

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Central Division

In Re:	)	Bankr. Case No. 92-30013
	)	
	)	Adversary Case No. 94-3008
DANIEL BRUCE ECKER	)	
SUZANN ELIZABETH ECKER	)	Chapter 7
	)	
Debtors.	)	
	)	
	)	MEMORANDUM OF DECISION RE:
JOHN S. LOVALD, TRUSTEE	)	COMPLAINT TO REVOKE DISCHARGE
	)	
Plaintiff,	)	
vs.	)	
	)	
DANIEL BRUCE ECKER	)	
SUZANN ELIZABETH ECKER	)	
	)	
Defendants.	)	

The matter before the Court is the complaint to revoke discharge filed by Trustee John S. Lovald. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum and subsequent judgment shall constitute findings and conclusions under F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that Debtors' discharge should be revoked under 11 U.S.C. § 727(d)(3).

I.

Debtors filed a Chapter 7 petition on February 21, 1992. The Chapter 7 Trustee filed an objection to Debtors' claimed exempt property on May 5, 1992. At a hearing on June 9, 1992, the parties reported a settlement. The Trustee noticed the settlement for objections. No objections were filed. By Order entered July 14, 1992, the Court approved the settlement. No appeal was taken from

that Order. A discharge was entered June 18, 1992.

The settlement allowed Debtors to retain all property they declared exempt on the condition that they pay the estate \$1,500.00 by June 1, 1993. Debtors have failed to pay any of the \$1,500.00 to Trustee Lovald.

On October 19, 1994, Trustee Lovald commenced this adversary proceeding requesting that Debtors' discharge be revoked pursuant to 11 U.S.C. § 727(d)(2) because Debtors had failed or refused to pay the \$1,500.00. Debtors answered on December 2, 1994 but did not deny the allegations. The parties filed stipulated facts and briefs. Attached to the stipulated facts was a copy of a letter from Debtor Daniel Ecker to Debtors' attorney that set forth several hardships that Debtors had suffered in the past few years.

Pursuant to F.R.Bankr.P. 7015 and by letter filed January 20, 1995, Trustee Lovald asked the Court also to revoke Debtors' discharge pursuant to 11 U.S.C. § 727(d)(3). Debtors did not file any statement in opposition to that request and the matter was taken under advisement.

## II.

Section 727(d) of the Bankruptcy Code provides:

On request of the trustee . . . and after notice and a hearing, the court shall revoke a discharge granted under [§ 727(a)] if-

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

Subsection (a)(6)(A) of § 727 provides that a debtor shall receive a discharge unless the debtor has refused in the case to obey a lawful order entered by the court, except an order to respond to a material question or to testify.

III.

*Amendment of Complaint.* Rule 7015 of the Federal Rules of Bankruptcy Procedure adopts F.R.Civ.P. 15. Rule 15 provides that pleadings may be amended to conform to the evidence if there is no prejudice shown by the opposing party in maintaining that party's defense upon the merits. Here, Debtors have not shown that they will be prejudiced if the Trustee's complaint is amended to conform to the evidence. Therefore, the Court will consider whether relief should be granted under § 727(d)(3), as requested by Trustee Lovald.

*Revocation of Discharge.* The facts presented above clearly show that Debtors have refused to obey the Court's July 14, 1992 Order requiring them to timely pay \$1,500.00 to Trustee Lovald for the excess personal property that they claimed exempt. Section 727(d)(3) provides that such a failure to obey a lawful order is grounds for revocation of Debtors' discharge. Therefore, a judgment shall be entered revoking Debtors' discharge.

Debtors have not cited any authority that would permit the Court to consider their equitable "hardship" arguments. Equitable arguments are dubious, however, when Debtors have failed to make

any payments to the Trustee, despite Trustee Lovald's generosity in giving them extra time to do so.

Trustee Lovald shall submit an appropriate proposed judgment in compliance with these findings and conclusions.

Dated this \_\_\_\_\_ day of May, 1995.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA A. JOHNSON, ACTING CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)