

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET

OCT - 6 2009

IN RE:	:	CASE NO. 09-68240 - JB
	:	
RONALD JAMES FOSTER,	:	
	:	
Debtor.	:	
_____	:	CHAPTER 7
	:	
MARTY LOU FRANZ,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 09-09043 - JB
v.	:	
	:	
RONALD JAMES FOSTER,	:	
	:	
Defendant.	:	

ORDER

Defendant Ronald James Foster has moved to dismiss the *pro se* complaint filed by creditor Marty Lou Franz for improper service and for failure to state a claim for relief (Docket No. 3). The Court held a hearing on the motion on September 30, 2009, at which Ms. Franz appeared *pro se*, Philip Barnes appeared for Mr. Foster, and Mr. Foster was present. After carefully considering the pleadings and arguments, the Court concludes that any claims by plaintiff objecting to debtor's discharge under 11 U.S.C. 727, and any claim objecting to dischargeability of Ms. Franz's claim under 11 U.S.C. §§ 523(a)(13) and 523(a)(19) must be and are hereby dismissed.

Ms. Franz's remaining claims objecting to dischargeability under 11 U.S.C. § 523(a)(2) and possibly § 523(a)(6) are not pled to meet the standards required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. Accordingly, Ms. Franz

must amend her pleadings to plead facts that would support an exception to discharge under § 523(a)(2) or (a)(6) by **October 30, 2009**, or the Court will dismiss this adversary proceeding.

The procedural history is as follows. On March 31, 2009, Mr. Foster filed a petition for relief under Chapter 13 of the Bankruptcy Code; he converted the case to Chapter 7 on June 15, 2009. On July 31, 2009, Ms. Franz filed a one page hand-written *pro se* complaint objecting to Defendant's discharge of her claim. The complaint is short and alleges that Mr. Foster "lied to obtain funds loaned to him by [Ms. Franz]. Please do not discharge this debt". The complaint does refer to specific Bankruptcy Code provisions, but the adversary proceeding cover sheet references 11 U.S.C. §§ 523(a)(2), 523(a)(6) and 727. On August 30, 2009, Mr. Foster filed a motion to dismiss pursuant to Rules 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure. Ms. Franz's *pro se* response to the motion contains one sentence that refers to §§ 523(a)(2), (a)(13), and (a)(19).

In considering a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7012(b), all facts pled in Plaintiff's complaint are to be accepted as true and construed in the light most favorable to the plaintiff. Rivell v. Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008) (citing Hoffman-Pugh v. Ramsey, 312 F.3d 1222, 1225 (11th Cir. 2002)). In Bell Atl. Corp. v. Twombly, the Supreme Court held "a formulaic recitation of the elements of a cause of action will not do" and that the complaint's factual allegations must raise the right of relief "above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545; 127 S.Ct 1955, 1965

(2007). Discussing the Supreme Court's holding in Twombly, the Eleventh Circuit has stated:

The Supreme Court's most recent formulation of the pleading specificity standard is that "stating such a claim requires a complaint with enough factual matter (taken as true) to suggest" the required element. The standard is one of "plausible grounds to infer." The Court has instructed us that the rule "does not impose a probability requirement at the pleading stage," but instead "simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of" the necessary element. It is sufficient if the complaint succeeds in "identifying facts that are suggestive enough to render [the element] plausible."

Watts v. Fla. Int'l Univ., 495 F.3d 1289, 1295 (11th Cir. 2007) (citations removed) (quoting Bell v. Twombly).

It appears from the complaint and cover sheet that Ms. Franz may be confused regarding the exceptions to receiving a discharge under § 727 of the Bankruptcy Code and exceptions to the dischargeability of a particular debt under § 523 of the Code. Her short complaint appears to object only to the dischargeability of Ms. Franz's debt, but the cover sheet refers to § 727. Even under the liberal pleading standards afforded *pro se* litigants, the complaint does not contain enough factual matter to create plausible grounds to support a denial of discharge under 11 U.S.C. § 727. Ms. Franz's allegations regarding Mr. Foster's character are not grounds upon which the Court can deny a discharge, and the allegation that Mr. Foster lied to obtain funds from Ms. Franz is more properly considered as an objection to the dischargeability of Ms. Franz's claim. Accordingly, to the extent Plaintiff attempts to state a claim under 11 U.S.C. § 727, the complaint fails, and any claim under Section 727 is dismissed. Defendant's discharge will be granted, and the Clerk is directed to issue the discharge instanter.

