

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:14-bk-809-PMG

Vincent Lawrence Marino,

Debtor.

Chapter 7

Sunseeker Investments, Inc.,

Plaintiff,

vs.

Adv. No. 3:14-ap-211-PMG

Vincent Lawrence Marino,

Defendant.

**ORDER ON MOTION TO DISMISS ADVERSARY PROCEEDING COMPLAINT
OF SUNSEEKER INVESTMENTS, INC.**

THIS CASE came before the Court for hearing to consider the Motion of the Debtor, Vincent Lawrence Marino, to Dismiss Adversary Proceeding Complaint of Sunseeker Investments, Inc. (Sunseeker).

In this case, Sunseeker seeks a determination that a debt owed by the Debtor to Sunseeker is not dischargeable, because the Debtor falsely valued two solely-owned corporations on his bankruptcy schedules, and because the Debtor falsely stated his income on his schedules.

The grounds alleged by Sunseeker do not fall within the exceptions to dischargeability set forth in §523(a) of the Bankruptcy Code, and the Complaint may not be amended to assert a claim for denial of the Debtor's discharge under §727(a). Additionally, the Complaint does not state a claim for dismissal of the Debtor's Chapter 7 case for "cause" under §707(a), because it is based exclusively or primarily on conduct that is redressed by another section of the Bankruptcy Code. Consequently, Sunseeker's Complaint should be dismissed.

Background

The Debtor, Vincent Lawrence Marino, filed a petition under Chapter 7 of the Bankruptcy Code on February 24, 2014.

On his schedule of assets, the Debtor listed a 100% ownership interest in two entities known as Vinco, Inc. and Best Affordable Contractors, LLC. According to the schedules, the value of the Debtor's interest in the entities was "\$0.00."

On his schedule of liabilities, the Debtor listed Sunseeker Investments, Inc. as a creditor holding an unsecured claim in the amount of \$428,527.63. (Main Case, Doc. 17).

On May 27, 2014, Sunseeker filed a Complaint to Dismiss Chapter 7 Bankruptcy and "for Dischargeability of Debt." (Doc. 1). In the Complaint, Sunseeker alleges that it is a creditor of the Debtor, and that it had sued the Debtor in state court prior to the filing of the bankruptcy petition.

Sunseeker also alleges in its Complaint that Best Affordable Contractors, LLC, one of the Debtor's solely-owned companies, posted adjusted gross profits of \$305,343.22 in 2013, and deposited the sum of \$86,000.00 into a bank account in January and February of 2014. (Complaint, ¶¶ 16, 17). According to Sunseeker, the Debtor was aware of the income and deposits, but falsely scheduled the

value of Best Affordable as “\$0.00” in his bankruptcy case. Further, Sunseeker also alleges that the Debtor “grossly understated” his income on his bankruptcy schedules.

Consequently, Sunseeker asks the Court to dismiss the Debtor’s Chapter 7 bankruptcy case, and to “determine Sunseeker’s debt owed by Debtor is not dischargeable.” (Complaint, p. 3).

The Debtor filed a Motion to Dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 5).

Discussion

Under §727(a) of the Bankruptcy Code, an individual Chapter 7 debtor is entitled to a discharge of his prepetition debts, unless a creditor, trustee, or United States trustee establishes one of the specified grounds for denial of his discharge. If a debtor is entitled to a general discharge under §727(a), certain particular debts may nevertheless be excepted from the general discharge pursuant to §523(a) of the Bankruptcy Code. In re Coley, 433 B.R. 476, 486 (Bankr. E.D. Penn. 2010).

The grounds to challenge the dischargeability of a particular debt under §523(a) are very different from the grounds set forth in §727(a) to challenge a debtor’s entitlement to his general discharge. Korman v. Eaglebank, 2013 WL 3816987, at 3 (D. Md.); In re Zemek, 2013 WL 4677879, at 4 n.5 (Bankr. N.D. Miss.).

The grounds to deny a debtor’s discharge under §727(a) generally relate to conduct of the debtor that affects all creditors. In re Hass, 273 B.R. 45, 49 (Bankr. S.D.N.Y. 2002). Such grounds include, for example, the debtor’s fraudulent transfer of property of the estate, or the debtor’s failure to produce information from which his financial condition can be determined. 11 U.S.C. §727(a)(2),(3).

The grounds to determine the dischargeability of a particular debt under §523(a), on the other hand, generally relate to the specific claim that is the subject of the challenge. In re Hass, 273 B.R. at

49. Debts that are nondischargeable under §523(a), for example, include debts that were incurred as a result of the debtor's fraudulent conduct, or debts that were incurred as a result of the debtor's willful and malicious injury to another entity. 11 U.S.C. §§523(a)(2),(4),(6).

A. Section 523

In this case, Sunseeker's Complaint does not refer to any specific section of the Bankruptcy Code. The Complaint is based on the factual allegations that the Debtor is the sole owner of two business entities, that the Debtor falsely valued the entities at "\$0.00" on his schedules, that the Debtor knew that the values were false as of the petition date, and that the Debtor falsely stated his income on his schedules. (Doc. 7, p. 2).

The Complaint does not state a claim to determine the dischargeability of the particular debt owed to Sunseeker for at least two reasons. First, the allegations in the Complaint are not related to the particular debt owed by the Debtor to Sunseeker. In other words, the debt claimed by Sunseeker was not incurred as a result of the Debtor's allegedly false bankruptcy schedules, as asserted in the Complaint, but is instead based on the Debtor's prepetition conduct as asserted in the prior state court action. And second, the filing of false schedules by a debtor is not listed in §523(a) as a basis to determine the dischargeability of a particular debt. See 11 U.S.C. §523(a)(1)-(a)(19).

