



IT IS ORDERED as set forth below:

Date: March 10, 2015

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 14-62095-PWB
	:	
LISA ANNE SITTON,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

	:	
NANCY TASKER and FRANK TASKER,	:	
	:	
Plaintiffs	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 14-5484
LISA ANNE SITTON,	:	
	:	
Defendant.	:	

ORDER DENYING MOTION TO DISMISS

The Debtor seeks dismissal of the Plaintiff's dischargeability complaint on the ground that the allegations fail to state a claim for relief under 11 U.S.C. § 523(a)(6). For the reasons set forth herein, the Debtor's motion is denied.

To survive a motion to dismiss under Rule 12(b)(6), a complaint “does not need detailed factual allegations,” but those allegations “must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim must have “facial plausibility,” which is met “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Plaintiffs’ allegations are straightforward. They sold real property to the Debtor and provided “owner financing” as part of the transaction. Shortly after the purchase, the Debtor notified the Plaintiffs that they had failed to disclose or had concealed termite damage to the property.

The Plaintiffs’ dischargeability claim is based on their contention that the Debtor’s subsequent willful and malicious actions caused damage to the property. The Plaintiffs contend that their counsel requested through the Debtor’s counsel that she avoid compromising the property and that they be notified of any repairs or destructive testing before it occurred. The Plaintiffs contend that their contractor later discovered significant damage to the property, including the removal of sheetrock, finishes, trims, and tile, and damage to the hardwood flooring. The Plaintiffs contend that the Debtor abandoned the property and later received a substantial settlement from the inspector who performed an inspection of the property. The Plaintiffs foreclosed on the property, obtained confirmation of the sale, and obtained a deficiency judgment against the Debtor.

The Debtor contends that the Plaintiffs’ claim is not “plausible” for purposes of § 523(a)(6) because the complaint fails to allege facts that support an inference that destructive acts committed by the Debtor were committed with the requisite intent to harm the Plaintiffs or the

Property rather than to discover the extent of termite damage.

The Court must accept all of the Plaintiffs' factual allegations as true. *Erickson v. Pardus*, 551 U.S. 89 (2007). The Court has reviewed the Plaintiffs' factual contentions and concludes that the facts as pled are sufficient to permit the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949.

Section 523(a)(6) provides that a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" is excepted from discharge. Section 523(a)(6) requires that a debtor intend the injury, not just the act that causes the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998). A "willful" injury is one in which a debtor commits an intentional act the purpose of which is to cause injury or which is substantially certain to cause injury." *In re Jennings*, 670 F.3d 1329, 1334 (11th Cir. 2012). "Malicious" means wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will. To establish malice, a showing of specific intent to harm another is not necessary." *Id.* at 1334 (internal quotation marks and citation omitted).

The Plaintiffs allege that the Debtor caused injury to their interest in property and that her actions were intentional, excessive, and without just cause (¶¶ 26–36). The Plaintiffs theorize that the Debtor's physical destruction of the property was intentional and that, when considered with her abandonment of the property, her receipt of settlement funds, and her refusal to notify the Plaintiffs whether she would rescind the sale, the Court could infer that she acted willfully and maliciously. These allegations state a plausible claim for relief under § 523(a)(6).

The only consideration of the Court at this time is whether the factual allegations of the complaint are sufficient to state a claim upon which relief may be granted. Whether the Plaintiffs

can prevail on their § 523(a)(6) claim is not the issue at this stage of the proceeding. The fact that an alternative theory may exist – e.g., the Debtor’s actions were justified in order to investigate the extent of latent termite damage to property she recently purchased – merely buttresses the Court’s conclusion that any consideration of the actual merits of the claim is premature. Accordingly, it is

ORDERED that the Debtor’s motion to dismiss is denied.

End of Order

Distribution List

Richard S. Alembik
Richard S. Alembik, PC
315 W. Ponce De Leon Ave
Suite 250
Decatur, GA 30030-5100

Charles M. Clapp
Law Offices of Charles Clapp, LLC
303 Perimeter Center North
Suite 300
Atlanta, GA 30346