

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

In re:

Case No. 3:11-bk-8847-PMG

Clark David Geissmann,

Debtor.

Chapter 7

Stephanie Smith,

Plaintiff,

vs.

Adv. No. 3:12-ap-218-PMG

Clark David Geissmann, Jr.,

Defendant.

Clark David Geissmann, Jr.

Counterplaintiff,

vs.

Stephanie E. Smith,

Counterdefendant.

ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS

THIS CASE came before the Court to consider the Motion for Judgment on the Pleadings filed by the Debtor, Clark David Geissmann.

The Plaintiff, Stephanie Smith, commenced this proceeding by filing a Complaint Objecting to Discharge of Debtor. The Debtor answered the Complaint, and filed a Counterclaim against the Plaintiff for willful violation of the automatic stay. In the Motion for Judgment on the Pleadings, the

Debtor seeks a judgment in his favor on the Plaintiff's Complaint to deny his discharge, and also on his Counterclaim against the Plaintiff for violation of the stay.

The standard for evaluating a Motion for Judgment on the Pleadings is virtually the same as the standard for evaluating a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In this case, therefore, the Court has considered the Complaint in the light most favorable to the Plaintiff, and finds that the Plaintiff has not alleged sufficient facts to state a claim for denial of the Debtor's discharge that is plausible on its face. Consequently, the Debtor's Motion for a judgment in his favor should be granted as to the Complaint.

The Motion should be denied, however, as to the Debtor's Counterclaim. The Court has considered the Counterclaim and the Plaintiff's Answer to the Counterclaim in the light most favorable to the Plaintiff, as the non-moving party, and finds that the Plaintiff should be permitted to offer evidence to show that her alleged violation of the stay was not willful.

I. Background

The Debtor filed a petition under Chapter 7 of the Bankruptcy Code on December 7, 2011. He is the owner and operator of a business known as Seaside Electrical Contractors, Inc.

The Plaintiff is the former wife of the Debtor, and was listed on the Debtor's schedule of liabilities as a creditor holding a judgment debt in the amount of \$8,573.48. On March 12, 2012, the Plaintiff filed a document entitled Complaint Objecting to Discharge of Debtor. The Complaint contains the following allegations:

1. The Debtor has mixed his business expenses and bank accounts with his personal expenses and bank accounts.

2. The Statement of Financial Affairs and Schedules filed by the Debtor do “not seem to be an accurate assessment [sic] of debtor’s finances.” Specifically, the Debtor’s actual income and “cash on hand” are greater than the income and cash listed on his schedules.

3. The Debtor refinanced his vehicle “after a lien judgement [sic] had already been placed on property.”

4. The Debtor omitted certain credit card accounts totaling \$58,424.96 from his schedule of liabilities.

The Complaint is not divided into separate counts or causes of action, and does not refer to any specific section of the Bankruptcy Code as a basis for denial of the Debtor’s discharge.

The Debtor filed an Answer and Affirmative Defenses to the Complaint, and denies all of the Plaintiff’s allegations. (Doc. 18).

The Debtor’s Answer to the Complaint is combined with a Counterclaim against the Plaintiff. (Doc. 18, p. 4). In the Counterclaim, the Debtor alleges that the Plaintiff willfully violated the automatic stay of §362 of the Bankruptcy Code by filing and prosecuting a Motion for Civil Contempt in the Circuit Court for Duval County, Florida after she had received actual notice of his bankruptcy case. Consequently, the Debtor seeks an award of actual and punitive damages against the Plaintiff pursuant to §362(k) of the Bankruptcy Code. (Doc. 22).

The Plaintiff filed an Answer to the Counterclaim, and alleges that she had not yet received notice of the Debtor’s bankruptcy case at the time that she filed the Motion for Contempt in state court, and that any actions taken after she had knowledge of the case were processing entries by the clerk’s office. (Doc. 33).

II. The Motion for Judgment on the Pleadings

The Debtor has filed a Motion for Judgment on the Pleadings, and seeks a judgment in his favor on the Plaintiff's Complaint to deny his discharge, and also on his Counterclaim against the Plaintiff for willful violation of the stay. (Doc. 43).

