F.2d 214, 216-17 (7th Cir. 1946); Quintana v. Byrd, 669 F. Supp. 849, 850 (N.D. Ill. 1987); Arado v. General Fire Extinguisher Corp., 626 F. Supp. 506, 509 (N.D. Ill. 1985); Capitol Records, Inc. v. Progress Record Distributing, Inc., 106 F.R.D. 25, 28 (N.D. Ill. 1985); In re Network 90°, Inc., 98 B.R. 821, 823 (Bankr. N.D. Ill. 1989); Strandell v. Jackson County, 648 F. Supp. 126, 136 (S.D. Ill. 1986). Rule 56(d) provides a method whereby a court can narrow issues and facts for trial after denying in whole or in part a Rule 56 motion. Capitol Records, 106 F.R.D. at 29.

Local Rule 402.M of the Bankruptcy Rules adopted for the Northern District of Illinois requires the party moving for summary judgment to file a detailed statement ("402.M statement") of material facts that the movant believes are uncontested. Local Bankr. R.

402.M. The 402.M statement "shall consist of short numbered paragraphs, including, within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion." Id.

Clark filed a 402.M statement that substantially complied with the requirements of Rule 402.M. It contained numbered paragraphs setting out assertedly uncontested facts with reference to parts of the record and other supporting materials relied upon to support the facts set forth in each paragraph.

The party opposing a summary judgment motion is required by Local Rule 402.N to respond ("402.N statement") to the movant's 402.M statement, paragraph by paragraph, and to set forth any material facts that would require denial of summary judgment, specifically referring to the record for support of each denial of fact. Local Bankr. R. 402.N. The opposing party is required to respond "to each numbered paragraph in the moving party's statement" and make "specific references to the affidavits, parts of the record, and other supporting materials relied upon." Local Bankr. R. 402.N(3)(a). The Debtors complied with Local Rule 402.N.

B. Objections to Discharge

The discharge provided by the Bankruptcy Code is to effectuate the "fresh start" goal of bankruptcy relief. In exchange for that fresh start, the Bankruptcy Code requires debtors to accurately and truthfully present themselves before the Court. A discharge is only for the honest debtor. In re Garman, 643 F.2d 1252, 1257 (7th Cir. 1980), cert. denied, 450 U.S. 910

(1981). Consequently, objections to discharge under 11 U.S.C. § 727 should be liberally construed in favor of debtors and strictly against objectors in order to grant debtors a fresh start. Soft Sheen Prods., Inc. v. Johnson (In re Johnson), 98 B.R. 359, 364 (Bankr. N.D. Ill. 1988) (citation omitted). Because denial of discharge is so drastic a remedy, courts may be more reluctant to impose it than to find a particular debt non-dischargeable. See Johnson, 98 B.R. at 367 ("The denial of discharge is a harsh remedy to be reserved for a truly pernicious debtor."). Reilly has the burden of proving the objections. See Fed. R. Bankr. P. 4005; In re Martin, 698 F.2d 883, 887 (7th Cir. 1983) (the ultimate burden of proof in a proceeding objecting to a discharge lies with the plaintiff). Under Federal Rule of Bankruptcy Procedure 4005, the objector must establish all elements, which controlling case law sets the standard at a preponderance of the evidence. See In re Scott, 172 F.3d 959, 966-67 (7th Cir. 1999).

IV. DISCUSSION

A. 11 U.S.C. § 727(a)(4)(A)

Clark argues that the Debtors' discharge should be denied pursuant to § 727(a)(4)(A) because they failed to schedule: (1) Clark as a creditor; (2) the three life insurance policies; (3) the medical trust; and (4) the jewelry and stock. Section 727(a)(4)(A) provides:

> (a) The court shall grant the debtor a discharge, unless--
> (4) the debtor knowingly and fraudulently, in or in connection with the case–
> (A) made a false oath or account.

