



IT IS ORDERED as set forth below:

Date: March 23, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
ENRICO D. DEAN,	:	BANKRUPTCY CASE
	:	
Debtor.	:	NO. 13-10138-WHD
_____	:	
	:	
JAMES G. BAKER, Trustee for the	:	ADVERSARY PROCEEDING
Estate of Enrico Dean,	:	NO. 15-1006-WHD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	IN PROCEEDINGS UNDER
NATHANIEL DEAN,	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE
Defendant.	:	

ORDER

Before the Court is the Motion for Default Judgment and/or Motion for Summary Judgment (hereinafter the “Motion”) filed by James G. Baker (hereinafter

the “Trustee”), Chapter 7 trustee for the bankruptcy estate of Enrico D. Dean (hereinafter the “Debtor”), in the above-styled adversary proceeding. The Motion arises in connection with the Trustee’s complaint against Nathaniel Dean (hereinafter the “Defendant”) seeking to recover property the Trustee alleges the Debtor fraudulently conveyed to the Defendant. This is a core proceeding, *see* 28 U.S.C. § 157(b)(2)(H), over which this Court has subject matter jurisdiction, *see* 28 U.S.C. § 157(a); 1337.

Background

The Debtor filed his voluntary petition for relief under Chapter 7 on January 18, 2013. The Debtor received his discharge on October 18, 2013, but his case remains open as the Trustee continues to investigate potentially recoverable assets. On January 14, 2015, the Trustee filed the instant adversary proceeding against the Defendant, the Debtor’s father. The Trustee’s complaint alleges that the Debtor transferred real property known as 109 Cline Road, Moreland, Georgia, (hereinafter the “Property”), to the Defendant on March 13, 2012, did not receive reasonably equivalent value in exchange for the Property, and was insolvent when he made the transfer or became so as a result of the transfer. The Trustee argues that the transfer is avoidable pursuant to subsections (a)(1)(A) and (B) of section 548 of the

Bankruptcy Code¹ as well as Georgia's fraudulent transfer statutes.

On February 13, 2015, the Debtor, despite the fact that he is not a party to this adversary proceeding, filed an answer to the Trustee's complaint. The Debtor, acting without an attorney, maintained that he and the Defendant had agreed to a plan where the Debtor would "buy [the land], build, and transfer the property back to [the Defendant], the true owner and creditor upon completion." Am. Answer, Doc. No. 7, at 2. Though the Debtor requested that the Court treat the pleading as an answer "from both ENRICO D. DEAN and NATHANIEL DEAN," only the Debtor signed it. *Id.*

On November 18, 2015, the Debtor, again purporting to act for both the Defendant and himself, filed a motion to dismiss the adversary proceeding and close the main bankruptcy case. The Court denied that motion on December 22, 2015, finding that the Trustee had sufficiently pleaded his claim. On January 27, 2016, the Trustee filed the instant motion. Once again, the Debtor, not the Defendant, filed a response, stating that it "shall be considered an answer by Nathaniel Dean." Obj. to Mot., Doc. No. 20, at 2. The Defendant never filed any documents.

¹ 11 U.S.C. § 101 *et seq.*

Discussion

In the Motion, the Trustee argues that because the Debtor is not an attorney licensed to practice before this Court, the answer should be stricken pursuant to Federal Rule of Bankruptcy Procedure 9011, and the Court should enter default judgment against the Defendant. In the alternative, the Trustee contends that even if the answer is allowed to remain, it does not propose a defense or deny the allegations of the Trustee's complaint, so the allegations are admitted and the Trustee is entitled to summary judgment on that basis.

The Debtor's response to the Motion does not address Rule 9011 or explain why the Debtor is purporting to act in the name of the Defendant. Instead, the Debtor merely repeats an argument made in the Debtor's initial motion to dismiss. The Debtor contends that, because no proofs of claim have been filed in his main bankruptcy case, there are no claims for the Trustee to pay, and therefore no reason for this adversary proceeding.²

² The Court addressed this argument in denying the Debtor's motion to dismiss. *See* Order, Doc. No. 17, at 6-7. The Court explained,

The Debtor's bankruptcy case has, up to this point, been considered a "no-asset" case. In other words, although the Trustee has been investigating the possibility of assets (*see* Dkt. No. 38), the Trustee has

A. Striking the Defendant's Answer

Rule 9011 requires either an attorney of record, or if a party does not have an attorney, the party himself, to sign all pleadings, which includes an answer to a complaint. FED. R. BANKR. P. 9011(a). If this rule is not followed, the court must strike the pleading unless “omission of the signature is corrected promptly after being called to the attention of the attorney or party.” *Id.*

In this case, the Defendant does not have an attorney of record. Though the Debtor appears to act on behalf of the Defendant, the Debtor's requests that the Court treat the documents the Debtor files as answers of the Defendant fail to make

not yet requested the Clerk of the Court to send notice to creditors of the existence of assets and the need to file proofs of claim. This fact, however, does not mean that the Trustee may not do so once assets have been located and administered. *See* FED. R. BANKR. P. 3002(c)(5) (“If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days’ notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.”). *There is no legitimate dispute that the Debtor has unpaid debts that will be subject to discharge unless paid by the Trustee from funds recovered in this litigation. Accordingly, the Trustee has the duty to continue this proceeding and to keep the Debtor's bankruptcy case open while he pursues the litigation.*