With respect to the Complaint, the Debtor asserts that he is entitled to a judgment in his favor because the Plaintiff has failed to allege any particular facts to state a cause of action under §727(a) of the Bankruptcy Code. According to the Debtor, for example, the Plaintiff does not allege that certain financial circumstances existed as of the petition date, even though she alleges that the circumstances existed in 2009, approximately two years before the bankruptcy case was filed. Such financial circumstances include the mingling of his business and personal expenses, the liability on his credit card accounts, and the excess or undisclosed personal income.

Additionally, according to the Debtor, the Complaint alleges circumstances that, even if true, do not state a cause of action under §727(a). These circumstances include the mingling of accounts, the payment of suppliers with cash, and the failure to report cash received from his electrical contracting jobs. (Doc. 43, pp. 5-7).

With respect to the Counterclaim, the Debtor contends that he is entitled to a judgment in his favor because the Plaintiff filed at least one pleading in the state court action after she admittedly had knowledge of the Debtor's bankruptcy case. According to the Debtor, for example, a Motion for Income Deduction Order was signed by the Plaintiff and filed in the state court action on January 17, 2012, even though the Plaintiff acknowledges in her Answer to the Counterclaim that she learned of the Debtor's Chapter 7 case before January 12, 2012. (Doc. 43, Exhibit B). Consequently, the Debtor asserts that the Counterclaim and Answer to Counterclaim show that the Plaintiff willfully violated the

automatic stay, and that he is entitled to an award of actual and punitive damages as a result of the willful violation.

The Plaintiff has filed an Objection to the Debtor's Motion for Judgment on the Pleadings. (Doc. 49). In the Objection, the Plaintiff generally refers to a number of matters that are outside the scope of the Complaint and Counterclaim.

III. The standard under Rule 12(c)

The Debtor filed the Motion for Judgment on the Pleadings under Rule 12(c) of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

Rule 12(c) provides that a party may move for judgment on the pleadings “[a]fter the pleadings are closed—but early enough not to delay trial.” F.R.Civ.P. 12(c).

A motion under *Rule 12(c)* is evaluated by essentially the same standard as a motion to dismiss pursuant to *Rule 12(b)(6)*, the only notable difference being that in a motion for judgment on the pleadings the Court reviews not only the complaint, but the answer as well. *Phillips v. Transunion, L.L.C.*, 2012 WL 1439088 (E.D. Pa. April 25, 2012). Under this standard the Court must accept as true all allegations in the *Complaint* and all inferences that can be drawn therefrom, and view them in the light most favorable to the . . . non-moving party.

In re General Purpose Steel, Inc., 469 B.R. 602, 605 (Bankr. W.D. Pa. 2012)(Emphasis in original).

See also In re DBSI Inc., 2013 WL 1498365, at 2 (Bankr. D. Idaho)(For a Rule 12(c) motion, which is “functionally identical” to a Rule 12(b)(6) motion, the allegations of the complaint are accepted as true, and the court construes all factual allegations in the complaint in the light most favorable to the nonmoving plaintiff.).

In testing a complaint under Rule 12(c), the Court considers whether it contains sufficient factual allegations to state a facially plausible claim for relief. In re General Purpose Steel, Inc., 469 B.R. at 605.

A complaint is sufficient if it pleads “enough facts to state a claim for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In determining the Motion, the Court “must determine only whether ‘the claimant is entitled to offer evidence to support the claims,’ not whether the plaintiff can ultimately prove the facts alleged.” *Perdido Sun Condo. Ass’n, Inc. v. Nationwide Mut. Ins. Co.*, 2007 WL 2565990, at 3 (N.D. Fla. 2007)(citations omitted).

