



IT IS ORDERED as set forth below:

Date: October 04, 2009

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

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

IN THE MATTER OF:	:	CASE NUMBER: A08-81559-PWB
	:	
CAMILLA L. LACKEY,	:	
	:	
Debtor.	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE
	:	
DEXTER HARDGE,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 09-9006
CAMILLA L. LACKEY,	:	
	:	
Defendant.	:	

**ORDER DENYING MOTION TO DISMISS AND
GRANTING MOTION TO AMEND COMPLAINT**

Camilla L. Lackey, the Debtor/Defendant in this action (the “Debtor”), seeks dismissal of the Plaintiff’s complaint objecting to the dischargeability of a debt owed to him on the ground

that the complaint fails to state a claim upon which relief may be granted. The Plaintiff opposes the motion and, in response, seeks leave to amend his complaint. For the reasons stated herein, the motion to dismiss is denied and the motion to amend the complaint is granted.

The Plaintiff contends that the Debtor “fraudulently obtained at least \$54,742 from [him] by fraudulently claiming that [he] was the Father of her child” and seeks a ruling that this debt is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A). (Complaint, ¶ 4). The Plaintiff further alleges that he obtained a judgment against the Debtor in the Superior Court of Rockdale County, Georgia, based upon allegations of the Debtor’s fraud and deceit. The judgment is not attached to the complaint.

Section 523(a)(2)(A) provides that a discharge under chapter 7 does not discharge a debtor from a debt for “money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud. . . .” 11 U.S.C. § 523(a)(2)(A). The Plaintiff contends that the Debtor’s complaint fails to state a claim for relief because it does not contain sufficient facts to enable the Debtor to respond. Specifically, the Plaintiff contends that the complaint is deficient because it does not does not allege facts that support a claim for fraudulent misrepresentation, namely that the complaint does not allege that the Debtor’s alleged misrepresentation was material, that she knew that the misrepresentation was false, that she made the misrepresentation with the intention of deceiving the Plaintiff, and that the Plaintiff justifiably relied on the representation and was damaged as a result. Thus, the Court must consider whether the Plaintiff’s complaint alleges the necessary facts and elements to overcome a motion to dismiss.

Rule 8 of the Federal Rules of Civil Procedure, made applicable by Rule 7008 of the

Federal Rules of Bankruptcy Procedure, provides that a claim for relief shall include “a short and plain statement of the claim showing that the pleader is entitled to relief” and that “[e]ach allegation must be simple, concise, and direct.” In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007), the Supreme Court explained that, 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.” *Twombly*, 127 S.Ct. at 1964-65. In *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009), the Supreme Court further explained that while Rule 8 “does not require detailed factual allegations, [] it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S.Ct. at 1949. 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.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

The Plaintiff has emphasized the traditional five part test of fraud which focuses on an express misrepresentation by the debtor. But fraud is a much broader term false representation and may encompass “deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another.” *McClellan v. Cantrell*, 217 F.3d 890, 893 (7th Cir. 2000) (citation omitted). The common element to both false representation and actual fraud is an intent to deceive by the debtor.

The Court concludes that the factual allegations meet the “facial plausibility” test of *Twombly* and *Iqbal*. The Plaintiff alleges that the Debtor “fraudulently obtained at least \$54,742 from [him] by fraudulently claiming that [he] was the Father of her child” and that the Debtor

“knowingly falsely claiming that the Plaintiff was the Father of her child in order to obtain child support was clear fraud.” (Complaint, ¶¶ 4, 13). These allegations are mixed contentions of fact and law. While a defendant cannot admit a conclusory legal statement (e.g., the act was “clear fraud”), the allegations that the Debtor acted knowingly and falsely are sufficient to put the Debtor on notice of the relief the Plaintiff seeks.

Even if the Court were to conclude the original complaint was deficient, the Plaintiff has promptly sought to amend his complaint to set forth further factual allegations which, upon review, satisfy the requirements of Rules 8 and 9 of the Federal Rules of Civil Procedure. Because the Plaintiff has acted promptly and because no response has been filed to the motion to amend the complaint, the Court grants the motion to amend. Based on the foregoing, it is

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

FURTHER ORDERED that the Plaintiff’s motion to amend the complaint is granted. The Plaintiff is directed to serve copies of the amended complaint upon the Debtor and the Debtor’s counsel within 10 days of the entry date of this Order. The Debtor is directed to file a response to the amended complaint within 10 days of service of the amended pleading.

End of Order

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