

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBERS
	:	
SILVESTEL K. LEE	:	BANKRUPTCY CASE
SUN A. LEE,	:	NO. 05-17278-WHD
	:	
Debtors.	:	
	:	
PEACHTREE NATIONAL BANK,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 05-1155
v.	:	
	:	
SILVESTEL K. LEE,	:	
SUN A. LEE,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Dismiss, filed by Silvestel and Sun Lee (hereinafter the "Debtors"). This motion arises in connection with a complaint to determine the dischargeability of a debt filed by the Plaintiff. Accordingly, this matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(I); § 1334.

On November 18, 2005, the Plaintiff filed a complaint in which the Plaintiff asserts that the Debtors fraudulently obtained funds from the Plaintiff. The complaint alleges particular facts to support its claim that the debt created by this fraud should be found

nondischargeable under sections 523(a)(2), (a)(4), and (a)(6) of the Bankruptcy Code.

On December 20, 2005, the Debtors filed an answer to the complaint and a motion to dismiss the complaint. The Court will consider the Motion as a motion to dismiss for failure to state a claim, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Bankruptcy Rule 7012(b). In evaluating a Rule 12(b)(6) motion to dismiss, the United States Supreme Court has stated that “[i]n appraising the sufficiency of the complaint we follow . . . the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also The S. Florida Water Management Dist. v. Montalvo*, 84 F.3d 402, 406 (11th Cir. 1996); *Mills v. Polar Molecular Corp.*, 12 F.3d, 1170, 1174 (2d Cir. 1993). “The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim ... all the Rules require is a 'short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.” *Conley*, 355 U.S. at 47. When confronted with a motion to dismiss for failure to state a claim, a court must construe the complaint “in a light most favorable to the plaintiff and the factual allegations taken as true.” *Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997); *Montalvo*, 84 F.3d at 406.

The Plaintiff opposes the Motion on the basis that the Debtors have failed to raise any

valid argument that would merit dismissal of the Complaint. The Court must concur with the Plaintiff. The Complaint alleges that the Debtors knowingly and fraudulently obtained funds from the Plaintiff by writing bad checks. If proven, these facts would support a finding that the debt owed by the Debtors to the Plaintiff is nondischargeable. Accordingly, the Debtors' Motion to Dismiss must be, and hereby is, **DENIED**.

IT IS ORDERED.

At Newnan, Georgia, this 3 day of January, 2006.

A handwritten signature in black ink, appearing to read "W. Homer Drake, Jr.", written over a horizontal line.

W. HOMER DRAKE, JR.

UNITED STATES BANKRUPTCY JUDGE