

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
Denise Coury,) Case No. 6:19-bk-05959-KSJ
) Chapter 7
Debtor.)
_____)
)
Lakeview Village Corporation)
and Jabel Holding, LLC,)
)
)
)
Plaintiffs,)
)
vs.)
) Adversary No. 6:19-ap-00367-KSJ
Denise Coury,)
)
Defendant.)
)
_____)

ORDER GRANTING DEFENDANT’S SECOND AMENDED MOTION TO DISMISS

Defendant and Debtor, Denise Coury, *again* seeks to dismiss this adversary proceeding in her Second Amended Motion to Dismiss Plaintiffs’ Amended Complaint.¹ Lakeview Village

¹ Doc. No. 22.

Corporation and Jabel Holdings, LLC (“Plaintiffs”) filed this Adversary Proceeding² generically objecting to Debtor’s discharge in undefined counts under 11 U.S.C. §§ 523 and 727.³ Defendant, rightfully, filed her first motion to dismiss,⁴ which the Court granted, dismissing the adversary proceeding with leave for the Plaintiffs to amend their complaint.⁵ Plaintiffs timely filed an Amended Complaint, but failed to correct their pleading errors.⁶ Defendant again alleges Plaintiffs fail to specifically and sufficiently plead the requisite elements of a § 523 or 727 cause of action in the Amended Complaint.⁷ The Court agrees but will give the Plaintiffs one final chance to properly amend their complaint.

The basis for the Defendant’s Motion is Rule 12(b)(6) of the Federal Rules of Civil Procedure.⁸ Rule 12(b)(6) provides that before an answer is filed a defendant may seek dismissal of a complaint if the complaint fails to state a claim. Disposition of a motion to dismiss under Rule 12(b)(6) focuses only upon the allegations in the complaint and whether those allegations state a claim for relief. In reviewing a motion to dismiss, courts must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff.⁹ Dismissal is appropriate under Rule 12(b)(6) if the plaintiff “fails to articulate claims with sufficient clarity to enable defendants to properly frame a response.”¹⁰

² Doc. No. 1. The adversary proceeding was filed on December 16, 2019.

³ All references to the Bankruptcy Code are to 11 U.S.C. § 101 et seq.

⁴ Doc. No. 8.

⁵ Doc. No. 15. Defendant filed a Motion to Dismiss Adversary Proceeding (Doc. No. 8). Plaintiffs filed a Consent to Dismissal (Doc. No. 13), and stated they “would agree to entry of an order dismissing with leave to amend, or to provide a more definitive statement, as the court might deem appropriate.”

⁶ Doc. No. 17.

⁷ Plaintiffs filed a Response to Defendant’s Motion (Doc. No. 24).

⁸ Rule 12(b)(6) is made applicable in adversary proceedings by virtue of Bankruptcy Rule 7012.

⁹ *Financial Security Assur., Inc. v. Stephens, Inc.*, 450 F.3d 1257, 1262 (11th Cir. 2006).

¹⁰ *Cream v. McIver*, Case No. 2:15-cv-113-FtM-29CM, 2015 WL 2168946 at *1 (May 8, 2015 M.D. Fla. 2015). *See also Estate of Bass v. Regions Bank, Inc.*, 947 F.3d 1352, 1358 (11th Cir. 2020). It is not the court’s responsibility to parse out unclear allegations. A court may instruct counsel to replead the case – even if the other party does not move the court to strike the pleading.

Plaintiffs' Amended Complaint¹¹ falls far short of the pleading standard for causes of action under § 523 or § 727 of the Bankruptcy Code. Plaintiffs include a great amount of detail regarding Defendant's alleged actions in the Amended Complaint; however, it is impossible to understand how those factual allegations support a claim under the Bankruptcy Code. No counts are included. Elements are not pled to support relief under *any* provision of the Bankruptcy Code. It appears Plaintiffs merely copied allegations from a state court action without even attempting to articulate why the alleged debt would not be discharged or the Debtor not entitled to a discharge under § 523 or § 727 of the Bankruptcy Code. The Court cannot make sense of the allegations; and the Defendant cannot properly form a response to Plaintiffs' shotgun allegations. The Amended Complaint does not satisfy the basic pleading requirements of Federal Rule of Civil Procedure 8.¹² But, the Court will give the Plaintiffs one last chance to fix this pleading error.

To survive dismissal, Plaintiffs must separate their complaint into specific counts, cite particular subsections of the Bankruptcy Code, list the necessary elements, and articulate how Defendant's alleged misconduct prevents the issuance of a discharge or the discharge of the Plaintiffs' debt under specific subsections of the Bankruptcy Code.¹³ Plaintiffs' counsel may wish to consult with a colleague specializing in bankruptcy to draft an adequate complaint.

Accordingly, it is

ORDERED:

1. The Defendant's Second Amended Motion to Dismiss (Doc. No. 22) is **Granted**.
2. Plaintiffs are directed, if desired, to file a second amended complaint by **June 19, 2020**.

¹¹ Doc. No. 17.

¹² Fed. R. Civ. P. 8(a)(2). A pleading must contain "a short and plain statement of the claim showing the pleader is entitled to relief."

¹³ See Fed. R. Civ. P. 10; *Cream*, 2015 WL at *3. A pleading separated into specific counts supports the orderly and efficient disposition of disputes.

3. If Plaintiffs fail to timely file a second amended complaint, this adversary proceeding will be dismissed with prejudice. And, if the second amended complaint contains similar pleading deficiencies, the Court *sua sponte* will dismiss this adversary proceeding with prejudice. **No further amendments will be permitted.**
4. A further pretrial conference using the Court's telephonic appearance procedures is set for **11:00 a.m. on June 24, 2020.**

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Attorney K. Hunter Goff is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.