In re Champalanne, 425 B.R. 707, 711 (Bankr. S.D. Fla. 2010). To survive a motion for judgment on the pleadings, the complaint is only required to plead “sufficient facts to allow the Court to draw a reasonable inference of misconduct.” In re DBSI Inc., 2013 WL 1498365, at 2(citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

IV. Application

In this case, the Court has considered the Complaint in the light most favorable to the Plaintiff, and finds that the Plaintiff has not alleged sufficient facts to state a claim for denial of the Debtor’s discharge that is plausible on its face. Consequently, the Debtor’s Motion for a judgment in his favor should be granted as to the Complaint.

The Motion should be denied, however, as to the Debtor’s Counterclaim. The Court has considered the Counterclaim and the Plaintiff’s Answer in the light most favorable to the Plaintiff, as the non-moving party, and finds that the Plaintiff should be permitted to offer evidence to show that that her alleged violation of the automatic stay was not willful.

A. The Complaint

First, the Court finds that the Complaint does not allege sufficient facts to state a claim for denial of the Debtor's discharge that is plausible on its face. The Complaint is not divided into separate Counts or causes of action, and does not refer to any specific section of the Bankruptcy Code as a basis for denial of the Debtor's discharge. It appears, however, that the Plaintiff primarily asserts that the Debtor misrepresented his financial affairs on his bankruptcy schedules and statements.

Section 727(a)(4)(A) of the Bankruptcy Code provides that a debtor's discharge may be denied if the debtor knowingly and fraudulently made a false oath in connection with the case. 11 U.S.C. §727(a)(4)(A). To establish a claim under §727(a)(4)(A), a plaintiff must show that a debtor's oath was knowingly and fraudulently made, and related to a material fact. In re Quiapo, 2007 WL 917248, at 4 (Bankr. S.D. Fla.)(citing In re Ingersoll, 124 B.R. 116, 122 (M.D. Fla. 1991)). "A false statement or omission in the debtor's petition, schedules, or statements, satisfies the requirements of a false oath." In re Pongvitayapanu, 487 B.R. 130, 140 (Bankr. E.D. N.Y. 2013).

In the Complaint, the Plaintiff alleges that the Debtor's schedules are false because he understated his income and "cash on hand," and because he omitted certain credit card liabilities.

To support her claim that the Debtor understated his income and cash on hand, the Plaintiff attached a motion that was filed on her behalf in the parties' divorce proceeding on September 25, 2009. The motion was apparently filed in furtherance of the Plaintiff's request for temporary support from the Debtor, and alleges that the divorce court had previously made a verbal finding that the Debtor's income was \$71,000.00 per year.

The Complaint and attached state court motion are insufficient to state a plausible claim that the Debtor understated his income and cash on hand on his bankruptcy schedules. The motion is dated

more than two years before the Debtor filed his bankruptcy petition, and no order adjudicating the motion is alleged in the Complaint or attached as an exhibit. Additionally, the Debtor's income is derived from his solely-owned electrical contracting business, and the Complaint does not allege any other facts to show that his income from the business as of the petition date is greater than the amount scheduled. In other words, the only support for the claim is a two-year old allegation by the Plaintiff that the Debtor had income that exceeded his expenses.

With respect to her claim that the Debtor omitted certain credit card liabilities from his schedules, the Plaintiff attached a list of credit card accounts from the parties' divorce proceeding in 2009. According to the list, outstanding balances were owed to Chase, Bank of America, Home Depot, and Vystar. Chase, Bank of America, and Vystar, however, are listed as creditors on the Debtor's bankruptcy schedules. The only creditor listed in the divorce action and not on the bankruptcy schedules is Home Depot. Since the Plaintiff acknowledges that the divorce records were prepared in 2009, the list is insufficient to show that Home Depot was an existing creditor that the Debtor knowingly omitted from his bankruptcy schedules two years later in December of 2011.

Finally, the Plaintiff claims that the Debtor refinanced his vehicle while it was encumbered by a judgment lien. On his schedule of liabilities, the Debtor listed Vystar Credit Union as a secured creditor with a lien on his 2003 Ford F-250 truck in the amount of \$12,667.91. According to the schedules, the debt was incurred on May 16, 2005. Consequently, the Court cannot reasonably infer from the Plaintiff's Complaint that the Debtor falsely represented the vehicle lien on his schedules, or otherwise performed an act with respect to his vehicle that is a basis for denying his discharge.