The grounds alleged by Sunseeker do not fall within the exceptions to dischargeability set forth in §523(a) of the Bankruptcy Code.

B. Section 727

The filing of false schedules may constitute grounds to deny a debtor's general discharge as a "false oath or account" within the meaning of §727(a)(4) of the Bankruptcy Code. See In re Reis, 372 B.R. 521, 525 (Bankr. S.D. Fla. 2007).

To state a claim for denial of a debtor's discharge under §727(a), however, the request must be asserted before the deadline for filing such actions has expired. Fed.R.Bankr.P. 4004(In a Chapter 7 case, a complaint objecting to the debtor's discharge "shall be filed" no later than sixty days after the first date set for the creditors' meeting.).

Further, if a §727(a) claim is insufficiently pled, the creditor may not amend the complaint to assert the claim after the deadline has passed. See In re Caldwell, 2004 WL 4960380, at 6 (Bankr. D. Idaho)(A creditor could not amend his §523 complaint to object to the debtor's discharge, where the original complaint made only a "passing reference" to §727, and did not adequately notify the debtor that the creditor was seeking denial of his discharge.)

In this case, the caption of the Complaint indicates that it is an action to dismiss the Debtor's bankruptcy case, or "for dischargeability of debt." In the request for relief, Sunseeker asks the Court to dismiss the case, or to "determine Sunseeker's debt owed by Debtor is not dischargeable." The Complaint expressly seeks a determination of nondischargeability as to the particular debt owed to Sunseeker. (See also Transcript, p. 13)("What we're asking for is clear, the nondischargeability of Sunseeker.")

The Complaint does not refer to §727 of the Bankruptcy Code, and does not seek the denial of the Debtor's general discharge. Even though the Complaint alleges that the Debtor filed false schedules, the Court finds that it does not provide the Debtor with adequate notice that Sunseeker was objecting to the Debtor's right to a discharge pursuant to §727(a).

The deadline to file an action to deny the Debtor's discharge under §727(a) was May 27, 2014. (Main Case, Doc. 11). Consequently, Sunseeker's Complaint may not be amended to assert an action

to deny the Debtor's discharge, because no such claim under §727(a) was asserted before the deadline expired.

C. Section 707(a)

Finally, Sunseeker's Complaint includes a request to dismiss the Debtor's Chapter 7 case based on his "bad faith" in falsely scheduling his assets and income. The Complaint does not cite any provision of the Bankruptcy Code as a basis for the request. Section 707(a), however, provides that a Chapter 7 case may be dismissed for "cause." 11 U.S.C. §707(a).

As indicated above, Sunseeker's Complaint is based on the allegations that the Debtor filed false schedules, which may constitute grounds to deny a debtor's discharge under §727(a)(4) of the Bankruptcy Code.

Where the Bankruptcy Code provides a specific remedy for misconduct, a Court may not dismiss a Chapter 7 case under the more general "cause" standard based exclusively or primarily on that conduct.

In re Quinn, 490 B.R. 607, 617 (Bankr. D.N.Mex. 2012)(citing In re Padilla, 222 F.3d 1184, 1192 (9th Cir. 2000)). "[W]hen analyzing whether a Chapter 7 debtor is guilty of bad faith constituting cause for dismissal under §707(a), the court should not consider conduct that is redressed by other portions of the Bankruptcy Code." In re Tallman, 397 B.R. 451, 460 (Bankr. N.D. Ind. 2008)(quoted in In re Kane & Kane, 406 B.R. 163, 169 (Bankr. S.D. Fla. 2009)).

In this case, the specific remedy provided by the Bankruptcy Code for filing false or fraudulent schedules is the denial of the debtor's discharge under §727(a)(4). Consequently, Sunseeker's Complaint should be dismissed to the extent that it seeks dismissal of the Debtor's Chapter 7 case for "cause" under §707(a) of the Bankruptcy Code, based on the Debtor's bad faith in filing allegedly false bankruptcy schedules.

Conclusion

Sunseeker seeks a determination that a debt owed by the Debtor to Sunseeker is not dischargeable, because the Debtor falsely valued two solely-owned corporations on his bankruptcy schedules, and because the Debtor falsely stated his income on his schedules.

The grounds alleged by Sunseeker do not fall within the exceptions to dischargeability set forth in §523(a) of the Bankruptcy Code, and the Complaint may not be amended to assert a claim for denial of the Debtor's discharge under §727(a) of the Bankruptcy Code. Additionally, the Complaint does not state a claim for dismissal of the Debtor's Chapter 7 case for "cause" under §707(a), because it is based exclusively or primarily on conduct that is redressed by another section of the Bankruptcy Code. Consequently, Sunseeker's Complaint should be dismissed.

Accordingly:

IT IS ORDERED that the Motion of the Debtor, Vincent Lawrence Marino, to Dismiss Adversary Proceeding Complaint of Sunseeker Investments, Inc. is granted, and the Complaint of Sunseeker Investments, Inc. for Dischargeability of Debt is dismissed.

DATED this 19th day of NOVEMBER, 2014.

BY THE COURT

Paul M. Glenn
PAUL M. GLENN
United States Bankruptcy Judge