

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

**ENTERED ON DOCKET
SEP 15 2006**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
SIDNEY JOE POWELL	:	BANKRUPTCY CASE
BEVERLY MAINE POWELL,	:	NO. 04-14110-WHD
	:	
Debtors.	:	
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	:	
UNITED STATES TRUSTEE,	:	ADVERSARY PROCEEDING
	:	NO. 06-1076
Plaintiff,	:	
	:	
v.	:	
	:	
SIDNEY JOE POWELL	:	
BEVERLY MAINE POWELL,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Currently before the Court is the Motion for Summary Judgment filed by the Office of the United States Trustee (hereinafter the "US Trustee"). The Motion arises in connection with an Objection to Discharge filed by the US Trustee against Sidney and Beverly Powell (hereinafter the "Debtors"). This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(J); § 1334.

FINDINGS OF FACT

On December 15, 2004, the Debtors filed a voluntary bankruptcy petition under

Chapter 13 of the Code. The Debtors converted the case to one under Chapter 7 on March 24, 2006. The records of this Court indicate that the Debtors filed a voluntary Chapter 13 petition on May 7, 1999 (Case Number 99-11286), which they converted to a case under Chapter 7 on September 27, 2001. The Court entered a discharge in that case on March 6, 2002. Prior to the expiration of the deadline for objecting to the Debtor's discharge in the instant case, the US Trustee filed the instant complaint.

CONCLUSIONS OF LAW

In accordance with Federal Rule of Civil Procedure 56 (applicable to bankruptcy under FED. R. BANKR. P. 7056), this Court will grant summary judgment only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of a proceeding under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The moving party has the burden of establishing the right to summary judgment, *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991); *Clark v. Union Mut. Life Ins. Co.*, 692 F.2d 1370, 1372 (11th Cir. 1982), and the Court will read the opposing party's pleadings liberally. *Anderson*, 477 U.S. at 249.

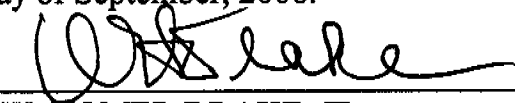
In determining whether a genuine issue of material fact exists, the Court must view the evidence in the light most favorable to the party opposing the motion. *Adickes v. S.H.*

Kress & Co., 398 U.S. 144, 157 (1970); *Rosen v. Biscayne Yacht & Country Club, Inc.*, 766 F.2d 482, 484 (11th Cir. 1985). The moving party must identify those evidentiary materials listed in Rule 56(c) that establish the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986); *see also* FED. R. CIV. P. 56(e). Once the motion is supported by a *prima facie* showing that the moving party is entitled to judgment as a matter of law, the party opposing the motion must go beyond the pleadings and demonstrate that there is a material issue of fact that precludes summary judgment. *Celotex*, 477 U.S. at 324; *Martin v. Commercial Union Ins. Co.*, 935 F.2d 235, 238 (11th Cir. 1991).

Pursuant to section 727(a)(8), a debtor shall not be granted a discharge if the debtor has been granted a discharge in a case commenced within six years before the date of the filing of the petition. *See* 11 U.S.C. § 727(a)(8). No material questions of fact remain as to whether the Debtors discharge should be denied. The US Trustee has established that the Debtors received a discharge in a Chapter 7 case within six years prior to the filing of the instant case. Accordingly, as a matter of law, the Debtors' discharge must be, and hereby is, **DENIED**. The US Trustee's Motion for Summary Judgment is, therefore, **GRANTED**. Judgment in favor of the US Trustee shall be entered.

IT IS SO ORDERED.

At Newnan, Georgia, this 15 day of September, 2006.


W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE