



IT IS ORDERED as set forth below:

Date: July 6, 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
	:	
DEBBIE ANN LAMBERT,	:	BANKRUPTCY CASE
	:	14-11692-WHD
Debtor.	:	
_____	:	
GUY G. GEBHARDT, ACTING	:	ADVERSARY PROCEEDING
UNITED STATES TRUSTEE,	:	NO. 16-1003
Plaintiff,	:	
	:	
v.	:	
	:	
DEBBIE ANN LAMBERT,	:	IN PROCEEDINGS UNDER
Defendant.	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Default Judgment filed by Guy G. Gebhardt (hereinafter the “U.S. Trustee”), Acting United States Trustee for Region 21, against

Debbie Ann Lambert (hereinafter the “Debtor”). This matter arises in connection with the U.S. Trustee’s complaint seeking to deny the Debtor’s receipt of a discharge in her Chapter 7 case. This is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(a), (b)(2)(J) & 1334.

Discussion

The U.S. Trustee filed his complaint on February 29, 2016, and served the complaint and summons on the Debtor on March 1, 2016. The Debtor has not filed an answer. Consequently, the Clerk entered default on May 10, 2016. The U.S. Trustee filed the instant motion for default judgment on June 6, 2016.

A. Default Judgment Standard

“Entry of default judgment is only warranted when there is ‘a sufficient basis in the pleadings for the judgment entered.’” *Surtain v. Hamlin Terrace Foundation*, 789 F.3d 1239, 1245 (11th Cir. 2015) (quoting *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). The “sufficient basis” standard is similar to that employed when evaluating the sufficiency of a complaint against a motion to dismiss under Rule 12(b)(6), that is, “whether the complaint contain[s] sufficient factual matter...to state a claim to relief that is plausible on its face.” *Id.* (first alteration in original) (internal quotation marks omitted) (quoting *Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009)); *see also* FED. R. CIV. P. 12(b)(6); FED. R. BANKR. P. 7012(b). Because the defendant has not responded to the complaint, the court deems the plaintiff's factual allegations admitted. *See Giovanni v. Fabec*, 804 F.3d 1361, 1366 (11th Cir. 2015). However, the defendant is not deemed to have admitted "facts that are not well-pleaded or...conclusions of law." *Surtain*, 789 F.3d at 1239 (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)). With these guiding principles in mind, the Court turns to the U.S. Trustee's complaint.

B. The U.S. Trustee's Allegations

On December 4, 2013, 1st Franklin Financial obtained a judgment against the Debtor in Spalding County, Georgia. A week later, a quitclaim deed was recorded in Spalding County, showing a transfer of 1.8 acres of real property known as 307 Vaughn School Road, Griffin, Georgia (hereinafter the "Property") from the Debtor to one Thresa Minter. The Debtor had signed the deed on November 7, 2013, receiving consideration of \$1 in exchange for the Property. After the transfer occurred, the Debtor continued to live at the Property. The Property is worth approximately \$40,000 and is completely unencumbered.

On December 23, 2013, the Debtor filed a voluntary petition under Chapter

13, initiating Bankruptcy Case 13-13160-WHD. The Debtor did not disclose the transfer of the Property in her documents filed in that case. The case was dismissed on May 15, 2014, and closed on July 15, 2014.

On August 4, 2014, the Debtor filed another petition under Chapter 13, and listed the Property as her address. On September 19, 2014, the Chapter 13 Trustee filed an objection to confirmation of the Debtor's plan and a motion to dismiss or convert her case. In his motion, the Chapter 13 Trustee indicated that the Debtor may have engaged in a fraudulent transfer concerning the Property. On October 17, 2014, the Court granted the Chapter 13 Trustee's motion and converted the case to Chapter 7. After the conversion, the Debtor failed to attend her meeting of creditors until the Court ordered the apprehension of the Debtor by the United States Marshal. The Marshal took custody of the Debtor and brought her before the Court on August 19, 2015.

Based on these facts, the U.S. Trustee concludes that the Debtor transferred the Property with the intent to hinder, delay, or defraud creditors, and therefore requests that the Court deny the Debtor's discharge pursuant to § 727(a)(2).

C. Denial of Discharge

Section 727(a)(2) denies a discharge to debtors who "with intent to hinder,

delay, or defraud a creditor or an officer of the estate...has transferred...or has permitted to be transferred...—(A) property of the debtor, within one year before the filing of the petition.” 11 U.S.C. § 727(a)(2). This section “is intended to prevent the discharge of a debtor who attempts to avoid payment to creditors by concealing or otherwise disposing of assets.” *Gebhardt v. McKeever (In re McKeever)*, 2016 WL 3021910, at *7 (Bankr. N.D. Ga. May 23, 2016) (Hagenau, J.). As is the case concerning all “statutory exceptions to discharge,” this section is to be narrowly construed, and the plaintiff must prove the exception’s application by a preponderance of the evidence. *See Moyer v. Geer (In re Geer)*, 522 B.R. 365, 385 (Bankr. N.D. Ga. 2014) (Hagenau, J.). To make a showing under § 727(a)(2), the creditor “must prove (1) a transfer, (2) of [the] Debtor’s property, (3) made within one year prior to the petition date, and (4) made with fraudulent intent.” *Williams v. Williams (In re Williams)*, 2013 WL 6017464, at *9 (Bankr. M.D. Ga. Nov. 12, 2013).

Here, the first three elements are easily satisfied by the U.S. Trustee’s allegations. The sale of the Property by the Debtor to Ms. Minter constitutes a transfer. *See* 11 U.S.C. § 101(54)(D) (defining “transfer” to include “each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing or

parting with [property]”). The deed recorded in Spalding County shows that the transfer was from the Debtor to Ms. Minter, so the Property was property of the Debtor. The Debtor signed the deed on November 7, 2013, and the deed was recorded on December 11, 2013—well within one year of the Debtor’s filing of her petition on August 4, 2014.

This leaves only the fourth element: fraudulent intent. The intent required to deny the debtor a discharge under § 727(a)(2) is “*actual intent* to hinder, delay, or defraud creditors” when the transfer occurred. *In re McKeever*, 2016 WL 3021910, at *8 (emphasis added). This means that “constructive fraud is insufficient.” *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 306 (11th Cir. 1994). Nevertheless, actual intent “may be inferred from the circumstances surrounding the transfer.” *In re McKeever*, 2016 WL 3021910, at *8. When evaluating whether a debtor acted with fraudulent intent, a court may consider traditional badges of fraud, including

the lack or inadequacy of consideration;...the retention of possession, benefit, or use of the property in question;...[and] the existence or cumulative effect of the pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors.

In re Williams, 2013 WL 6017464, at *9 (quoting *Bank of Dawson v. Cutts (In re*

Cutts), 233 B.R. 563, 570 (Bankr. M.D. Ga. 1999)).

Here, the circumstances of the transfer and the Debtor's conduct in her bankruptcy case lead to a strong inference that the Debtor acted with fraudulent intent when she transferred the Property. The Debtor received a single dollar in exchange for property worth approximately \$40,000. She signed the deed transferring the Property shortly before a creditor obtained a judgment against her, and the deed was recorded shortly thereafter. She did not report the transfer in her first bankruptcy case. Finally, she steadfastly refused to appear for her meeting of creditors to explain herself until the Court ordered the Marshal to take her into custody. These facts compel the conclusion that the Debtor transferred the Property with actual intent to hinder, delay, and defraud her creditors.

Conclusion

As the allegations in the U.S. Trustee's complaint, taken as admitted due to the Debtor's default, are sufficient to support a claim under § 727(a)(2), it is hereby **ORDERED** that the U.S. Trustee's Motion for Default Judgment is **GRANTED**. The Debtor shall not receive a discharge in Bankruptcy Case 14-11692-WHD. Judgment will be entered in accordance with this Order.

The Clerk is **DIRECTED** to serve this Order on the U.S. Trustee, the Debtor,

and the Chapter 7 Trustee.

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