At the hearing on the motion to dismiss, the parties appeared to agree that Ms. Franz's claim arises from money loaned to Mr. Foster that led to a \$10,500.00 consent judgment issued by the Magistrate Court of Dekalb County and dated January 29, 2003. Ms. Franz stated she has received payments of \$11,158.00 on the judgment, and the parties appear to agree that, including interest, approximately \$7,860.00 of the debt remains unpaid. Neither party has provided the Court with a written payment history of this debt. The complaint only states that Mr. Foster "lied to obtain funds loaned to him", but does not provide any additional facts.

Ms. Franz's response to the motion to dismiss also recites that the debt should be excluded from the discharge pursuant to 11 U.S.C. §§ 523(a)(2), (a)(13) and (a)(19)(B). Section 523(a)(13) excepts from discharge a debt for payment of an order of restitution issued under title 18 of the United States Code, and Section 523(a)(19) excepts from discharge a debt that results from a violation of Federal or State securities laws, or a debt incurred by fraud in connection with the purchase or sale of a security. The complaint does not allege any facts that, even if true, raise plausible grounds to infer that Mr. Foster's debt to Ms. Franz falls within the exceptions to discharge in Sections 523(a)(13) or (a)(19). Accordingly, any claims by Ms. Franz objecting to the dischargeability of her claim under Sections 523(a)(13) or (a)(19) are dismissed.

All that remains are Ms. Franz's claims to determine dischargeability under 11 U.S.C. § 523(a)(2) which she refers to in the response and cover sheet and § 523(a)(6) mentioned only in her cover sheet. The pleadings on file do not meet required pleading standards. Accordingly, Ms. Franz will be given until **October 30, 2009** to amend her

complaint to conform with Federal Rule of Bankruptcy Procedure 7008 and 7009(b), requiring that plaintiff plead "a short and plain statement of the claim showing that the pleader is entitled to relief". Ms. Franz must allege a specific factual and legal basis for her claim and her complaint must state the particular circumstances constituting the alleged fraud. The amended complaint should reference specific acts, transactions or events upon which Ms. Franz bases her objections to dischargeability under Sections 523(a)(2) or 523(a)(6).

Ms. Franz is further directed to obtain a summons and serve the summons and amended complaint on: (1) defendant Ronald James Foster at 62 Eastwick Road, Decatur, GA 30023; and (2) defendant's counsel Philip Barnes at Leonard, Rickman, and Holloway, P.C., 191 Roswell Street, Marietta, GA 30060. If Ms. Franz fails to properly file and serve the amended complaint by **October 30, 2009**, this adversary proceeding will be dismissed.

At the hearing on the motion to dismiss, Ms. Franz indicated her preference that she be served by email at martyloufranz@yahoo.com, as well as by regular mail. The Clerk and Defendant's counsel are directed to take steps to serve Ms. Franz through this email address and by regular mail.

IT IS SO ORDERED, this 5th day of October, 2009.



JOYCE BIARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

Marty Lou Franz
Apt A
5 Lameth Circle
Ellenwood, GA 30294

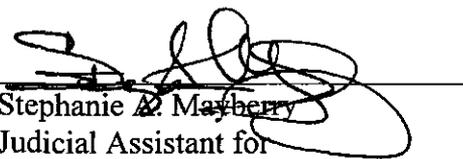
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Philip Barnes
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Ronald James Foster
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Robert Trauner
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Stephanie A. Mayberry
Judicial Assistant for
Chief Judge Bihary

Mailed: 10/5/09