Id. (emphasis added).

him the Defendant's representative. While an individual may represent himself in a bankruptcy proceeding, *see* FED. R. BANKR. P. 9010, "[t]he right to appear [without an attorney]...is limited to parties conducting 'their own cases' and does not extend to non-attorney parties representing the interests of others." *FuQua v. Massey*, 615 F. App'x 611, 612 (11th Cir. 2015). Instead, it is a longstanding rule that "only a lawyer authorized to practice before the court may represent another person." *In re Falck*, 513 B.R. 617, 620 (Bankr. S.D. Fla. 2014). Because there is nothing in the record of this case to suggest that the Debtor is an attorney licensed to practice before this Court, the Debtor cannot represent the Defendant in this proceeding.

Consequently, Rule 9011 requires the Defendant, as an unrepresented party, to sign the answer himself. He has failed to do so, and has also failed to correct his omission promptly. The Trustee served the Motion on the Debtor and the Defendant. Since the Motion points out the Defendant's failure to comply with the signature requirement of Rule 9011, service of the Motion operated to bring that omission to the Defendant's attention. Nevertheless, the Defendant has not endeavored to remedy his failure to sign the answer, and the Debtor's response does not provide the Court with any explanation for that failure. Accordingly, the Court finds that the Defendant has failed to comply with the signature requirement of Rule

9011. Therefore, the Defendant's answer is hereby **STRICKEN** from the record.

B. Default Judgment

The Court will now consider the Trustee's request for default judgment. In order to grant a default judgment, the Court must determine that the Trustee's allegations of fact serve as a sufficient basis for the entry of a judgment. *Nishimatsu Construction Co., Ltd. v. Houston National Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Bonner v. Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (announcing that decisions of the Fifth Circuit Court of Appeals prior to September 30, 1981, would be binding precedent in the Eleventh Circuit). In evaluating those allegations, the Court notes that "a defaulted defendant is deemed to have admitted the movant's well-pleaded allegations of fact, [but] she is not charged with having admitted 'facts that are not well-pleaded...or conclusions of law.'" *Perez v. Wells Fargo, N.A.*, 774 F.3d 1329, 1339 (11th Cir. 2014) (second alteration in original) (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)).

The Trustee asserts four causes of action, seeking the same ultimate relief in each: the recovery of the value of the transferred property for the estate. Consequently, so long as the Trustee has alleged sufficient facts to support at least one of his claims, the Court may grant him the relief he requests. The first count of

the Trustee's complaint alleges a right to avoid the transfer of the property from the Debtor to the Defendant pursuant to § 548(a)(1)(B) of the Bankruptcy Code, so that is where the Court will begin. Section 548 provides,

The trustee may avoid any transfer...of an interest of the debtor in property..., that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—...(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii) was insolvent on the date that such transfer was made..., or became insolvent as a result of such transfer or obligation.

11 U.S.C. § 548(a)(1).

Here, the Trustee's complaint alleges that the Debtor transferred the Property to the Defendant less than a year before the Debtor filed his petition, and that the Debtor did not receive reasonably equivalent value in exchange for the Property. Furthermore, as the Court noted in its December 22nd Order denying the Debtor's motion to dismiss, "the Trustee is also entitled to the reasonable inference that the transfer of the Property rendered the Debtor insolvent." Order, Doc. No. 17, at 6. Therefore, the Trustee has satisfied the elements of § 548(a)(1)(B) and may avoid the transfer of the Property from the Debtor to the Defendant.

Having concluded that the transfer is avoidable, the Court must determine the amount of the judgment to which the Trustee is entitled. The Trustee makes no

specific allegations regarding the value of the Property, so evidence will be required in order to allow the Court to determine the amount of the judgment. Therefore, the Court will conduct a hearing to determine the value of the Property on May 11, 2016, at which the parties may present evidence concerning the value of the Property. *See* FED. R. CIV. P. 55(b)(2)(B); *see also* FED R. BANKR. P. 7055.

Conclusion

For the reasons set forth above, it is hereby **ORDERED** that the Trustee's Motion for Default Judgment is **GRANTED**. The transfer of the Property to the Defendant is hereby avoided, and the Defendant is prohibited from using, spending, disposing of, or transferring the Property and its proceeds received by the Defendant from the Debtor.

As the Trustee is entitled to entry of a judgment for the value of the Property, **IT IS FURTHER ORDERED** that the Court will hold a hearing to determine that value on **May 11, 2016, in the Second Floor Courtroom, 18 Greenville Street, Newnan, Georgia, 30263, at 2:00 PM.**

The Clerk is **DIRECTED** to serve a copy of this Order on the Trustee, the Defendant, the Debtor, and the United States Trustee.

END OF DOCUMENT