

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

ENTERED ON DOCKET
8/12/05

IN THE MATTER OF:	:	CASE NUMBER: R04-40818-PWB
	:	
HOYT ANTHONY PILGRIM	:	
and TERESA PILGRIM,	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE
<hr/>		
	:	
THOMAS D. RICHARDSON, Trustee	:	
in Bankruptcy for Hoyt Anthony Pilgrim	:	
and Teresa Pilgrim,	:	
	:	
	:	ADVERSARY PROCEEDING
Plaintiff	:	NO. 04-4054
	:	
v.	:	
	:	
HOYT ANTHONY PILGRIM	:	JUDGE BONAPFEL
and TERESA PILGRIM,	:	
	:	
	:	
Defendants.	:	

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

Thomas D. Richardson, the Chapter 7 Trustee for the estates of Hoyt Anthony Pilgrim and Teresa Pilgrim, seeks denial of the Debtors' discharges in the above-styled adversary proceeding pursuant to 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(3), 727(a)(4)(B), and 727(a)(5). On December 22, 2004, the Court denied without prejudice the Trustee's motion for default judgment. The Trustee, having re-served the complaint and summons and filed an affidavit addressing Debtors' military status as required by the Servicemembers' Civil Relief Act, 50 App. U.S.C. § 501 *et seq.*, renews his motion for default judgment.

Section 727(a)(5) provides that the Court shall grant the debtor a discharge unless "the debtor has failed to explain satisfactorily before determination of denial of discharge under this

paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." The plaintiff bears the initial burden of establishing the basis for denial of discharge under this provision. Once the plaintiff meets the initial burden, the burden shifts to the debtor to "satisfactorily" explain the loss of assets. See *Hawley v. Cement Indus., Inc. (In re Hawley)*, 51 F.3d 246 (11th Cir. 1995) (citing *(Chalik v. Moorefield) In re Chalik*, 748 F.2d 616, 619 (11th Cir. 1984)).

The Trustee alleges that the Debtors testified at their meeting of creditors that they received a \$41,000 cash settlement three months prior to the filing of their bankruptcy petition. The Trustee alleges that because the Debtors' schedules list only \$500 in two bank accounts with a credit union, the Debtors spent, invested or otherwise disposed of approximately \$40,500 of the settlement proceeds in the three months prior to the filing of their bankruptcy petition. The Trustee further alleges that the Debtors have failed to respond to his repeated requests for an accounting of the disposition of the \$41,000 proceeds, as evidenced by the May 26, 2004 and June 16, 2004 letters to the Debtors' counsel attached to the complaint.

The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtors' discharges under §727(a)(5). Debtors have failed to offer any explanation or accounting of the \$41,000 in settlement proceeds obtained just three months prior to the filing of the bankruptcy petition. The Debtors have failed to respond to the Trustee's inquiries and have filed no response to the complaint or the motion for default judgment. The Debtors have not controverted these assertions and as a result, Debtors' default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure. Because the Court finds grounds for denial of discharge under § 727(a)(5), it is unnecessary to make any determination with respect to the Trustee's claims under §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(3),

and 727(a)(4)(B). Based on the foregoing, it is

ORDERED that the Trustee's motion for default judgment is **GRANTED**. The Debtors' discharges are denied pursuant to 11 U.S.C. § 727(a)(5). A separate judgment shall be entered contemporaneously herewith.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Rome, Georgia, this 10 day of August, 2005.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Thomas D. Richardson
Brinson, Askew, Berry, et al.
P. O. Box 5513
Rome, GA 30162-5513

Hoyt Anthony Pilgrim
516 Lyons Bridge Road
Cave Spring, GA 30124

Teresa Pilgrim
516 Lyons Bridge Road
Cave Spring, GA 30124

D. Leon Sproles
107 East 5th Avenue
Rome, GA 30161