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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7

8
9 In re) Case No. 11-92149-E-7
10)
11 SHERRI LORRAINE MUNSON,)
12)
13 Debtor(s).)
14)
15 IRMA C. EDMONDS,) Adv. Pro. No. 12-9016
16 Chapter 7 Trustee,) Docket Control No. (None
17) Provided)
18 Plaintiff(s),)
19 v.)
20)
21 ANDREA FOSTER,)
22)
23 Defendant(s).)
24)
25)

26 **This memorandum decision is not approved for publication and may**
27 **not be cited except when relevant under the doctrine of law of the**
28 **case or the rules of claim preclusion or issue preclusion.**

29 **MEMORANDUM OPINION AND DECISION**

30
31 Irma Edmonds, the Chapter 7 Trustee, ("Plaintiff-Trustee")
32 commenced that Adversary proceeding on June 28, 2012, against
33 Andrea Foster ("Defendant") by filing a complaint seeking to avoid
34 and recover transfers pursuant to 11 U.S.C. §§ 544, 547, 548, and
35 550, and for Fraudulent Conveyance. Dckt. 1. The Complaint
36 alleges that this court has jurisdiction for this Adversary
37 Proceeding pursuant to 28 U.S.C. § 1334 and that this is a core
38 proceeding pursuant to 28 U.S.C. § 157(b) (2) (A) [matters concerning

1 administration of the estate], (F) [proceeding to determine, avoid,
2 or recover preference], (H) [proceedings to determine, avoid, or
3 recover fraudulent conveyances], and (O) [other proceedings
4 affecting the liquidation of the assets of the estate or adjustment
5 of the debtor-creditor relationship]. No answer or other
6 responsive pleading was filed to the Complaint and the Defendant's
7 default was entered on August 27, 2012. Dckt. 14.

8 The Plaintiff-Trustee filed her motion for entry of a default
9 judgment which requests that the court enter judgment in favor of
10 the Plaintiff-Trustee for:

11 A. \$5,455.00, plus pre and post-judgment interest, and costs
12 of suit. Motion, Dckt. 22.

13 B. The judgment is to recover \$5,455.00 paid by the Debtor
14 to Patent Assistance Worldwide ("PAW") for the benefit of the
15 Defendant, the Debtor's daughter. Memorandum, Dckt. 24.

16 C. The payment to PAW was by a cashier's check issued on
17 November 31, 2011, with the Debtor as the remitter. Memorandum.

18 D. The Trustee testifies that the transfer was made on
19 May 31, 2011. Declaration, Dckt. 23.

20 E. The Debtor commenced her Chapter 7 bankruptcy case on
21 June 17, 2012. Bankr. EDC 12-92149. Memorandum.

22 F. The Debtor was insolvent, based on her Summary of
23 Schedules listing only \$26,110.26 in assets and \$275,618.36 in
24 liabilities. Memorandum.

25 G. No consideration was provided for the transfer of the
26 \$5,455.00 for the benefit of the Defendant. Memorandum.

27 H. The Debtor testified under oath at the First Meeting of
28 Creditors held on September 15, 2011, that she made the payment to

1 PAW for the Defendant, her daughter. Declaration, Dckt. 23.

2 I. The Trustee obtained a copy of the cashier's check
3 obtained by the Debtor and delivered to PAW from Debtor's
4 bankruptcy counsel. Declaration and Exhibit 2, Dckt. 25.

5 The Complaint filed by the Plaintiff-Trustee asserts that
6 within 90-days of the commencement of the bankruptcy case the
7 Debtor made a transfer in the amount of \$5,455.00 for the benefit
8 of the Defendant. The Complaint alleges that the transfer is
9 avoidable pursuant to 11 U.S.C. § 544(b), § 548(a)(1)(B)(I) [made
10 while insolvent or with intention to incur debts beyond ability to
11 pay], § 547 [preferential transfer], and § 550 [recovery of
12 transfer or value of transfers].

13 **DISCUSSION**

14 The court originally ordered that the Plaintiff-Trustee could
15 file a motion for entry of a judgment without hearing. On its
16 face, the Motion fails to state with particularity the grounds upon
17 which the requested relief, the judgment, is based. Federal Rules
18 of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure
19 7007. To determine the grounds the court is directed to consider
20 the Memorandum in Support, Trustee's Declaration, and Exhibits to
21 assemble the grounds. The Motion contains typographical errors of
22 key dates for the claims. Exhibit 2, the cashier's check, does not
23 have a legible date for the court to select a correct date. The
24 Trustee testifies that May 31, 2011, is the date of the check, but
25 does not state how she has personal knowledge of that fact.

26 Rather than proceeding with the inconsistent pleadings and
27 illegible exhibits, the court denies the Plaintiff-Trustee's Motion
28 without prejudice. The Plaintiff-Trustee shall file and serve on

1 or before October 31, 2012, a new motion for entry of a default
2 judgment, which will be set for hearing on the court's regular law
3 and motion calendar.

4 This Memorandum Opinion and Decision constitutes the court's
5 findings of fact and conclusions of law pursuant to Federal Rule of
6 Civil Procedure 52 and Federal Rule of Bankruptcy Procedure 7052.

7 The court shall issue an order consistent with this ruling.

8 Dated: October 10, 2012

9 /s/
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RONALD H. SARGIS, Judge
12 United States Bankruptcy Court
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