IT IS ORDERED as set forth below:

Date: December 22, 2015

_____

**W. Homer Drake
U.S. Bankruptcy Court Judge**

_____

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBERS**
	:	
ENRICO D. DEAN,	:	BANKRUPTCY CASE
	:	13-10138-WHD
Debtor.	:	
_____	:	
	:	
JAMES G. BAKER,	:	ADVERSARY PROCEEDING
	:	NO. 15-1006
Plaintiff,	:	
	:	
v.	:	
	:	
NATHANIEL DEAN,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Dismiss Complaint and Close the Chapter 7

Case, filed by Enrico Dean (hereinafter the "Debtor"). The Motion arises in connection with a complaint (hereinafter the "Complaint") filed by James G. Baker (hereinafter the "Trustee"), in his capacity as the trustee of the Debtor's Chapter 7 bankruptcy estate, to recover an allegedly fraudulent transfer. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 1334; 157(b)(2)(H).

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FACTS

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The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on January 18, 2013. *See* Case No. 13-10138-whd. The Trustee was appointed by the United States Trustee to serve as interim trustee and became permanent trustee following the meeting of creditors on February 21, 2013.

The Debtor purchased real property known as 109 Cline Road, Moreland, Coweta County, Georgia on June 4, 2009 (the "Property"). Complaint, ¶ 8. On March 13, 2012, the Debtor transferred the Property to his father, Nathaniel Dean (hereinafter the "Defendant"), and did not receive "reasonably equivalent value" in exchange for the transfer. *Id.* ¶ 3, ¶ 9, ¶ 27. The Debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. *Id.* at ¶ 10, ¶ 27. Prior to the transfer, one or more creditors of the Debtor were entitled to payment from the Debtor. *Id.* at ¶ 27. The Debtor failed to disclose the transfer of the Property to his creditors and failed to include it in his Statement of Financial Affairs filed with this Court. *Id.* at ¶ 27. The Debtor has

effectively retained possession and/or control of the Property after the transfer. *Id*. The

transfer was the only property that the Debtor owned free and clear of all liens, claims,

and encumbrances. *Id*.

CONCLUSIONS OF LAW

The Trustee has alleged that the transfer of the Property from the Debtor to the

Defendant was a fraudulent transfer, subject to avoidance under sections 548 and 544 of

the Bankruptcy Code. The Debtor seeks dismissal of the Complaint and the closing of his

Chapter 7 case because the transfer of Property had "nothing to do with the Debtor's

bankruptcy filing" and because no creditors have filed claims against the Debtor's estate.

Setting aside the fact that the Debtor is not a party to this adversary proceeding, the

Court has no basis at this time to dismiss the Complaint or to close the Debtor's

bankruptcy case. Rule 8 of the Federal Rules of Civil Procedure, made applicable to this

proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure, requires that a

complaint contain only "a short and plain statement of the claim showing that the pleader

is entitled to relief." FED. R. CIV. P. 8(a)(2) (made applicable to this proceeding by FED.

R. BANKR. P. 7008). Under Rule 7012, the Court may dismiss a complaint if it fails "to

state a claim upon which relief can be granted." *See* FED. R. BANKR. P. 7012

(incorporating FED. R. CIV. P. 12(b)(6)). When considering dismissal of a complaint fue

to the plaintiff's failure to state a claim upon which relief can be granted, the Court must

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accept as true all factual allegations set forth in the complaint and, on the basis of those

facts, determine whether the plaintiff is entitled to the relief requested. The Court must

also draw all reasonable inferences in the light most favorable to the non-moving party.

See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554-56 (2007); *Daewoo Motor America,*

Inc. v. General Motors Corp., 459 F.3d 1249, 1271 (11th Cir. 2007); *Hill v. White* 321

F.3d 1334, 1335 (11th Cir. 2003); *Grossman v. Nationsbank, Nat'l Ass'n*, 225 F.3d 1228,

1231 (11th Cir. 2000); *Bryant v. Avado Brands*, *Inc.*, 187 F.3d 1271, 1273 n.1 (11th Cir.

1999). Legal conclusions, labels, and unsupportable assertions, however, are not entitled

to an presumption of truth. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In fact, legal

conclusions "must be supported by [specific] factual allegations." *Id*. Accordingly,

"conclusory   allegations,   unwarranted   factual   deductions   or   legal   conclusions

masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc*., 326

F.3d 1183, 1185 (11th Cir. 2003).

