**IT IS ORDERED as set forth below:**

**Date: September 4, 2013**

**Barbara Ellis-Monro**
**U.S. Bankruptcy Court Judge**

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

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| IN RE: | |
| Amy R. Reynolds,<br>Debtor. | CASE NO. 11-87131-BEM<br>CHAPTER 7 |
| Barbara B. Stalzer, as Chapter 7 Trustee,<br>Plaintiff,<br>v.<br>Amy R. Reynolds,<br>Defendant. | ADVERSARY PROCEEDING NO. 13-05137-BEM |

**O R D E R DENYING MOTION TO DISMISS**

This matter comes before the Court on Defendant's First Affirmative Defense of "Motion to Dismiss for Failure to State a Claim" and Plaintiff's "Response to Defendant's First Affirmative Defense" (the "Motion" and "Response"). [Doc. No. 4, 10].

## I. FACTS

In the Complaint [Doc. No. 1], Plaintiff, Chapter 7 Trustee Barbara Stalzer ("Plaintiff" or "Trustee"), alleges as follows: that Defendant, Amy R. Reynolds ("Defendant" or "Reynolds"), filed her Chapter 7 bankruptcy case on December 30, 2011. [Complaint ¶ 5]. After the 341 meeting of creditors was held on February 6, 2012, the Trustee filed her Report of No Distribution and Defendant's discharge was entered on April 16, 2012. *Id.* The United States Trustee filed a Motion to Reopen the case on April 9, 2013, (Case No. 11-87131, Doc. No. 33) because the administration of another Chapter 7 bankruptcy case (the "Jahangard case," Case No. 12-52321-jem) prompted inquiry regarding whether Reynolds had misled the court. [Complaint ¶¶ 6, 7]. Plaintiff is the Chapter 7 Trustee in both the Defendant's and Jahangard's case. In her investigation of the Jahangard case, she became familiar with a company named Ridgemont, LLC ("Ridgemont"), of which Defendant is the organizer and registered agent. [Complaint ¶ 8, 9]. Reynolds organized Ridgemont in October 2011 to purchase a shopping center in November 2011 for $900,000. [Complaint ¶ 8,9]. Ridgemont's corporate resolution filed with the Georgia Secretary of State lists Defendant as a manager and member of the company. [Complaint ¶ 10].

No mention is made of Ridgemont or the Defendant's status with the company in Defendant's Statement of Financial Affairs or Schedule I, and no amendments have been filed to clarify this issue. [Complaint ¶¶ 12, 13]. However, the Defendant filed her chapter 7 case just a few weeks after the closing of the sale on the shopping center by Ridgemont, and the Defendant's bankruptcy attorney also represented Ridgemont at the property closing. *Id.* Plaintiff took Defendant's 2004 examination in December of 2012. At that time Defendant stated she was still the acting manager of Ridgemont. [Complaint ¶¶ 11, 12].

Plaintiff claims the fact that Defendant was a manager of Ridgemont was a material fact that Defendant omitted from her Statement of Financial Affairs and Schedules filed in her chapter 7 case. [Complaint ¶ 16]. Plaintiff explains that Defendant knew her status as the manager of Ridgemont, a company with a "substantial asset," and yet omitted it from all bankruptcy documents, possibly to the detriment of the estate and her creditors. [Complaint ¶ 18]. Because Defendant failed to disclose her relationship to Ridgemont, Plaintiff asserts that her discharge should be revoked pursuant to 11 U.S.C. § 727(d). [Complaint ¶ 19].

In Defendant's First Affirmative Defense to the Complaint, Defendant asserts that the Complaint should be dismissed for Failure to State a Claim. [Doc. No. 4]. Defendant argues that under Bankruptcy Rule § 7012(b)(6), Plaintiff's Complaint "does not overcome the mandate established by the Supreme Court that mere conclusory pleadings are not sufficient." *Id*. Defendant states that the Plaintiff "draws a conclusion that the alleged omission of a non-existent interest in the LLC, is a "material" omission without stating specifically how any damage could have been incurred by the Defendant's creditors." *Id*. Defendant also states that Plaintiff cannot set forth any facts which prove Defendant was a manager or member of the LLC. *Id.*

In her response, Plaintiff argues that Defendant's Motion to Dismiss lodged as an affirmative defense does not comply with the local rules. [Doc. No. 10]. Bankruptcy Local Rule (BLR) 7007-1(a) states that, "Every motion presented to the Bankruptcy Clerk for filing shall be accompanied by a memorandum of law that cites supporting authority." Defendant did not file a Motion and Memorandum as a separate pleading, and Plaintiff states that the Court has the ability to decline the Motion based on the filing deficiency. Additionally, Plaintiff argues that the Complaint satisfies the pleading standard established by *Bell Atlanta Corp. v. Twombly*, 550 U.S. 544, 545 (2007), and *Ashcroft v.* Iqbal, 556 U.S. 662 (2009). [Doc. No. 11].

## II. STANDARD

Under Fed. R. Civ. P. 8(a)(2), Plaintiff need only provide, "a short and plain statement of the claim showing that the pleader is entitled to relief," enough to give the Defendant adequate notice of the claim, "and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citing *Twombly* at 545). Detailed facts are not necessary, but Plaintiff must provide enough information "to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id.* "A complaint that provides "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" is not adequate to survive a Rule 12(b)(6) motion to dismiss." *Chaparro v. Carnival Corp.,* 693 F.3d 1333, 1337 (11th Cir. 2012)(internal citations omitted). Furthermore, *Twombly* does not require that a pleading show the likelihood of success on the merits, "but instead 'simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of' the necessary element." *In re Haven Trust Bancorp., Inc.,* 461 B.R. 910, 912 (Bankr.N.D.Ga. 2011) (citing *Twombly*).

## III. ANALYSIS

While Plaintiff correctly points out that Defendant failed to follow BLR 7007-1(a), in the interest of addressing the merits in this proceeding, the Court will consider the Motion to Dismiss despite its deficiencies. The Court finds that Plaintiff has stated facts that, when accepted as true, would prove Defendant omitted information when answering question #18 on her Statement of Financial Affairs, allowing the Plaintiff to pursue a revocation of discharge under 11 U.S.C. § 727(d). *See Walton v. Paul (In Re Paul)*, 2012 WL 4894581, *3 (Bankr. N.D.Ga. 2012)(Drake, J.). Plaintiff clearly explains in the Complaint why the case was

reopened and how Plaintiff discovered the facts that led her to examine the Defendant and inquire into her relationship with Ridgemont. The documents of record indicate that the Defendant was at one point the organizer, manager, and member of Ridgemont. Statements made by the Plaintiff in the Complaint rely solely on documents in the record, including the statement of financial affairs, schedules, testimony taken pursuant to a Rule 2004 exam, and documents filed with the state. The Plaintiff does not rely on or make conclusory statements or mere allegations in the Complaint as contemplated by *Twombly*. Contrary to Defendant's assertion, Plaintiff does not need to generally prove that the omission caused harm to creditors. Plaintiff has clearly alleged sufficient facts to withstand a motion to dismiss.

## IV. CONCLUSION

Plaintiff has set forth in her Complaint facts that when accepted as true, state a claim upon which relief can be granted under 11 U.S.C. 727(d). At no point does Plaintiff make conclusory statements devoid of facts or evidence. As such,

IT IS ORDERED that Defendant's Motion to Dismiss for Failure to State a Claim under Fed. R. Civ. P. 12(b)(6) is DENIED.

Parties will have 90 days from the entry of this order to conduct discovery, at the conclusion of which period parties will have 30 days to file dispositive Motions.

**END OF ORDER**

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