

In re: Robbins, Barbara) Case No. 05-40334-EEB
 Debtor) Chapter 7
 Karen Dudnikov,)
 Michael Meadors) **RE: Adversarial Proceedings**
) **# 06-1225-EEB**
 vs
 Barbara Robbins
 Defendant

2006 APR 21 AM 11:31
 U.S. BANKRUPTCY COURT
 DISTRICT OF COLORADO
 ↑

MOTION TO DISMISS PLAINTIFF'S CLAIM WITH PREJUDICE

COMES NOW, Barbara A. Robbins, debtor pro se, and makes motion to this Court to have the adversarial proceeding currently at bar, namely File # 06-1225-EEB, dismissed with prejudice, and in support does hereby state and aver:

BACKGROUND INFORMATION

1. On October 7, 2005, Barbara Robbins, (Debtor) filed a voluntary petition for bankruptcy. It was assigned case number 05-40334-EEB.
2. On February 2, 2006, Karen Dudnikov and Michael Meadors (Plaintiffs) filed an adversarial proceeding with a Memorandum in Support. It was assigned case number 06-1225-EEB.
3. On March 2, 2006, Debtor filed a response to the complaint and a Response to the memorandum.

JURISDICTION

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. ss 157, 1334 and 1409 as well as FRBP 7001, and 11 U.S.C. ss 523. The United States District Court for the District of Colorado has jurisdiction to hear and decide this matter pursuant to 28 U.S.C. ss 1334 because this matter arises in and is related to a case filed under title 11, U.S.C.
5. This Court has subject matter jurisdiction to dismiss this claim as a result of the voluntary petition to this Court; whereby Debtor – in petitioning for protection from the court – submitted her financial matters to the discretion of this Court.

6. The claim at bar is a default (failure to defend) judgment; and as such is an interlocutory order that, alone, determines no rights or remedies. Interlocutory orders are left to the sound discretion of the court, which retains jurisdiction to modify or reconsider such orders prior to the entry of a final judgment. (Sumler v. District Court (Colo 1995)) (Battaglia v. Moore, (Colo. 1953))

CLAIMS AGAINST DEBTOR MUST BE PROVEN

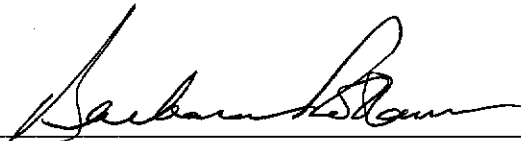
7. A default is appropriate as an affirmative relief against a party who has failed to plead or otherwise defend as provided for (CRCP 55). This Debtor did not fail to plead or defend, but was denied the opportunity to present evidence at hearing that would have eliminated the default.
 - a. A Summons was served upon this Debtor, signed by the Court on December 22, 2003, demanding this Debtor appear at a hearing on March 1, 2004. Actual hearing date was March 19, 2004. A careful review of the text indicates (at least to this Debtor) that the summons was tampered with prior to service on this Debtor. This Debtor makes no allegations as to who tampered with the document, whether it was the Defendant (Plaintiffs herein), their legal counsel, or the process server. The result was the same regardless, in that this Debtor appeared at the wrong date and time and was not notified of the correct date and time. This Debtor has no doubts about the intent of that act.
 - b. Plaintiffs indicate in their most recent response that this Debtor did appear in the Park County Courthouse on the day of March 1, 2004, and indicated that "the Court Clerk stated to Judge Mayhew that the clerk specifically told Ms. Robbins that the hearing date was March 19, 2004. That claim is false, and Plaintiffs knew it to be false when they made it. Hearsay evidence is of no value in these proceedings. The actual conversation went much differently, but is still hearsay.
 - c. If the above statement had actually been made by the Court Clerk, it still would not have fulfilled the requirement to notify. The rules of service and notification are specific; and though lenient, do not include casual conversations with clerks.
8. It is worth noting that the entry of default and the entry of a default judgment are separate and distinct. The entry of default merely establishes the defaulting party's liability. When a default has been entered, but damages have not been proven, there can be no final judgment. Thus, the entry of default is simply an interlocutory order that, alone, determines no rights or remedies. (Sumler v. District Court, Colo. 1995); (Kwik Way Stores, Inc v. Caldwell, (Colo App 1985))
9. Finality of judgment is a requisite of collateral estoppel (Michaelson v. Michaelson (Colo. 1994)), and where there is an interlocutory order (as in a failure to defend default judgment) there can be no finality of judgment and therefore it can never be a proven claim. Plaintiffs have never shown any validity to their claim(s) and no claims were ever proven.
10. Plaintiff's laundry list of costs is without any substantive documentation, merit, or grounds. The amounts appear to have been extracted from thin air, and are totally without merit.

11. No proof of claim, or any accompanying required documentation from Plaintiff, has been received by this Debtor, in violation of Title 11, Federal Rules of Bankruptcy Procedure, Rule 3001. Had a Proof of Claim been received, an objection would have been filed.
12. In accordance with the Federal Rules of Bankruptcy Procedures, a discharge should properly be granted, except on any of nine grounds by the Bankruptcy Court, and for a creditor, only for certain specific reasons (namely fraud), none of which exist in this case.

THIS evidence should clearly show that the Plaintiffs have no definite claim against this Debtor, and that the Plaintiffs have submitted no proof of any claim (other than a failure to appear default judgment). A verifiable and proven claim is essential to succeed in their attempt to deny the discharge of their claim, or the discharge of my bankruptcy petition.

WHEREFORE, this Debtor prays that after a careful review of the facts presented herein, this Honorable Court will find that the Plaintiffs have no true issue of fact, and have presented no grounds to deny the discharge or their debt, or any other debt. This Debtor prays that this Honorable Court dismiss the adversary case brought against this Debtor by the Plaintiffs and grant the discharge of the debts of this Debtor.

Respectfully submitted this 21st day of April, 2006.



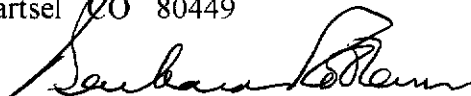
Barbara Robbins

1440 Main Street
Woodland Park CO 80863

Certificate of Service

I hereby certify that a copy of this response was mailed, postage prepaid, to the following address on April 21, 2006.

Karen Dudnikov
Michael Meadors
PO Box 87
Hartsel CO 80449



Barbara Robbins, pro se