

**ORDERED.**

**Dated: April 28, 2023**

  
Tiffany P. Geyer  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

2 Monkey Trading, LLC, and  
Lucky Shot USA, LLC,

Case No. 6:22-bk-04099-TPG  
Chapter 11

Debtors.

BenShot, LLC,

Plaintiff,

Adversary No. 6:23-ap-00007-TPG

v.

2 Monkey Trading, LLC, and  
Lucky Shot USA, LLC,

Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS AMENDED COMPLAINT FOR  
FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6)**

On February 13, 2023, Plaintiff, BenShot, LLC, filed a Complaint (Doc. No. 1) commencing this adversary proceeding against Defendants, 2 Monkey Trading, LLC and Lucky Shot USA, LLC, which Plaintiff subsequently amended on February 14, 2023 (Doc. No. 3). Defendants filed a motion to dismiss (Doc. No. 5), arguing that both the initial Complaint (and

thus the Amended Complaint) are untimely (“the Motion”) under Federal Rule of Bankruptcy Procedure 4007(c). (Doc. No. 5.) Plaintiff filed a Response (Doc. No. 6) to the Motion, Defendants filed a Reply (Doc. No. 12), and a hearing was held on April 19, 2023 (Doc. No. 15). Because a factual issue exists regarding whether Plaintiff reasonably relied upon the deadline for filing a complaint under 11 U.S.C. § 523 as set forth in the Notices of Commencement issued by the Clerk in Defendants’ bankruptcy cases<sup>1</sup> when Rule 4007(c) established a different (and earlier) deadline, the Court determined an evidentiary hearing was necessary (Doc. No. 15).

In addition to untimeliness, however, Defendants argue that the Amended Complaint must be dismissed for failing to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) as made applicable here by Federal Rule of Bankruptcy Procedure 7012. (Doc. No. 5 at 4-9.) Specifically, Defendants argue that because the only count Plaintiff asserts is pursuant to 11 U.S.C. § 523(a)(6), the Amended Complaint is due to be dismissed because such a cause of action can only be maintained against an individual debtor/defendant, and here both Debtors/Defendants are limited liability companies. (*Id.*) “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.” Fed. R. Civ. P. 12(b)(6); *MacQuarrie v. JPMorgan Chase Bank, N.A., et al. (In re MacQuarrie)*, Ch. 7 Case No. 6:14-BK-13112-KSJ, Adv. No. 6:16-ap-00114-KSJ, 2017 WL 3172807, at \*1 (Bankr. M.D. Fla. July 26, 2017). In reviewing a motion to dismiss under Rule 12(b)(6), the court reviews only the allegations in the complaint, which the court must accept as true and construe in the light most favorable to the plaintiff. *Brophy v. Jiangbo Pharm., Inc.*, 781 F.3d 1296, 1301 (11th Cir. 2015). A complaint can be dismissed without leave to amend if an amended complaint would still be properly dismissed or

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<sup>1</sup> Case No. 6:22-bk-04099-TPG, Doc. No. 13 at 2; Case No. 6:22-bk-04100-TPG, Doc. No. 15 at 2.

immediately subject to summary judgment for the defendant. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007) (citing *Hall v. United Ins. Co. Of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004)).

A few days prior to the hearing on the Motion, Defendants filed a Notice of Supplemental Authority (Doc. No. 13), citing a recent decision issued by Judge Jason A. Burgess in *Nutrien Ag Solutions, Inc. v. Hall, et al. (In re Hall)*, Ch. 11 Case No. 3:22-bk-01326-BAJ, Ch. 11 Case No. 3:22-bk-01341-BAJ, Adv. No. 3:22-AP-00062-BAJ, 2023 WL 2927164 (Bankr. M.D. Fla. Apr. 13, 2023), in which Judge Burgess squarely addressed the same issue before this Court—whether the § 523(a) discharge exceptions apply only in Subchapter V cases filed by individual debtors, or also in Subchapter V cases filed by corporate debtors that receive a discharge under § 1192. *Hall*, No. 3:22-AP-00062-BAJ, 2023 WL 2927164, at \*1. Judge Burgess examined the decisions of the handful of other bankruptcy courts to visit this emerging issue, each of which concluded that the § 523(a) discharge exceptions do *not* apply in Subchapter V cases filed by corporate debtors that receive a discharge under § 1192.<sup>2</sup> *Id.* at \*3. He also examined, and rejected, the reasoning of a decision of the Fourth Circuit Court of Appeals in *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 514 (4th Cir. 2022), which ruled that the § 523(a) exceptions to discharge *do* apply to corporations receiving a discharge under § 1192. *Hall*, No. 3:22-AP-00062-BAJ, 2023 WL 2927164, at \*3-4. This Court agrees with and adopts Judge Burgess’s analysis of the Fourth Circuit’s decision in *Cleary*.

