

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Will This Opinion be Published? No

Bankruptcy Caption: In re Daniel Robert Weadley

Bankruptcy No. 06 B 1854

Adversary Caption: Bibby Financial Services (Midwest), Inc. v. Weadley

Adversary No.: No. 07 A 683

Date of Issuance: June 11, 2008

Judge: A. Benjamin Goldgar

Appearance of Counsel:

Attorney for Bibby Financial Services (Midwest), Inc.: Robert J. Trizna, Thomas G. Draths, Robert D. Snow, Schuyler, Roche & Zwirner, Chicago, IL

Attorney for Daniel Robert Weadley: Joseph E. Cohen, Cohen & Krol, Chicago, IL

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
)	
DANIEL ROBERT WEADLEY,)	No. 06 B 1854
)	
Debtor.)	
<hr/>		
)	
BIBBY FINANCIAL SERVICES)	
(MIDWEST), INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 07 A 683
)	
DANIEL ROBERT WEADLEY,)	
)	
Defendant.)	Judge Goldgar

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

This adversary proceeding is currently set for trial on June 19, 2008, at 9:30 a.m. The plaintiff is Bibby Financial Services (Midwest), Inc. The defendant is debtor Daniel Robert Weadley. The complaint alleges that Weadley owes Bibby Financial a debt nondischargeable under section 523(a)(2)(B) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(B). According to the complaint, the debt totals more than \$1.9 million.

The trial date in the adversary proceeding was set on March 19, 2008, more than two months ago, when the court entered a final pretrial order in the form it customarily uses. The following day, a copy of the final pretrial order was mailed to

counsel for both parties at the addresses shown on the court's docket.

The final pretrial order set dates for the filing of pretrial materials. In particular, it required each party to file and exchange a list of witnesses, a list of exhibits to be introduced at trial, and the exhibits themselves, no later than 21 days before the hearing date: in other words, by May 29, 2008.

The final pretrial order also made clear that failure to comply with its terms “*will* result in the imposition of appropriate sanctions.” Final Pretrial Order at ¶ 10 (emphasis in original). It specified what those sanctions would be. *Id.* Failure to file and exchange the list of exhibits and the exhibits themselves would preclude a party from introducing any exhibits into evidence at trial. *Id.* at ¶ 10.a. Failure to file and exchange the list of witnesses would preclude a party from presenting any witnesses at trial. *Id.* at ¶ 10.b.

Defendant Weadley duly filed his lists of witnesses and exhibits on May 29, 2008, as the final pretrial order required. The proof of service Weadley filed shows that counsel for Bibby Financial were served with Weadley's pretrial materials by mail the same day.

Plaintiff Bibby Financial, on the other hand, filed nothing. Indeed a review of the court's docket shows that as of today, almost two weeks after the due date and just six days before trial, Bibby Financial still has filed nothing: no list of witnesses, no list of exhibits, no exhibits. Nor has any extension of time to file these materials been sought.

The requirements of the final pretrial order are clear. Despite their clarity,

Bibby Financial has chosen to ignore them. There is no reason why Weadley should be kept in the dark about Bibby Financial's witnesses and exhibits and have his own trial preparation impaired – especially when Bibby has had the benefit of Weadley's pretrial materials to aid its preparation for the past two weeks.^{1/}

Pursuant to Rule 16(f) of the Federal Rules, Fed. R. Civ. P. 16(f) (made applicable by Fed. R. Bankr. P. 7016), and in keeping with this court's consistent practice, *see First Equity Card Corp. v. Kleit (In re Kleit)*, 2006 WL 2792685, at *1 (Bankr. N.D. Ill. Sept. 28, 2006); *Michael v. Khan (In re Khan)*, 321 B.R. 709, 711 (Bankr. N.D. Ill. 2005); *Schechter v. McAniff (In re McAniff)*, 2004 WL 1630493, at *1 (Bankr. N.D. Ill. July 21, 2004); *Hartwick v. Craig (In re Craig)*, 2004 WL 1490427, at *2 (Bankr. N.D. Ill. June 29, 2004), sanctions will therefore be imposed on Bibby Financial for its violation of the final pretrial order:

Bibby Financial is barred from introducing any exhibits or calling any witnesses at trial. *See In re Maurice*, 21 F.3d 767, 773 (7th Cir. 1994); *see also Khan*, 321 B.R. at 711-12.

With the plaintiff unable to introduce any evidence at trial, there no longer seems to be much point in having one. Bibby Financial would have the burden of proof on its claim of nondischargeability, *see Grogan v. Garner*, 498 U.S. 279, 289-90

^{1/} Weadley's materials disclose that Weadley himself is his only witness and that he does not intend to introduce any exhibits. Meager though this appears to be, it is still immensely valuable to Bibby Financial's own preparation to know what Weadley intends (or doesn't intend) to offer as evidence at trial. Weadley has no similar information about Bibby Financial's trial plans.

(1991); *In re Crosswhite*, 148 F.3d 879, 881 (7th Cir. 1998), and it is clear right now that it cannot meet that burden.

Judgment will accordingly be in favor of defendant Weadley and against plaintiff Bibby Financial on the complaint. The trial date of June 19, 2008, is stricken.^{2/} A copy of this order will be faxed to counsel for the parties.

This amended order merely corrects a typographical error in the original and so is entered *nunc pro tunc* to June 11, 2008.

Dated: June 16, 2008

A. Benjamin Goldgar
United States Bankruptcy Judge

^{2/} Occasionally, of course, parties do not file pretrial materials because they have reached a settlement and no longer need a trial. On those occasions, however, the parties have the courtesy to notify chambers. Since the trial in this case is looming and the parties have not notified chambers of a settlement, the court is entitled to assume there has been none.