

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re:)
)
FREDERICK COOPER and) Case No. 6:11-bk-05364-KSJ
KAREN COOPER,) Chapter 7
)
Debtors.)
_____)

MICHAEL EASLICK and)
HUDA EASLICK, Individually, and)
derivatively on behalf of 407 CUSTOM)
SUPER STORE, INC.,)
)
Plaintiffs,)
vs.) Adversary No. 6:11-ap-00139-KSJ
)
FREDERICK COOPER and)
KAREN COOPER,)
)
Defendants.)
_____)

**ORDER PARTIALLY GRANTING PLAINTIFF'S
MOTION TO STRIKE DEFENDANTS' AFFIRMATIVE DEFENSES**

Plaintiffs, Michael and Huda Easlick, assert that the Debtors, Frederick and Karen Cooper, owe them \$465,000 in connection with the Plaintiffs' purchase of a 50% ownership interest in the Debtors' business, 407 Custom Super Store ("CSS"), and that the debt is not dischargeable under § 523(a)(2)(A), (a)(2)(B), (a)(4), and (a)(6) of the Bankruptcy Code.¹ Plaintiffs also assert that the Debtors are not entitled to receive a discharge.² Debtors deny these

¹ References to the Bankruptcy Code refer to 11 U.S.C. Section 101, *et seq.*

² Doc. No. 1.

allegations and assert 18 affirmative defenses.³ Plaintiffs now have moved to strike all of the Defendants' affirmative defenses claiming either that they are legally insufficient or constitute general denials.⁴

In opposition to the Motion to Strike, the Defendants first argue that the motion was untimely. Generally, a party must file a motion to strike affirmative defenses within 21 days after service of the pleading containing the affirmative defenses.⁵ Although the Court agrees that the motion to strike is untimely by ten days,⁶ the Court regardless will consider the merits of the motion because Rule 12(f) allows the Court *sua sponte* to strike matters in a pleading at any time.⁷ Further, the Defendants have failed to allege, and the Court cannot find, any prejudice to the Defendants resulting from the Plaintiffs' slight, 10-day delay in filing its motion to strike.

Turning to a consideration of the merits of the Plaintiffs' Motion to Strike, Federal Rule of Civil Procedure 8(c)⁸ enumerates a non-exhaustive list of affirmative defenses and states in pertinent part:

In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, *res judicata*, statute of frauds, statute of limitations, and waiver.

Rule 12(f) further provides that the Court may order that any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter may be stricken from a pleading. An

³ Doc. No. 50.

⁴ Doc. No. 51.

⁵ Fed. R. Civ. P. 12 (f)(2); Made applicable by Fed. R. Bankr. P. 7012.

⁶ The Defendants served their answer to the Plaintiffs on June 29, 2012. The Plaintiffs filed their motion to strike on July 30, 2012, 31 days after receipt of the affirmative defenses.

⁷ *United States v. Walerko Tool & Eng'g Corp.*, 784 F. Supp. 1385, 1387 (N.D. Ind. 1992) (holding that Rule 12(f) allows the court on its own motion to strike matters in a pleading and thus the court may decide the merits of the motion to strike even if the motion is untimely); *Washington v. M/V Dilkara*, 470 F. Supp 437, 439 (W.D. Wash. 1979) (holding that under Rule 12(f), the Court at any time, on its own initiative, may order stricken any insufficient defense).

⁸ Made applicable by Fed. R. Bankr. P. 7008.

affirmative defense is insufficient as a matter of law only if “it appears that the defendant cannot succeed under any set of facts which it could prove.”⁹ “To the extent that a defense puts into issue relevant and substantial legal and factual questions, it is ‘sufficient’ and may survive a motion to strike, particularly when there is no showing of prejudice to the movant.”¹⁰

The Court specifically finds that 17 of the Defendants’ 18 affirmative defenses (1-17)¹¹ are either valid affirmative defenses or may be treated as general denials. Several of the defenses argue that the Plaintiffs have failed to state a claim. Although the Defendants could have asserted a general denial as opposed to asserting an affirmative defense,¹² Rule 12(f) should not be used to police the form of a pleading or to correct any erroneous designations.¹³ Thus, the Court denies the Plaintiffs’ motion to strike as to these affirmative defenses (1-17).

As to the last remaining “defense”, the Defendants’ 18th affirmative defense is merely an attempt by the Defendants to reserve the right to add new, undefined affirmative defenses in the future. A reservation of rights to make future amendments to a filed pleading is not a proper affirmative defense¹⁴ or a general denial.¹⁵ Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading *only* with the opposing party’s written consent or the court’s leave.”¹⁶ Any further additions to the Defendants’ already lengthy list of affirmative defenses

⁹ *Reyher v. Trans World Airlines, Inc.*, 881 F. Supp. 574, 576 (M.D. Fla.1995).

¹⁰ *Harvey v. Home Depot U.S.A., Inc.*, 2005 WL 1421170, at *1 (M.D. Fla. June 17, 2005) (citing *Reyher v. Trans World Airlines, Inc.*, 881 F. Supp. 574, 576 (M.D. Fla.1995)).

¹¹ Doc. No. 50 at 6-9.

¹² *F.T.C. v. Hang-Ups Art Enters., Inc.*, 1995 WL 914179, at *6 n. 5 (C.D. Cal. Sept. 27, 1995)

¹³ *United States v. Shuster*, 11 F.R.D. 151, 152 (D. Neb. 1950) (holding Rule 12(f) may not be used to strike a general denial).

¹⁴ *Avocent Redmond Corp. v. United States*, 85 Fed. Cl. 724, 726 (Fed. Cl. 2009).

¹⁵ *See Underwriters at Lloyd’s, London and London Market Ins. Cos., etc. v. Taylor Bean & Whitaker Mortgage Corp., et al.*, Adversary Proceeding No. 3:10-ap-243-JAF in Case No. 3:09-bk-7047-JAF (striking as redundant the defendant’s affirmative defense “expressly reserving all other applicable affirmative defenses.”).

¹⁶ Fed. R. Civ. P. 15 (a)(2) (emphasis added).

will be by motion, notice, hearing, and court order. The Plaintiffs' Motion to Strike is partially granted only to the extent that the 18th Affirmative Defense is stricken.

Accordingly, it is

ORDERED:

1. Plaintiffs' Motion to Strike the Defendants' Affirmative Defenses (Doc. No. 51) is partially granted.
2. Defendants' 18th Affirmative Defense is stricken.
3. Plaintiffs' Motion to Strike (Doc. No. 51) is denied as to all other affirmative defenses (1-17).

DONE AND ORDERED in Orlando, Florida, on September 19, 2013.



KAREN S. JENNEMANN
Chief United States Bankruptcy Judge