11 U.S.C. § 727(a)(4)(A). The purpose of § 727(a)(4) is to enforce a debtor's duty of disclosure and to ensure that the debtor provides reliable information to those who have an interest in the administration of the estate. Brandt v. Carlson (In re Carlson), 231 B.R. 640, 655 (Bankr. N.D. Ill. 1999); Bensenville Community Center Union v. Bailey (In re Bailey), 147 B.R. 157, 163 (Bankr. N.D. Ill. 1992) (citations omitted).

In order to prevail, Clark must establish five elements under § 727(a)(4)(A): (1) the Debtors made a statement under oath; (2) the statement was false; (3) the Debtors knew the statement was false; (4) the Debtors made the statement with the intent to deceive; and (5) the statement related materially to the bankruptcy case. Bailey, 147 B.R. at 162 (citations omitted). If made with the requisite fraudulent intent, a false statement, whether made in the schedules or orally at a § 341 creditors' meeting is sufficient grounds for denying a discharge provided it was knowingly made and is material. Armstrong v. Lunday (In re Lunday), 100 B.R. 502, 508 (Bankr. D. N.D. 1989). It is a debtor's role to consider the questions posed on the schedules and at the creditors' meeting carefully, and answer them accurately and completely. Id. (citation omitted)

Turning to the matter at bar, Clark must establish that the Debtors made a statement under oath. That element has been established here. A debtor's petition and schedules constitute a statement under oath for purposes of a discharge objection under § 727(a)(4). See Nof v. Gannon (In re Gannon), 173 B.R. 313, 320 (Bankr. S.D. N.Y. 1994) (citations omitted). The Petition and Schedules filed by the Debtors constitute a statement under oath.

Second, Clark must show that such statements were false. Whether the Debtors made

a false oath within the meaning of § 727(a)(4)(A) is a question of fact. Williamson v. Fireman's Fund Ins. Co., 828 F.2d 249, 251 (4th Cir. 1987); Continental Ill. Nat. Bank & Trust Co. of Chicago v. Bernard (In re Bernard), 99 B.R. 563, 570 (Bankr. S.D. N.Y. 1989) (citing Williamson). "Filing of false schedules with material omissions or misrepresentations with an intent to mislead creditors and the trustee as to a debtor's actual financial condition constitutes a false oath under section 727(a)(4)(A)." Britton Motor Serv., Inc. v. Krich (In re Krich), 97 B.R. 919, 923 (Bankr. N.D. Ill. 1988) (citation omitted). Subsequent voluntary disclosure through testimony or amendment to the schedules does not expunge the falsity of the oath. Bailey, 147 B.R. at 165 (citation omitted). This second element has been satisfied because the filed Schedules completely omitted any reference to several assets, including the life insurance policies, the medical trust, the stock, and the jewelry, which the Debtors concede existed. Further, the Schedules failed to list Clark as a creditor.

Third, Clark must establish that the Debtors knew the statements (here the omitted assets and liabilities) were false. The Debtors contend that at the time of the filing of the bankruptcy petition, the life insurance policies had no cash value. Further, the Debtors state that when they filed their Chapter 7 individual case, another bankruptcy case was filed (98 B 27406 Golden Flavor Foods, Inc.). The Debtors contend that they made full disclosure at the § 341 meeting of creditors regarding the Debtors' involvement in both Golden Flavor Foods, Inc. and Sesame Marketing, Inc. Additionally, the Debtors allege that the existence of the medical trust was disclosed at the § 341 meeting. Further, the Debtors claim that the failure to list Clark as a creditor on the Schedules was due to an inadvertent error of their

attorney. Finally, the Debtors maintain that an assignment of a cause of action was made on September 16, 1996 to Eliot Landau, but that they believed that they had no financial responsibility to Mr. Landau. Clark counters that the alleged assignment to Landau is invalid and illegal and was never properly filed of record and is therefore another asset of the bankruptcy estate. Clearly, this third element is disputed.

