

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

SHAWN BARTON,

Debtor.

Case No. 13-01124-SWD

Hon. Scott W. Dales

Chapter 7

JOHN A. POTTER, Chapter 7 Trustee,

Plaintiff,

v.

DEWAYNE RAYMOND BARTON,

Defendant.

Adversary Pro. No. 14-80091-SWD

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

The court held a hearing in Grand Rapids, Michigan, on June 25, 2014 to consider the Trustee's Motion for Entry of Default Judgment Permitting Sale (the "Motion," DN 5). The well-pleaded allegations within the complaint establish a right to relief under 11 U.S.C. § 363(f). Although the court neglected to inquire during the hearing, it appears from the Motion that the Defendant is not likely an infant or incompetent, nor is he in the military service.¹ In view of the Defendant's default, the court is prepared to authorize the Plaintiff to sell the Defendant's interest in the real estate at issue together with the estate's interest in the same property.

During the hearing, the court explained the benefits of the separate document rule expressed in Fed. R. Civ. P. 58, and the effect of complying with that rule on the time to appeal, the effectiveness of the judgment, and its finality. To recap, federal judgments must be set forth on a "separate document," essentially to avoid confusion about the deadline to appeal. *See* Fed. R. Civ. P. 58(a) (separate document rule, applicable in adversary proceedings under Fed. R. Bankr. P. 7058). In a case like the present, where

¹ In addition to preparing the separate document described below, Plaintiff shall file an affidavit or declaration under penalty of perjury satisfying the requirements of Fed. R. Civ. P. 55(a) and the Servicemembers Civil Relief Act. 50 U.S.C. App. §§ 501 *et seq.*

the rules require a separate document, the court's judgment is considered to be entered when the separate document is entered on the court's docket. *See* Fed. R. Civ. P. 58(c)(2) (time of entry); Fed. R. Bankr. P. 7058 (reference in Rule 58 to "civil docket" shall be read as referring to the bankruptcy docket under Fed. R. Bankr. P. 5003(a)).

The timing of the "entry" of the judgment is significant principally because the time to appeal runs from the "entry" of the judgment. *See* Fed. R. Bankr. P. 8002(a). If a separate document is required and entered, the appeal period in bankruptcy proceedings is generally 14 days. *Id.*; Fed. R. Civ. P. 58(c)(2)(A). If, however, a separate document is required but not entered, the time to appeal is 150 days, because the judgment is not regarded as "entered" until after that time. *See* Fed. R. Civ. P. 58(c)(2)(B). For practical reasons, therefore, a trustee whose authority to sell property depends upon an effective and final order would be wise to observe the separate document rule to foreclose an unhappy litigant from seeking to unwind a transaction undertaken in reliance on a temporarily vulnerable order.

For these reasons, and those set forth on the record during the hearing, the court will grant the Motion, but will require the Plaintiff to prepare an affidavit or declaration under 28 U.S.C. § 1746 to satisfy the Servicemembers Civil Relief Act. If the Defendant is not protected as a member of the military, the court will enter judgment on a separate document based on the court's Official Form B 261B.²

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 5) is GRANTED as provided herein.

IT IS FURTHER ORDERED that Plaintiff's counsel shall prepare and file an affidavit or declaration regarding the Defendant's military status within 21 days after entry of this Order.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Scott Hogan, Esq., and the United States Trustee.

² *See* Fed. R. Bankr. P. 9009. The propos

IT IS SO ORDERED.

Dated June 29, 2014



A handwritten signature in black ink, appearing to read "S. Dales".

Scott W. Dales
United States Bankruptcy Judge