UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
MIRANDA ANN STOREY,	)	CASE NO. **13-75469** – MHM
f/k/a Miranda Ann Sanders,	)	
	)	
Debtor.	)	
	)	
	)	
AARON STILL	)	
	)	
Plaintiff,	)	**ADVERSARY PROCEEDING**
v.	)	**NO. 14-5125**
	)	
MIRANDA ANN STOREY,	)	
f/k/a Miranda Ann Sanders,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This adversary proceeding is before the court on Defendant's *Motion to Dismiss* filed June 3, 2014 (Doc. No. 8). On April 22, 2014, Plaintiff filed a complaint *pro se* initiating this adversary proceeding to determine dischargeability of a debt allegedly obtained through fraud. Plaintiff's actual complaint alleges only nondischargeability "of a debt of $12,000 on the grounds that the monies were procured by the debtors [*sic*] fraud" (Doc. No. 1 at 1). However, Plaintiff's *Adversary Proceeding Cover Sheet* states five causes of action: 1) action for recovery of money or property; 2) action for objection or revocation of discharge; 3) action for determination of nondischargeability of priority

tax claims; 4) action for determination of nondischargeability of a debt obtained through false pretenses, false representations, or actual fraud; and 5) action for determination of nondischargeability of a debt obtained through fraud as a fiduciary, embezzlement, or larceny (Doc. No. 3). On June 3, 2014, Defendant filed both a *Motion to Dismiss* and *Motion to Strike*.

DISCUSSION

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), made applicable by Federal Rule of Bankruptcy Procedure 7012(b), a complaint, when viewed in the light most favorable to the Plaintiff, must contain no set of facts that support "a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). For purposes of a motion to dismiss, factual allegations are generally accepted as true. *Hughes v. Rowe*, 449 U.S. 5, 10 (1980). Documents filed by *pro se* parties are to be liberally construed and, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Hughes v. Rowe*, 449 U.S. at 9 (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)); *In re Ankoanda*, 495 B.R. 599, 603 (N.D. Ga. 2013). Nonetheless, a complaint, whether or not it is filed *pro se*, is insufficient if it contains only "naked assertion[s of conclusions] devoid of further factual enhancement." *Ashcroft v. Iqbal* 556 U.S. at 678.

None of Plaintiff's claims are supported by sufficient factual allegations, even when his pleadings are construed liberally. For the first cause of action, the recovery of

money or property, Plaintiff has not shown that he is entitled to relief. He merely asserts that a debt of $12,000 was "procured by the debtors [*sic*] fraud" (Doc. No. 1 at 1). Such a statement is a legal conclusion for the court to determine, not a factual allegation that may be accepted as true for purposes of a motion to dismiss. The deposit receipts and text messages attached to the complaint imply that Plaintiff and Defendant had an arrangement where Plaintiff was to deposit $262 into Defendant's account each month so Defendant could make payments on a motorcycle. Plaintiff also states that he "paid for this bike in full," but that there is a balance of $8,400 on the motorcycle because Defendant failed to make payments (Doc. No. 1 at 19). However, these facts alone do not support a claim to the money that Plaintiff allegedly gave Defendant – they do not, for example, suggest that Defendant and Plaintiff had an enforceable contract, or that Plaintiff was otherwise legally entitled to anything in return for his payments.

Plaintiff's objection to discharge under 11 U.S.C. § 727(c) is not supported by sufficient facts in the complaint. Under § 727(c), a creditor may prospectively object to entry of a discharge if an exception to discharge under § 727(a) applies. The only § 727(a) exception applicable to Plaintiff's claim allows the court to deny discharge if a debtor, "in connection with the case," fraudulently "gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act . . ." 11 U.S.C. § 727(a)(4)(C) (2014). The deposit receipts and text messages do not support a claim of fraud, much less show that Debtor acted fraudulently "in connection with" Debtor's bankruptcy case.

Plaintiff does not allege sufficient facts to state a claim that Defendant's debt is a nondischargeable priority tax claim; no facts *at all* are alleged in the complaint relating to a tax claim.

Plaintiff does not allege sufficient facts showing that the $12,000 debt was obtained through false pretenses, false representations, or actual fraud under § 523(a)(2). A fraud complaint must "state with particularity the circumstances constituting fraud." FED. R. BANKR. P. 7009. Such particularity requires a plaintiff to identify the precise statements of misrepresentation or omission; the content of those statements; when, where, and by whom the statements were made; and what the defendant obtained by committing fraud. *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001).

Here, Plaintiff failed to allege with particularity that Defendant's debt was obtained through fraud. The text messages attached to the complaint bear no date or time stamp. Moreover, no facts are alleged to show how Plaintiff was harmed or what Defendant did to harm him. Even if the Plaintiff's assertions in the text messages are accepted as true, Plaintiff has not set forth the false representations that Defendant allegedly made to deceive him and thus cannot show either reliance or that he sustained a loss resulting from his reliance on Defendant's false representations.

Although Plaintiff mentions only "debtors [sic] fraud" in the body of his complaint, his claim appears to be more appropriately characterized as embezzlement.[1] Embezzlement is "the fraudulent appropriation of property by a person to whom such

[1] *Pro se* pleadings should be construed liberally. *Hughes v. Rowe*, 449 U.S. at 9.

property has been lawfully entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269 (1895); *In re Marsh*, 449 B.R. 431, 437 (N.D. Ga. 2011). But the facts in the pleadings do not satisfy the requirements of embezzlement because Plaintiff has not shown that he has a colorable claim to the motorcycle.[2]

Defendant seeks to strike the handwritten statement, deposit receipts, and text messages that Plaintiff attached to his complaint because of a lack of information verifying the content in these attachments. However, because Defendant's *Motion to Dismiss* should be granted due to Plaintiff's failure to state a claim, Defendant's *Motion to Strike* is moot.

Accordingly, it is hereby

ORDERED that Defendant's motion is ***granted***. It is further

ORDERED that, with respect to Defendant's Motion to Strike, the Motion is ***denied*** as moot.

IT IS SO ORDERED, this the 11th day of July, 2014.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

[2] Plaintiff does not hold title to the motorcycle (Doc No. 1 at 19). Also, Plaintiff does not mention or show that a contract existed between Plaintiff and Defendant, or between Plaintiff and the seller of the motorcycle.