

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

HAROLD L. WILSON,  
JANET L. WILSON,

Case No. 87-438-W

Debtors.

MALL OF THE BLUFFS, Limited  
Partnership and GENERAL  
GROWTH COMPANIES,

Adv.Pro.No. 87-0094

Plaintiffs,

Chapter 7

v.

HAROLD L. WILSON,  
JANET L. WILSON,  
dba Jana's Candles and Gifts,

Defendants.

ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

On May 3, 1988 plaintiffs' motion for summary judgment came on for telephonic hearing in Des Moines, Iowa. Deborah L. Petersen appeared on behalf of Mall of the Bluffs and General Growth Companies (Mall) and Clint W. Smith appeared on behalf of the debtors. The Mall contends that the debtors should be denied a discharge under 11 U.S.C. section 727(a)(6)(A) for failure to attend the first meeting of creditors. The parties have submitted the matter on briefs and affidavits. The court considers the matter fully submitted.

FACTUAL BACKGROUND

The debtors filed a petition for relief on February 2, 1987. On March 2, 1987 the undersigned ordered the debtors to appear at a section 341(a) meeting held at Council Bluffs, Iowa on March 17, 1987. The minutes of the meeting, prepared by the Chapter 7 trustee, Charles L. Smith, reveal that the debtors did not appear.

On March 24, 1987, then counsel for the debtors, Norman L. Springer, Jr., filed an application to withdraw as debtors' counsel. In his application, Mr. Springer stated that just prior to the meeting he became aware of the fact that this court had granted the debtors a bankruptcy discharge in 1982. The debtors did not list this bankruptcy on their schedules. Mr. Springer further stated in his application that Janet L. Wilson was unable to attend the meeting because of illness. Mr. Springer also asserted that contrary to his advice, Harold L. Wilson decided not to attend the meeting because he was convinced that the court would dismiss the case on account of the previous bankruptcy.

In an affidavit dated February 17, 1988, Harold L. Wilson disputes Mr. Springer's contentions. Mr. Wilson states that Mr. Springer advised him that because the court would dismiss the case it would not be necessary or beneficial for him to attend the meeting.

DISCUSSION

Summary judgment is proper where there is no genuine

issue as to any material fact and the moving party is entitled to judgment as a matter of law. Bankruptcy Rule 7056; Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987). The court must view the evidence in the light most favorable to the non-moving party and give the non-moving party the benefit of all reasonable inferences which may be made from the record. Fair v. Fulbright, 844 F.2d 567, 569 (8th Cir. 1988). Summary judgment is notoriously inappropriate for determination of claims in which the issue of intent plays a dominant role. Pfizer, Inc. v. International Rectifier Corp., 538 F.2d 180, 185 (8th Cir. 1976) cert. denied, 429 U.S. 1040, 97 S.Ct. 738, 50 L.Ed.2d 751 (1977).

The Mall argues it is entitled to summary judgment because the debtors failed to attend the section 341 meeting. The Mall contends that by failing to appear, the debtors violated a court order and, therefore, should be denied a discharge under 11 U.S.C. section 727(a)(6)(A), which provides:

(a) The court shall grant the debtor a discharge, unless-

....

(6) the debtor has refused, in the case--

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify.

The debtors maintain that summary judgment is inappropriate since a factual issue exists regarding intent. The

debtors argue that making a determination under section 727(c)(6)(A) requires the court to consider whether Mr. Wilson's actions were excusable or whether he intended to disobey the court's order. Specifically, the debtors point to Mr. Wilson's affidavit in which he states he did not appear at the hearing upon advice of his counsel.

To warrant denial of a discharge the failure to obey a court order must be willful and intentional and not due simply to inadvertence and mistake. Matter of Dowell, 61 B.R. 75, 78 (Bankr. W.D. Mo. 1986) remanded on other grounds, 73 B.R. 47 (W.D. Mo. 1987). Intent may be deduced from all the facts and circumstances of a case. See In re Devers, 759 F.2d 751, 754 (9th Cir. 1985) ("Because a debtor is unlikely to testify that his intent was fraudulent, the courts may deduce fraudulent intent from all the facts and circumstances of a case").

The court finds that a genuine issue of a material fact exists as to whether Harold L. Wilson intentionally and wilfully disobeyed the court's order to appear at the section 341 meeting. Mr. Wilson's intent only can be ascertained after carefully examining the facts and circumstances surrounding the case. The need for an evidentiary hearing is evident especially in light of the dispute between the parties regarding Mr. Springer's advice to Mr. Wilson on the day of the meeting.

#### CONCLUSION AND ORDER

WHEREFORE, based on the reasoning set forth above, the

court finds that a genuine issue of material fact exists in this case.

THEREFORE, the Mall's motion for summary judgment is denied.

Signed and dated this 25th day of July, 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE