



IT IS ORDERED as set forth below:

Date: June 07, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	CHAPTER 7
	:	
	:	
Todd Anthony Shaw,	:	Case No. 09-61855-MGD
	:	
Debtor.	:	Judge Mary Grace Diehl
	:	
S. Gregory Hays, Chapter 7 Trustee	:	
for the Estate of	:	
Todd Anthony Shaw	:	
	:	
Plaintiff,	:	
v.	:	Adversary Proceeding
	:	No. 10-06025-MGD
Todd Anthony Shaw	:	
Wayne Jay Shaw and	:	
Dorothy Wilson Shaw	:	
	:	
Defendants.	:	
	:	

ORDER GRANTING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

This matter is before the Court on Plaintiff’s Motion for Default Judgment (“Motion”) filed

on March 18, 2010. (Docket No. 5). The Chapter 7 Trustee (“Trustee”) commenced this adversary proceeding (“Complaint”) on January 19, 2010, against Todd Anthony Shaw (“Debtor”), Wayne Jay Shaw, and Dorothy Wilson Shaw (collectively, “Defendants”).¹ (Docket No. 1). In the Complaint, Trustee asserts three claims against Defendants. Count I seeks turnover of the property under 11 U.S.C. § 542(a).² (Complaint ¶¶ 19-21). Count II seeks Debtor surrender of the property to the Trustee under 11 U.S.C. § 521(a)(4) and Rule 4002(4) of the Federal Rules of Bankruptcy Procedure. (Complaint ¶¶ 22 & 23). Count III seeks an injunction preventing Defendants from entering the premises, committing waste to the Property, and compelling the Defendants to turnover the property. (Complaint ¶¶ 24 & 25).

A summons was issued commanding Defendants to file and serve an answer to the complaint. According to the certificate of service, all three defendants³ were served the summons and complaint by first class mail on January 19, 2010, in accordance with Rule 7004(b) of the Federal Rules of Bankruptcy Procedure. (Docket No. 3). Rule 7012 of the Federal Rules of Bankruptcy Procedure requires a defendant to “serve an answer within 30 days after the issuance of the summons.” To

¹ Todd Anthony Shaw is the debtor in the case before the Court. Wayne Jay Shaw and Dorothy Wilson Shaw are alleged occupants of the subject property.

² Section 542(a) requires “an entity . . . in possession, custody, or control, during the case, of property” of the estate to “deliver to the trustee . . . such property.” Under § 101(15), an entity includes a “person” and, therefore, § 542(a) is applicable to defendants Wayne Jay Shaw and Dorothy Wilson Shaw. Section 542(a)’s requirement is self-executing and no demand by a trustee is required. *E.g., Turner v. DeKalb Bank (In re Turner)*, 209 B.R. 558, 571 n.7 (Bankr. N.D. Ala. 1997) (“It is widely recognized that the Code implies an affirmative duty to voluntarily return property repossessed pre-petition without forcing the debtor[’s estate] to file a turnover action at all.”) (citations omitted).

³ Debtor does not have an attorney of record in his Chapter 7 case before the Court, therefore no attorney was served. On August 18, 2009, the Court granted Debtor’s attorney’s motion to withdraw. Docket No. 51, Case No. 09-61855.

date, no answer or response has been filed, and Defendants have made no appearance. On March 2, 2010, a Clerk's Entry of Default was entered against the Defendants. (Docket. No. 4).

On March 18, 2010, Trustee filed the Motion for Default Judgment and it appears that the Motion was properly served on the Defendants. (Docket No. 5). Trustee's Motion for Default Judgment seeks a judgment against the Defendants requiring turnover of the property and enjoining the Defendants from entering the premises, committing any waste to the property and compelling the Defendants to turn over the property to the trustee. Defendants have failed to file a response to the Motion for Default Judgment. Consequently, the Motion for Default Judgment is deemed unopposed pursuant to Rule 7007-1(c) of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia. Accordingly, it is

ORDERED that the Plaintiff's Motion for Default Judgment be and is hereby **GRANTED**.

END OF DOCUMENT