Fourth, Clark must prove that the Debtors made the statements with fraudulent intent. To find the requisite degree of fraudulent intent, the Court must find that the Debtors knowingly intended to defraud their creditors or engaged in behavior which displayed a reckless disregard for the truth in conjunction with the bankruptcy case. In re Yonikus, 974 F.2d 901, 905 (7th Cir. 1992); Bailey, 147 B.R. at 164-165 (citing Yonikus). If a debtor's bankruptcy schedules reflect a "reckless indifference to the truth" then the plaintiff seeking denial of the discharge need not offer any further evidence of fraud. Calisoff v. Calisoff (In re Calisoff), 92 B.R. 346, 355 (Bankr. N.D. Ill. 1988) (citation omitted). The requisite intent under § 727(a)(4)(A) may be inferred from circumstantial evidence. Yonikus, 974 F.2d at 905 (citations omitted). However, discharge should not be denied where the untruth was the result of mistake or inadvertence. Lanker v. Wheeler (In re Wheeler), 101 B.R. 39, 49 (Bankr. N.D. Ind. 1989). When a debtor is in doubt concerning disclosure, it is unquestioned that he is obligated to disclose. See Bank of India v. Sapru (In re Sapru), 127 B.R. 306, 315-16 (Bankr. E.D. N.Y. 1990) ("multitude" of false oaths and omissions were material and justified denial of discharge); Behrman Chiropractic Clinics Inc. v. Johnson (In re Johnson), 189 B.R. 985, 994-95 (Bankr. N.D. Ala. 1995) (failure to disclose transferred assets

warranted denial of discharge). This element is hotly disputed by the parties.

Finally, Clark must show that the false statements related materially to the bankruptcy case. The debtor's false oath must relate to a material matter before it will bar a discharge in bankruptcy. In re Agnew, 818 F.2d 1284, 1290 (7th Cir. 1987) (citation omitted). The test for materiality of the subject matter of false oath is whether it "bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." Bailey, 147 B.R. at 162 (citations omitted). A false oath may be material even though it does not result in any detriment or prejudice to the creditor. Scimeca v. Umanoff, 169 B.R. 536, 543 (D. N.J. 1993), aff'd, 30 F.3d 1488 (3d Cir. 1994); Congress Talcott Corp. v. Sicari (In re Sicari), 187 B.R. 861, 881 (Bankr. S.D. N.Y. 1994). This last element is met. The unscheduled assets and liabilities are "material" in the context of the case law applying § 727(a)(4)(A).

The Court denies the motion for summary judgment as to this theory of recovery because material issues of fact exist regarding the Debtors' intent and their knowledge of the falsity of their Schedules at the time they filed their petition.

B. 11 U.S.C. § 727(a)(4)(D)

Clark argues that the Debtors' discharge should be denied pursuant to § 727(a)(4)(D) because they withheld information from the Trustee with respect to the life insurance policies, the medical trust, the jewelry and the stock. Section 727(a)(4)(D) provides:

> (a) The court shall grant the debtor a discharge, unless--
> (4) the debtor knowingly and fraudulently, in or in connection with the case–

> (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.

11 U.S.C. § 727(a)(4)(D).

Trustees lack the time and resources to play detective and uncover all assets and transactions of their debtors. Bay State Milling Co. v. Martin (In re Martin), 141 B.R. 986, 997-98 (Bankr. N.D. Ill. 1992) (citations omitted); Morton v. Dreyer (In re Dreyer), 127 B.R. 587, 595 (Bankr. N.D. Tex. 1991) (citation omitted). "[D]ebtors in bankruptcy have an affirmative duty to surrender to the Trustee . . . all recorded information relating to property of estate, and are also obligated to cooperate by providing the Trustee . . . with all relevant documents and papers and fully answering the questions in the petition for relief and attached schedules." Martin, 141 B.R. at 998 (citations omitted). Section 727(a)(4)(D) enforces this obligation by denying discharge to debtors who intentionally withhold records, books, documents, or other papers relating to their property or financial affairs. Id. (citation omitted). The requisite intent to act knowingly and fraudulently "'may be established by circumstantial evidence, or by inference drawn from a course of conduct.'" Id. (quoting Nassau Savs. and Loan Ass'n v. Trinsey (In re Trinsey), 114 B.R. 86, 92 (Bankr. E.D. Pa. 1990)).

A genuine issue of material facts exists regarding the Debtors' alleged fraudulent

intent on this theory which precludes the entry of summary judgment. Moreover, the Debtors assert they have produced the documents requested in discovery, and deny that they have failed to cooperate with the Trustee or failed to turn over the requested assets and related documents. It is unclear from this record exactly what was turned over to the Trustee and when and what has been requested, but still not turned over to the Trustee.

C. 11 U.S.C. § 727(a)(6)(A)

Clark argues that the Debtors' discharge should be denied pursuant to § 727(a)(6)(A) because they failed to comply with discovery requests and the Trustee's requests for documents. Further, Clark contends that the Debtors failed to pay for the equity in their motor vehicle or turn it over to the Trustee. Section 727(a)(6)(A) provides:

> (a) The court shall grant the debtor a discharge, unless--
> (6) the debtor has refused, in the case–
> (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify.

11 U.S.C. § 727(a)(6)(A).

Section 727(a)(6)(A) allows a court to deny a discharge only if the debtor *refused* to obey the court order. The use of the word "refused" in § 727(a)(6)(A) must be distinguished from the use of the word "failed" elsewhere in § 727(a). Wilmington Trust Co. v. Jarrell (In re Jarrell), 129 B.R. 29, 33 (Bankr. D. Del. 1991). The mere failure to obey an order is insufficient to deny a discharge; there must be a willful refusal. See Id.; United States v. Richardson (In re Richardson), 85 B.R. 1008, 1016-17 (Bankr. W.D. Mo. 1988) (discharge

granted where debtor's failure to obey court order was unintentional); United States v. Dowell (In re Dowell), 82 B.R. 998 (Bankr. W.D. Mo. 1987) (discharge granted where debtor's disobedience unintentional). "[A]n objection to discharge has been denied when the debtor's failure to comply with an order was due to inability to comply, inadvertence or mistake, as opposed to wilful, intentional disobedience or dereliction." 6 L. King, Collier on Bankruptcy ¶ 727.09[1] at 727-50 (15th ed. 1999). "[I]t is totally within the discretion of the bankruptcy court to find a particular violation of the court's order so serious as to require denial of discharge." In re Devers, 759 F.2d 751, 755 (9th Cir. 1985).

Clark contends that at the § 341 meeting of creditors, the Trustee requested a copy of the alleged medical trust and the life insurance policies. The Debtors allegedly failed to give the Trustee any documentation. In March 1991, the Debtors were served with discovery requests. In May 1999, a motion to compel discovery was filed. Thereafter, on May 17, 1999 an order was entered. To date, allegedly no documents have been produced and no interrogatories have been answered. Finally, the Debtors disclosed that they owned a motor vehicle with equity. The Trustee and the Debtors agreed on a dollar figure to be paid for the equity in the vehicle. To date, the Debtors allegedly have failed to turn over the vehicle to the Trustee or pay for it.

Contrary to the Trustee's affidavit and Clark's argument, the Debtors contend that they have complied with the discovery requests. Counsel for the Debtors, however, claims that until he was served with a petition for rule to show cause, he was unaware of the entry of an order requiring compliance with the discovery requests within fourteen days of May

17, 1999. According to the Debtors, the requested discovery was tendered within the time frame of the Court's Order.

The Court denies the motion for summary judgment under this theory of recovery because a genuine issue of material facts exists regarding whether the Debtors intentionally or willfully failed to comply with the Court's Order or whether they have fully complied therewith.

V. CONCLUSION

For the foregoing reasons, the motion for summary judgment is denied.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
MELVIN J. TIESZEN and NANCY H. TIESZEN,	)	Chapter 7
	)	Bankruptcy No. 98 B 27403
Debtors.	)	Judge John H. Squires
	)	
JOHN S. CLARK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 98 A 02087
	)	
MELVIN S. TIESZEN and NANCY H. TIESZEN,	)	
	)	
Defendants.	)	

O R D E R

For the reasons set forth in a Memorandum Opinion dated the 24th day of August, 1999, the Court denies the motion of the Plaintiff, John S. Clark for summary judgment.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List