Moreover, in *Twombly*, the Supreme Court held that the Court must dismiss a case

where the well pled facts do not state a claim that is plausible on its face. *See Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 554-56). "A claim has

facial plausibility when the plaintiff pleads factual content that allows the court to draw

the reasonable inference that the defendant is liable for the misconduct alleged" or that the

plaintiff can establish the necessary elements of the cause of action. *Id*.; *see also In re*

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Clower, 463 B.R. 573, 576 (Bankr. N.D. Ga. 2011) (Drake, J.). The factual allegations in

the complaint need not be fully developed, but they must include sufficient factual

information to provide the grounds on which the claim rests, and they "must be enough to

raise a right to relief above the speculative level . . . on the assumption that all the

allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at

555. Nonetheless, the Court need not accept as true "formulaic" or "threadbare recitals of

a cause of action's elements, supported by mere conclusory statements." *Twombly*, 550

U.S. at 545; *Iqbal*, 556 U.S. at 663-64.

In this case, the Trustee has asserted sufficient facts to address each element of his

cause of action and to put the Defendant on notice of the relief he seeks. Section 548 of

the Bankruptcy Code provides that a trustee may "avoid any transfer . . . of an interest of

the debtor in property . . ., that was made . . . on or within 2 years before the date of the

filing of the petition, if the debtor voluntarily or involuntarily— (A) made such transfer .

. . with actual intent to hinder, delay, or defraud any entity to which the debtor was or

became, on or after the date that such transfer was made or such obligation was incurred,

indebted; or (B) (i) received less than a reasonably equivalent value in exchange for such

transfer . . .; and (ii) . . . was insolvent on the date that such transfer was made . . . , or

became insolvent as a result of such transfer or obligation . . . . 11 U.S.C. § 548(a)(1).

First, the Trustee has alleged that the Debtor transferred the Property to his father

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less than one year before he filed his bankruptcy petition. Second, the Trustee alleges that

the Debtor did so with the actual intent to hinder, defraud, or delay his creditors. The

Trustee is entitled to the benefit of a reasonable inference drawn from the facts that he has

alleged in support of such a conclusion, to wit: (1) the Debtor did not receive reasonably

equivalent value in exchange for the Property; (2) the Property was his only

unencumbered asset; (3) the Debtor was in debt; (4) the transfer occurred less than a year

before the Debtor filed his bankruptcy petition; (5) the Debtor continued to use the

Property; (6) the Debtor did not disclose the transfer of the Property when he filed his

Statement of Financial Affairs as part of his bankruptcy filing; and (7) the transfer was to

a family member. These are all classic "badges of fraud" and support the Trustee's

conclusion that this was an actual fraudulent transfer. Finally, the Trustee is also entitled

to the reasonable inference that the transfer of the Property rendered the Debtor insolvent,

and, therefore, was constructively fraudulent, if not actually fraudulent. In short, the

Trustee's complaint does allege a cause of action that is plausible on its face.

Further, the Debtor misunderstands the nature of a Chapter 7 bankruptcy

proceeding when he argues that the Complaint should be dismissed because no claims

have been filed in the Debtor's bankruptcy case. The Debtor's bankruptcy case has, up to

this point, been considered a "no-asset" case. In other words, although the Trustee has

been investigating the possibility of assets (*see* Dkt. No. 38), the Trustee has not yet

requested the Clerk of the Court to send notice to creditors of the existence of assets and

the need to file proofs of claim. This fact, however, does not mean that the Trustee may

not do so once assets have been located and administered. *See* FED. R. BANKR. P.

3002(c)(5) ("If notice of insufficient assets to pay a dividend was given to creditors under

Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend

appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that

fact and of the date by which proofs of claim must be filed."). There is no legitimate

dispute that the Debtor has unpaid debts that will be subject to discharge unless paid by

the Trustee from funds recovered in this litigation. Accordingly, the Trustee has the duty

to continue this proceeding and to keep the Debtor's bankruptcy case open while he

pursues the litigation.

That being said, on October 16, 2015, the Court granted the Trustee's motion to

reconsider the earlier dismissal of the Complaint for want of prosecution and directed the

Trustee to file an appropriate motion or status report. Two months have passed, and the

Trustee has not done so. The Trustee has also failed to respond to the instant motion.

Accordingly, it is hereby

ORDERED that the Motion to Dismiss and Close Chapter 7 Case is **DENIED**;

IT IS FURTHER ORDERED that the Trustee shall file a motion for summary

judgment or a request for the matter to be scheduled for a trial on or before January 31,

2016. Should the Trustee fail to do so, the complaint shall stand **DISMISSED** for want

of prosecution.

<p align="center">**END OF DOCUMENT**</p>