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<sup>2</sup> *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, 647 B.R. 337, 344 (Bankr. W.D. Tex. 2022), motion to certify appeal granted, No. 22-50403-CAG, 2023 WL 1768414 (Bankr. W.D. Tex. Feb. 3, 2023); *Jennings v. Lapeer Aviation, Inc. (In re LaPeer Aviation, Inc.)*, No. 21-31500-JDA, Adv. No. 22-03002, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022); *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *Gaske v. Satellite Rests. Inc. (In re Satellite Rests. Inc.)*, 626 B.R. 871 (Bankr. D. Md. 2021).

In siding with the bankruptcy courts on this issue, Judge Burgess relied upon the longstanding rules of statutory construction. *Id.* at \*3-4. When Congress created Subchapter V through the Small Business Act of 2019, it amended § 523(a) to incorporate a reference to 1192 and now states, “A discharge under section 727, 1141, 1192[,] 1228(a), 1228(b), or 1328(b) of this title does not discharge an *individual* debtor from any debt” and lists nineteen such exceptions. 11 U.S.C. § 523(a) (emphasis added). “If Congress intended for § 523(a) exceptions to apply to corporations receiving a discharge under § 1192, th[e] addition [of the reference to § 1192] was unnecessary.” *Hall*, No. 3:22-AP-00062-BAJ, 2023 WL 2927164, at \*3 (citing *GFS Indus.*, 647 B.R. at 343). Indeed, § 1192(2) compels the reader to examine § 523(a), which, as noted above, expressly does not discharge an *individual* debtor from certain enumerated debts and is silent about corporate debtors.

Based on Judge Burgess’s decision in *Hall* and the same conclusions reached by other bankruptcy courts, the Court agrees with Defendants that the Amended Complaint must be dismissed. *See GFS Indus.*, 647 B.R. at 344 (“[T]he statutory language along with the broader Chapter 11 statutory scheme mandate this Court’s holding that corporate debtors proceeding under Subchapter V cannot be made defendants in § 523 dischargeability actions.”); *Lapeer Aviation*, No. 21-31500-JDA, 2022 WL 1110072, at \*2 (holding that because a corporate defendant proceeding under Subchapter V is “not an individual debtor, actions under § 523(a) are not applicable to it[.]”); *Rtech Fabrications*, 635 B.R. at 566 (finding “that § 523(a)’s discharge exceptions only apply to an individual debtor and § 1192(2)’s reference to § 523(a) does not expand its applicability to entity debtors[.]”); *Satellite Rests.*, 626 B.R. at 873 (holding that § 523(a) applies only to individuals, and not to corporations proceeding under Subchapter V).

Because Defendants are limited liability corporations, the exceptions to discharge in § 523(a) do not apply. Therefore, the Amended Complaint is dismissed for failure to state a claim, mooted the issue of whether the complaints were untimely. The evidentiary hearing set for July 12, 2023, to determine the factual issue of whether Plaintiff reasonably relied upon the Clerk's Notices of Commencement to establish the complaint deadline versus Rule 4007(c) is cancelled.

Accordingly, it is **ORDERED** as follows:

1. The Motion (Doc. No. 5) is **GRANTED**;
2. The Amended Complaint is **DISMISSED WITH PREJUDICE**; and
3. The evidentiary hearing scheduled for July 12, 2023, is **CANCELLED**.

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The Clerk is directed to serve a copy of this order on all interested parties.