The Complaint does not contain any other factual allegations sufficient to show that the Debtor knowingly and fraudulently made false oaths on his bankruptcy schedules and statements. Although the Complaint includes other general or conclusory allegations, the Plaintiff has not alleged specific facts that allow the Court to draw the reasonable inference that the Debtor's bankruptcy schedules and statements were false as of the petition date. Accordingly, the Debtor's Motion for a judgment in his favor should be granted as to the Complaint.

B. The Counterclaim

The Motion should be denied, however, as to the Debtor's Counterclaim against the Plaintiff. In the Counterclaim, the Debtor alleges that the Plaintiff willfully violated the automatic stay of §362 of the Bankruptcy Code by filing and prosecuting pleadings in the state court after his bankruptcy case was filed. The Debtor seeks damages under §362(k) of the Bankruptcy Code, which provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. §362(k)(1).

The Plaintiff filed a written Answer to the Counterclaim, and asserted (1) that she did not receive notice of the bankruptcy until "sometime after December 27th and before January 12th," (2) that the notice was sent to her parents' address instead of her address, and that her parents were out of town at the time, (3) that the address listed for her on the Debtor's Schedule F is incorrect, (4) that she was not aware of the bankruptcy case until after she "filed paperwork to collect on debts on Dec27th," and (5) that any action after that date "was merely a result of the clerks office being slow to process." (Doc. 33).

To support her claim that the notice of bankruptcy was not sent to the correct address, the Plaintiff attached the page of the Debtor's schedules on which she is listed as a creditor. The address on the schedule is not the same as the Plaintiff's address of record in the current proceeding.

The Debtor's Motion for Judgment on the Pleadings should be denied as to the Counterclaim. The award of damages for a "willful" violation under §362(k) is generally a fact-specific determination based on all of the evidence. In re Panek, 402 B.R. 71, 76-77 (Bankr. D. Mass. 2009).

In this case, the Plaintiff alleges in her Answer that she was not aware of the Debtor's bankruptcy case at the time that she pursued the state court matters. The Court should view the Complaint and Answer in the light most favorable to the Plaintiff as the non-moving party. Under the circumstances, the Plaintiff has alleged sufficient facts to allow the Court to reasonably infer that the alleged violation of the stay was not willful. The Debtor's Motion for a judgment in his favor on the Counterclaim should be denied.

Conclusion

The Debtor filed a Motion for Judgment on the Pleadings, and seeks a judgment in his favor on the Plaintiff's Complaint to deny his discharge, and also on his Counterclaim against the Plaintiff for willful violation of the stay.

The Court has considered the Complaint in the light most favorable to the Plaintiff, and finds that the Plaintiff has not alleged sufficient facts to state a claim for denial of the Debtor's discharge that is plausible on its face. Consequently, the Debtor's Motion for a judgment in his favor should be granted as to the Complaint.

The Motion should be denied, however, as to the Debtor's Counterclaim. The Court has considered the Counterclaim and the Plaintiff's Answer to the Counterclaim in the light most favorable to the Plaintiff, as the non-moving party, and finds that the Plaintiff should be permitted to offer evidence to show that her alleged violation of the automatic stay was not willful.

Accordingly:

IT IS ORDERED that:

1. The Motion of the Debtor, Clark David Geissman, for Judgment on the Pleadings is granted in part and denied in part as set forth in this Order.

2. The Motion is granted as to the Complaint Objecting to Discharge of Debtor filed by the Plaintiff, Stephanie Smith, and a separate Final Judgment will be entered on the Complaint in favor of the Debtor and against the Plaintiff.

3. The Motion is denied as to the Debtor's Counterclaim against the Plaintiff for willful violation of the automatic stay, and a Pretrial Hearing will be scheduled on the Counterclaim by separate order or notice.

DATED this 30 day of May, 2013.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge