

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JAMES CAMPBELL,

CASE NO. 07-01200-NPO

DEBTOR.

CHAPTER 7

UNITED STATES TRUSTEE

PLAINTIFF

VS.

ADV. PROC. NO. 07-00070-NPO

JAMES CAMPBELL

DEFENDANT

**MEMORANDUM OPINION AND ORDER GRANTING
UNITED STATES TRUSTEE'S MOTION FOR SUMMARY JUDGMENT
ON COMPLAINT OBJECTING TO DISCHARGE**

There came on for consideration the United States Trustee's Motion for Summary Judgment (the "Motion") (Adv. Dk. No. 10) filed by the United States Trustee for Region 5 (the "UST") in the above-styled adversary proceeding. The Defendant, James Campbell (the "Debtor"), did not file a response to the Motion. The UST is represented by Ronald H. McAlpin, and the Debtor is represented by Lynn Douglas Wade. Having considered the Motion and the United States Trustee's Memorandum in Support of Motion for Summary Judgment (Adv. Dk. No. 11), together with the pleadings in the Court files, the Court finds that no genuine issue of material fact exists and that, as a matter of law, the Debtor is not entitled to a discharge. Therefore, summary judgment should be granted on the United States Trustee's Complaint Objecting to Discharge (the "Complaint") (Adv. Dk. No. 1).¹

¹ The following constitutes the findings of fact and conclusions of law of the Court, pursuant to Federal Rule of Bankruptcy Procedure 7052.

Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (J). Notice of the Motion was proper under the circumstances.

Summary Judgment Standard

Federal Rule of Civil Procedure 56, made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056, states that summary judgment is properly granted only when, viewing the evidence in the light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Rule 56(e) further provides, in relevant part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Fed. R. Civ. P. 56(e).

Thus, the moving party bears the initial responsibility of informing the Court of the basis for its motion, and of identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. at 323, 106 S.Ct. at 2552-53. Once the moving party has made its required showing, the nonmovant must go beyond the pleadings and, by its own affidavits or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing a genuine issue for trial. Id. at 324. In any event, "[t]he movant

has the burden of establishing the absence of a genuine issue of material fact and, unless he has done so, the court may not grant the motion, regardless of whether any response was filed.” Hibernia Nat’l Bank v. Administracion Central Sociedad Anonima, 776 F.2d 1277, 1279 (5th Cir. 1985); *see also* Medlock v. Commission for Lawyer Discipline, 24 S.W.3d 865, 870 (Tex. Ct. App. 2000).

Facts

The following facts have been established by the United States Trustee’s Statement of Facts (Adv. Dk. No. 11) and the Court files:

1. On January 19, 2000, the Debtor filed his first voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code (the “First Chapter 7 Case”) (Case No. 00-30101, Dk. No. 1).² The First Chapter 7 Case was styled *In re James Campbell*, No. 00-30101 (E.D. Mich. filed Jan. 19, 2000). On April 27, 2000, the Debtor was granted a discharge in the First Chapter 7 Case (Case No. 00-30101, Dk. No. 13).

2. On April 18, 2007, the Debtor filed his second voluntary petition for relief pursuant to chapter 7 (the “Second Chapter 7 Case”) (Case No. 07-01200-NPO, Dk. No. 1). The Second Chapter 7 Case, currently before this Court, is styled *In re James Campbell*, No. 07-01200-NPO (S.D. Miss. filed April 18, 2007).

3. On June 28, 2007, the UST filed the Complaint wherein he alleges that, pursuant to § 727(a)(8), the Debtor is precluded from obtaining a discharge in the Second Chapter 7 Case.

4. On July 31, 2007, the Debtor filed the Defendant’s Answer to United States Trustee’s Complaint Objecting to Discharge (the “Answer”) (Adv. Dk. No. 5). The Debtor stated in his Answer that he thought he had filed a bankruptcy in Michigan “some years ago, possibly 1999 or

² Hereinafter all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code unless otherwise noted.

before,” but that he could not remember the details of the previous filing because of certain medications he was taking at that time (Answer, ¶ 2).

5. The Trustee subsequently filed the Motion before the Court.

Discussion

Section 727(a)(8) bars the discharge of a debtor who has been granted a discharge under § 727 in a case commenced within eight (8) years of the date of the filing of the petition in the earlier case. The undisputed facts establish that the Debtor filed his First Chapter 7 Case on January 19, 2000, and was granted a discharge under § 727 on April 27, 2000. The Debtor subsequently filed his Second Chapter 7 Case on April 18, 2007, less than eight (8) years from the filing of the Debtor’s First Chapter 7 Case. Thus, as a matter of law, the Debtor is not entitled to a discharge. Accordingly, the UST is entitled to summary judgment on his Complaint.

Based on the foregoing, the Court finds that the Motion is well taken and should be granted.

A separate final judgment will be entered in accordance with Rules 7054 and 9021.

SO ORDERED, this the 27th day of September, 2007.

/s/ Neil P. Olack
NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE